Foreign Exchange Professionals Association

October 25, 2024

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

RE: Request for Feedback on Amendments to the FX Global Code and Disclosure Cover Sheets

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 Disclosure Cover Sheets.[2]

The FXPA would like to offer a few overall observations and then respond to the GFXC's specific questions about the proposed amendments to the Code and Disclosure Cover Sheets.

The FXPA remains a strong supporter of the Code and its stated aim to promote a robust, fair, liquid, open and transparent foreign exchange ("FX") market, and supports the GFXC's efforts to promote transparency and stability in the FX market through updates to the Code. The FXPA understands the GFXC's goal to promote widespread voluntary adoption of the Code, and we continue to believe that alignment with the Code's principles-based approach provides the greatest benefit to all market participants. However, the FXPA is concerned that the proposed amendments to the Code are overly prescriptive. In our view, the further the Code moves away from a principles-based approach, the less likely market participants will be to adopt and conform to the Code, as it will not offer the necessary flexibility to enable adherence to the Code while meeting various jurisdictional regulatory requirements and fostering responsible innovation and greater efficiencies in the market.

Moreover, the FXPA believes that the proposed amendments would benefit from enhanced explanation and guidance and, in some cases, a cost-benefit analysis to demonstrate the anticipated market benefit of the proposed changes to the Code. It is extremely difficult to adequately assess the proposed amendments absent adequate background and explanation, particularly given the very short timeframe provided for public consultation of the amendments. Indeed, it is impractical for market participants—who in many cases must consider and coordinate feedback across

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1 The FXPA represents the collective interests of the institutional FX market 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 about the FXPA, please see www.fxpa.org.

2 GFXC, *GFXC Request for Feedback on Amendments to the FX Global Code and Disclosure Cover Sheets* (Oct. 2024), https://www.globalfxc.org/uploads/gfxc_request_feedback_oct2024.pdf. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Code.

multiple jurisdictions in which they operate—to fulsomely assess the appropriateness and impact of the proposed amendments to the Code in a very short feedback timeframe.[3] We encourage the GFXC to ensure sufficient time and engagement is dedicated to validating the feasibility and desirability of any proposed amendments with the broader market. Otherwise, artificial consultation periods fail both to provide the opportunity for any meaningful interactions with the Code that might foster substantive engagement and to support the increase in the number of firms that commit to the Code.

The FXPA encourages the GFXC to enhance the focus of the Code revision process by ensuring that market participants, including trading platforms and infrastructure providers, are represented throughout the amendment proposal and consideration process. The FXPA also stresses the importance of end-user and buy-side engagement throughout the GFXC revision process to both engage in constructive promotion of the Code to encourage additional buyside commitment to the Code and to ensure that any amendments to the Code that are adopted provide meaningful benefits to market participants. This is particularly important where the GFXC proposes to amend the obligations of liquidity providers and trading platforms for purported benefits to end-users and buy-side market participants.

The FXPA's membership, including its buy-side working group and platforms working group, stand ready to work with the GFXC in its effort to ensure the Code remains fit for purpose and provides positive benefit to the integrity of the FX market.

I. Proposed Amendments to the FX Global Code[4]

A. *FX Settlement Risk Working Group Proposals*

Principle 35: Settlement Risk

Do you agree with the proposed changes to Principle 35? If not, why not? Please elaborate.[5]

The FXPA believes the proposed changes lack the necessary background or rationale explaining the proposed amendments to Principle 35, as discussed further below. Absent such information and guidance, the FXPA does not agree with the proposed changes to Principle 35.

First, as noted in the request for feedback, the proposed amendments introduce a risk waterfall approach and specify that Market Participants should use payment-versus-payment ("PVP") settlement where available. However, FXPA does not believe this waterfall approach accurately captures other types of scenarios where risk is addressed in a different manner and PVP settlement is not appropriate.

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[3] GFXC issued its request for feedback on the proposed Code amendments on Oct. 9, 2024, requiring responses just sixteen calendar days later, on Oct. 25, 2024.

[4] GFXC, *Annex A: GFXC Proposed Changes to the FX Global Code* (2024) https://www.globalfxc.org/uploads/gfxc_request_feedback_oct2024_annex_a.pdf.

[5] *Id*. at 2-3.

For example, where a trade occurs between a custody bank and one of its clients, both counterparties' accounts are held at the custody bank; the custody bank ensures that the payment legs of the transaction settle across the books of a single institution (so-called "on-us settlement"). The proposed amendments do not seem to take this type of risk allocation and settlement method for FX transactions into account and should be revised to consider this factor.

Further, the proposed amendments to Principle 35 should consider the role of risk shifting in the context of PVP settlement through settlement systems like CLS, particularly in instances where settlement can be effectuated by a custodial bank through a book-entry system.

The introduction of a settlement system like CLS, by definition, incorporates an additional layer of operational risk beyond settlement that can be effectuated at the settlement bank. Further, reliance on a settlement system like CLS means that the custody bank may take on credit risk in the pendency before settlement of the transaction where the client does not have sufficient funds in their account and enters into an overdraft position with their custody bank. In effect, mandating the use of systems like CLS, a custody bank may be replacing settlement risk with credit risk. Next, the proposed amendments include the following sentence: "The Management of each area involved in a Market Participant's FX operations should have a thorough understanding of the settlement process and the tools that may be used to mitigate Settlement Risk, including, where available, the use of PVP settlement." As "Management" is not a defined term in the current Code or in the proposed amendments, we request that GFXC confirm that the capitalization of "Management" is not a substantive change or discard the proposed amendment to capitalize the word. Further, it is unclear what constitutes a "thorough" understanding of the settlement process. FXPA cannot provide additional constructive feedback on this proposed change without additional specifics to determine if this phrase is more fit for purpose than the current "high level" requirement in this principle. Without clarity on these important terms, it is difficult for FXPA to understand the implications of these amendments.

For these reasons, and in light of the limited period of time to review and consider these amendments, FXPA does not agree with the proposed changes.

Principle 51: Standard Settlement Instructions ("SSIs")

Do you agree with the proposed changes to Principle 51? If not, why not? Please elaborate.[6]

The FXPA believes the proposed changes lack the necessary background or rationale explaining the proposed amendments to Principle 51, as discussed further below. Absent such information and further guidance, the FXPA does not agree with the proposed changes to Principle 51.

Specifically, the proposed amendments to Principle 51 should provide additional guidance with respect to periodic review of SSIs by Market Participants. In line with the Code's principles-based approach, the FXPA does not believe a frequency for review should be mandated by the Code but should reflect a reasonable practice that meets industry best practices. Specifically, the FXPA recommends the Code specify that SSIs need only be reviewed as it is reasonably practicable for Market Participants.

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[6] *Id*. at 5-6.

B. FX Data Working Group Proposals

Principle 9: Order Handling

Do you agree with the proposed changes to Principle 9? If not, why not? Please elaborate.[7]

The FXPA believes the proposed changes lack the necessary background or rationale explaining the proposed amendments to Principle 9, as discussed further below. Absent such information and guidance, the FXPA does not agree with the proposed changes to Principle 9.

As noted in the request for feedback, the proposed amendments are designed to "encourage FX-E platforms to provide better disclosures around sharing FX data derived from Client interactions with third parties." Code-adherent platforms in the FX market already provide significant information through disclosures. GFXC has not provided full reasoning why additional information would be beneficial to market participants, and FXPA members – including a number of platforms – are not aware of participants seeking this additional disclosure.

The proposed amendments to Principle 9 remove the term "market data" in favor of the term "client interaction data." Client interaction data is described as "order or transaction data derived from client interactions" and "include but are not limited to data on potential or actual FX transactions by clients, including requests for quotes, and other transaction data related to a Client order or trade execution."

In the FXPA's view, the proposed terms "client interaction data" implies a much broader scope of data than "market data" and it is not entirely clear what data the new term is practically meant to capture. "Market data" can be understood to include primary data related to transactions such as price and volume data. In contrast, "client interaction data" could include anything that interacts with the trade negotiation workflow. In the FXPA's view, the scope of "client interaction data" is unhelpfully broad and practically unworkable. Without further revision and clarification, firms could interpret the term in very different ways, in opposition to the Code's stated aim to "assist Market Participants in making informed decisions about their FX business relationships." FXPA believes the negative unintended consequences of this amendment could significantly outweigh the potential benefits without more color and information from GFXC on the scope of this new terminology.

The FXPA also encourages the GFXC to more clearly define the term "third party" in the context of the proposed amendments to Principle 9. It is not clear, for example, if entities such as central banks, regulators, settlement banks, custody banks, and prime brokers would be considered a "third party" for the purposes of the proposed amendments. It is also not clear if an affiliate within an organization would be considered a "third party" under Principle 9 as proposed. We note that the current Code also does not define the term "third party."

Without consideration of the appropriate scope of the application of these proposed amendments, and clarity on these important terms, it is difficult for FXPA to understand the implications of these amendments.

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[7] *Id*. at 7-10.

For these reasons, and the limited period of time to review and consider these amendments, FXPA does not agree with the proposed changes.

Principle 10: Considerations for Execution of FX Transactions

Do you agree with the proposed changes to Principle 10? If not, why not? Please elaborate.[8]

The FXPA believes the proposed changes lack the necessary background or rationale explaining the proposed amendments to Principle 10, as discussed further below. Absent such information and guidance, the FXPA does not agree with the proposed changes to Principle 10.

The proposed amendments to Principle 10 include the following:

> "Market Participants who *initiate* Client orders in a Principal role, where execution of FX Transactions is subject to a written agreement in advance with the Client identifying when the Market Participant should initiate such FX Transactions (such as auxiliary services to facilitate a securities or futures transaction or FX hedging services agreements), should:
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> - Operate within the parameters of that written agreement;
> - Establish and disclose a transparent order execution policy including:
>   - Factors affecting the execution of Client orders;
>   - Factors affecting the choice of execution venues; and
>   - Information as to how the Principal provides fair and transparent execution of Client orders.
> - Be transparent with the Client about terms and conditions, principally setting out fees and commissions applicable throughout the term of the agreement; and,
> - Make available sufficient information to enable the Client to assess the quality of execution. Where available, this should include the date and time of execution along with market reference rates at the time of execution."[9]

In the FXPA's view, if the amendments to Principle 10 are adopted as currently drafted and without clarity around the limitations of this new language, Principle 10's language could create unintended negative consequences for Market Participants by capturing a wide range of electronic communications as "written agreements." For example, if a Client sends a bank a market order on a secure chat facility, which is written, all of the listed practices would presumably be required for a Client upfront in order for the bank to accept a market order over chat. This would create significant inefficiencies in transaction flow and unnecessarily duplicative recordkeeping requirements for Market Participants. The FXPA encourages the GFXC to clarify that messages such as these are not within the intended scope of the proposed amendment's language.

8 *Id*. at 10-15.

9 *Id*. at 12-13.

Without clarity on this proposed amendment, it is difficult for FXPA to understand the implications of these amendments.

For these reasons, and the limited period of time to review and consider these amendments, FXPA does not agree with the proposed changes.

II. Proposed Amendments to the Platform Disclosure Cover Sheet[10]

Do you agree with the added section on the Platform Disclosure Cover Sheet, which would map to Principle 9? If not, why not? Please elaborate.

The FXPA does not agree with the inclusion of the additional section on the Disclosure Cover Sheet. First, including the proposed table for data sharing policies on the Disclosure Cover Sheet will add significant narrative content requiring significant compliance time and resources for market participants to develop, yet the FXPA is not aware of any Clients or Market Participants that rely on the existing platform disclosures (or who have expressed that such existing disclosures are insufficient). Accordingly, significant length and density will be added to the Disclosure Cover Sheet, despite it being wholly unclear what utility the revised Disclosure Cover Sheets will provide.

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The FXPA appreciates the opportunity to submit feedback on the proposed amendments to the Code and Disclosure Cover Sheets and the long and productive relationship between the GFXC and the FXPA. The FXPA stands ready to work with the GFXC on the issues discussed herein. Should the GFXC wish to discuss these comments further, please contact us (https://fxpa.org/contact-us/).

Sincerely,

/s/ Joseph Hoffman___

Joseph Hoffman, Chair, FXPA

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[10] GFXC, *Annex C: GFXC Proposed changes to the Platform Disclosure Cover Sheet* (Oct. 2024) https://www.globalfxc.org/uploads/gfxc_request_feedback_oct2024_annex_c.pdf.