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The FX Global Code

Bob Penn, Anna Lewis-Martinez, Christina Edward, Colin D. Lloyd, Brian J. Morris, and Truc Doan*

This article summarizes the key elements of the FX Global Code, a common set of principles intended to enhance the integrity and effective functioning of the wholesale foreign exchange markets, and provides more detail on where the Code's standards fall short of local legal and regulatory requirements or where compliance affects other regulatory obligations. Signatories will need to identify and manage points of interaction (and tension) between the Code and existing and upcoming U.S. and EU legislation.

Central banks, regulatory bodies, market participants, and industry working groups from a range of jurisdictions released the FX Global Code (the "Code") on May 25, 2017.[1] The Code is a common set of principles intended to enhance the integrity and effective functioning of the wholesale foreign exchange markets ("FX markets"), certain segments of which have, to date, been largely unregulated. The Code will supplement, rather than replace, the legal and regulatory obligations of adherents.

Although the Code includes principles that are akin to many of the requirements under the new Markets in Financial Instruments Directive package ("MiFID II") and U.S. Commodity Futures Trading Commission ("CFTC") rules under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"),in several respects the Code goes beyond those requirements. As such, for many market participants, adherence

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[1] Global FX Code (May 25, 2017), *available at* http://www.globalfxc.org/docs/fx_global.pdf. In conjunction with the publication of the Code on May 25, 2017, the London Bullion Market Association ("LBMA") launched the Global Precious Metals Code, which is largely similar to the Code. *See* LBMA Global Precious Metals Code (May 25, 2017), *available at* http://www.lbma.org.uk/assets/downloads/pmc.pdf.

to the Code will require material changes to existing operating models, compliance procedures, client disclosures, and other documentation. Adherence to the Code is voluntary, but several regulators have expressed that they expect market participants to adhere, and there will be public and private sector pressure to publicize adherence.

For market participants adhering to the Code, notable issues and considerations are likely to include the following:

- *Broad Coverage*: The scope of the Code is very broad, in terms of products, market participants, and geographies covered. In particular, essentially all wholesale FX market transactions, including spot transactions, are covered by the Code, even if they would not otherwise be covered by MiFID II, CFTC rules, or similar market conduct regulation in other jurisdictions. In addition, the Code covers the vast majority of wholesale FX market participants, going beyond the types of market intermediaries normally subject to prescriptive regulation and lacking any carve-outs for firms engaged in only a *de minimis* level of market activity (although those firms might, as a practical matter, face less pressure to adhere).
- *Enhanced Disclosures*: Although it is ostensibly principles-based, the Code imposes highly detailed disclosure requirements that go beyond material risks, trade characteristics, or conflicts of interest. For example, the Code prescribes disclosure requirements regarding different order types, mark-ups, pre-hedging, "last look" mechanisms, and algorithmic trading services. At a high level, these disclosures seem geared toward clarifying the principal-to-principal nature of most dealings in the FX market, notwithstanding the use of trading conventions and jargon that are similar to marketplaces where trading more commonly takes place on a brokered or other agency basis. Many major FX market participants have already published disclosures regarding these matters, but updates to satisfy the Code might be required nonetheless.
- *Pre-Hedging*: The Code provides that a market participant should only pre-hedge client orders when acting as principal and in a manner not meant to disadvantage the client. This principle is generally consistent with relevant CFTC rules, as further applied through industry standard documentation. But the Code goes further to require additional disclosure regarding pre-hedging practices in a manner meant to enable clients to understand their choices as to execution. In addition, for certain listed products, market participants will need to assess whether pre-hedging in accordance with the Code will also be consistent with the EU Market Abuse Regulation ("MAR") and relevant venue rules.

- *Mark-Ups*: In addition to disclosure requirements relating to mark-ups, the Code provides that mark-ups must be "fair and reasonable," including (for example) not discriminating among clients based only on their level of sophistication. Substantive regulation of mark-up amounts goes beyond existing CFTC rules and the forthcoming MiFID II package, which instead seek to address excessive mark-ups through expanded price transparency mechanisms.
- *Order Tickets/Time Stamping*: The Code includes detailed requirements for market participants to create and maintain order tickets (with time stamping), which go beyond the CFTC recordkeeping rules currently applicable to swap dealers. In addition, the broad product coverage of the Code will necessitate that FX market participants in the EU examine and, as necessary, enhance their recordkeeping practices for FX transactions outside the scope of MiFID II.

In addition to these particular areas, there will be others where the Code's standards fall short of local legal and regulatory requirements or where compliance affects other regulatory obligations: signatories will need to identify and manage points of interaction (and tension) between the Code and existing and upcoming U.S. and EU legislation. This article summarizes the key elements of the Code and provides more detail on these issues.

BACKGROUND

Historically, the FX markets have operated with limited regulatory oversight. Over the last several years, regulators have focused on conduct in the FX markets, where perceived failings to manage conflicts of interest and treat customers fairly have led to some of the biggest regulatory fines in history, including over £1 billion by the UK's Financial Conduct Authority ("FCA"), over $2.7 billion by the U.S. Department of Justice, over $1.8 billion by the U.S. Federal Reserve, and over $1.4 billion by the CFTC.

What is the FX Global Code?

The Code is a voluntary code that provides a comprehensive set of principles for trading in the wholesale FX markets by market participants and infrastructures. It was developed by central banks, regulatory bodies, market participants, and industry working groups from 16 jurisdictions.

As detailed below, the Code consists of six "leading" principles, each with underlying principles on market practice. There is also an annex that sets out illustrative examples of good and bad practice, a glossary of terms, and a statement of commitment.

Importantly, the Code also incorporates by reference the Financial Stability Board's Foreign Exchange Benchmark Report Recommendations, published on September 30, 2014 ("FSB FX Benchmark Report").[2]

Why a Voluntary Code?

The decision to create a voluntary code primarily reflects the fact that FX markets are global: it is not within the power of any single regulator to police all of the markets. Further, local regulatory regimes applicable to market participants differ substantially and often do not capture all activities of the FX markets.

For example, in the EU under the existing EU Markets in Financial Instruments Directive ("MiFID"), FX "options, futures, forward rate agreements and other derivative contracts" are financial instruments within the scope of regulation; other FX contracts are not. The implementation process for the European Market Infrastructure Regulation ("EMIR") in 2014 revealed significant differences across EU Member States in the interpretation of the perimeter of the definition, with particular differences of approach for FX contracts settling within between three and seven days, and longer term contracts for physical delivery.[3] These limits have created legal uncertainty and an uneven playing field across EU jurisdictions for these FX contracts. The revisions to the Directive under MiFID II create greater clarity over the perimeter of the definition by narrowing the unregulated "spot" category, but leave FX dealings partly within and partly without the regulatory perimeter. As discussed below, issues arise in the EU market abuse context.

Similarly, in the United States, CFTC regulations generally exempt FX spot transactions, and physically-settled FX swaps and forwards are eligible for exemptions from certain Dodd-Frank Act requirements.

In the absence of a consistent international regulatory framework, the Code serves as a voluntary measure to create common principles to promote the integrity and effective functioning of the global wholesale FX markets.

Will I Have to Sign Up?

Although strictly voluntary, it is likely that all major participants in the FX markets will face regulatory, as well as market, pressure to adhere to the Code.

[2] Foreign Exchange Benchmarks Final Report (September 30, 2014), *available at* http://www.fsb.org/wp-content/uploads/r_140930.pdf.

[3] FX rolling spot transactions (*i.e.* FX spot transactions that can be indefinitely renewed or "rolled" with no currency actually delivered until a party affirmatively closes out its position) are currently subject to regulation as a financial instrument under MiFID and as a swap by the CFTC.

In the UK, the FCA has stated that "[t]he Code will be a key component of market conduct standards that staff in authorized firms will have to observe under the Senior Managers Regime."

In the United States, the president of the Federal Reserve Bank of New York, William C. Dudley, noted in connection with the launch of the Code that the Code "has resulted in an important set of common standards for foreign exchange markets." Further, Dudley noted that he "welcome[s] and encourage[s] efforts by the industry to implement and adhere to these principles."

In addition, the Global Foreign Exchange Committee ("GFXC") was formally launched on May 24, 2017 as a forum bringing together various existing national and regional FX committees.[4] One of the core objectives of the newly formed GFXC will be to endorse and promote the Code: a commitment to endorse and promote the Code is a condition to membership of the GFXC.

On the same date that the Code was published, the Bank for International Settlements published a Report on Adherence to the FX Global Code, intended to address, amongst other things, the importance of embedding the Code's principles into the day-to-day operations of organizations and demonstrating compliance with the Code.

Whilst it is recognized that the Code seeks voluntary compliance from market participants, there will be public and private sector pressure to publicize adherence.

SCOPE AND INTERACTION WITH LOCAL LAW AND REGULATION

What Market Participants Are Within Scope?

The Code applies to a wide range of "market participants", broadly defined as persons or organizations(regardless of legal form) who are not retail participants and who are active in the FX markets in: (i) carrying out currency trading; (ii) operating a platform, facility, or execution function through which participants can carry out currency trading; or (iii) providing FX benchmark execution services. As a result, the Code broadly covers buy-side and sell-side participants (whether dealing in the markets as principal or agent), non-bank liquidity providers, operators of e-trading platforms, and other entities provid-

[4] A list of the FX committees which are members is *available at* https://www.globalfxc.org/membership.htm?m=61%7C370.

ing trading facilitation services such as brokerage and settlement services or FX benchmark services.[5]

The Code is intended to apply to all these market participants, but how it may apply will depend on each participant's activities. The Code also specifies that the following persons will not typically engage in FX activities as market participants, and are therefore not within scope:

(i) pricing display platforms;

(ii) remittance businesses, money changers, and money services businesses when interacting with retail customers;

(iii) private banking customers (whether trading as individuals or via personal investment vehicles); and

(iv) the general retail public.

The Code also goes so far as to say that it does not matter whether the currency trading is done "directly or indirectly" through other intermediaries or market participants. The Code does not contain any *de minimis* exception akin to the CFTC's swap dealer rules, nor does it apply solely to market participants required to be registered or authorized by the CFTC, under MiFID, or otherwise.

What Products Are Within Scope?

Unlike MiFID II and the Dodd-Frank Act, which, as discussed above, apply regulatory obligations only where an FX product will fall within the definition of a "financial instrument" or "swap," respectively, almost any FX product will be subject to the Code, including futures, forwards, swaps, options, and spot transactions.

How Does the Code Interact with Local Law and Regulation?

Although the Code imposes quasi-regulatory obligations on market participants, it explicitly provides that the guidance does not supplant or modify

[5] The Code gives the following list as examples of typical "market participants": (1) financial institutions; (2) central banks (except where this inhibits them discharging their legal duties or policy functions); (3) quasi-sovereigns and supranationals (except where this inhibits discharge of their organizational policy functions); (4) asset managers, sovereign wealth funds, hedge funds, pension funds, and insurance companies; (5) corporate treasury departments; (6) benchmark execution providers; (7) non-bank liquidity providers; (8) firms offering algorithmic trading strategies; (9) brokers (including retail brokers), investment advisers, aggregators, and analogous intermediaries; (10) remittance businesses and money services businesses in their interactions in the wholesale FX markets; (11) e-trading platforms; (12) affirmation and settlement platforms; and (13) family offices running treasury operations.

applicable law. Market participants will need to be cognizant of the interrelationship between the Code and applicable legislation that overlaps or potentially conflicts with provisions in the Code. Some key areas of interaction are discussed further below.

ADHERENCE TO AND COMPLIANCE WITH THE CODE

How Do I Adhere?

Annex 3 to the Code contains a standard form statement of commitment that market participants can use to adhere to the Code. The statement of commitment is brief, and, as the Code is voluntary, it is not required to be made publically available or published on the market participant's website.

As such, the Code provides market participants with the flexibility of making use of it in different ways, whether by providing it on a website, or bilaterally to other participants or prospective clients.

When is Compliance Required?

The Code does not provide a time frame for compliance. Instead, the Code provides that the time taken to implement its principles will depend on the size and nature of each market participant's business, but that most market participants will need approximately six to 12 months to prepare to use the statement of commitment. Some market participants have indicated that this is a rather restrictive timetable given the wide scope and impact of the Code's principles.

What Do Market Participants Need to Do to Comply?

Firms that wish to adhere to the Code will need to plan for and implement a compliance program to meet the principles set out in the Code. How onerous that process will be will depend on the role of the firm in the FX markets, the nature and scale of its FX business, and its existing regulatory compliance procedures. Implementation is likely to involve an end-to-end review of the FX business conducted within the firm, covering ethics, governance, staff remuneration, disclosure, contractual terms, order handling, operations, client reporting, risk management, and settlement. For firms whose activities straddle the sell-side and buy-side, compliance procedures will need to cover both aspects of the business.

What Action will be Required?

- Conduct a gap analysis against the requirements of the Code.
- Amend and implement revisions to:
    - governance and oversight arrangements;

  - remuneration framework for FX staff;
  - compliance policies and procedures;
  - disclosure and client agreements governing FX trading;
  - risk management systems and controls;
  - operations; and
  - business continuity processes.
- Ensure personnel have been suitably trained for their roles.

Appendix A sets out an illustrative high-level comparison of the Code's principles to some key EU and U.S. requirements.

Appendix B sets out a basic list of policies required under the Code for FX business.

Appendix C sets out a key list of disclosures under the Code.

Appendix D sets out a checklist for order handling policies.

What Consequences will flow from Breaches of the Code?

The Code does not address how failure to comply will be handled. However, it appears likely that regulatory authorities will take into account compliance with the Code when assessing whether conduct meets regulatory standards. In the UK, for example, it is likely in the future that the FCA will interpret its Principle for Businesses 5, which requires that firms observe "proper standards of market conduct," as importing an obligation on a signatory to comply with the Code. U.S. prudential regulators (such as the Federal Reserve) may also consider violations of the Code to constitute unsafe and unsound banking practices. Further, it remains to be seen whether the CFTC or the National Futures Association will transport principles from the Code into their regulatory rules and guidance for swaps.

Also, although the Code does not of itself give rise to third-party rights, market participants will wish to consider whether publicizing their adherence to clients and counterparties could give rise to liability for a breach of representation in connection with a violation of the Code.

THE LEADING PRINCIPLES

Ethics

Market Participants are expected to behave in an ethical and professional manner to promote the fairness and integrity of the FX Market.

Market participants, which includes firms, senior management, and personnel, should act honestly, fairly, and with integrity in their dealings with clients

and other market participants. Further, market participants should demonstrate the highest degree of professionalism and standards of business conduct by having sufficient knowledge of applicable law, relevant experience, and technical knowledge, as well as acting with competence and skill. Finally, market participants are expected to identify and eliminate actual and potential conflicts of interest where reasonably possible, and effectively manage them otherwise.

Governance

Market Participants are expected to have a sound and effective governance framework to provide for clear responsibility for and comprehensive oversight of their FX Market activity and to promote responsible engagement in the FX Market.

The Code recommends that market participants establish and maintain an operational structure with transparent lines of responsibility and effective oversight of the market participant's FX market activity. The body, or individual(s), responsible for the FX business is required to establish independent control functions and mechanisms to assess whether its FX Market activities are conducted in a manner that reflects operational risk and conduct requirements, which should be commensurate with the size and complexity of the market participant's FX market activities. Such functions should have sufficient stature, resources, and access to the body, or individual(s), that is ultimately responsible for the FX business strategy and financial soundness. Taken together, these requirements seem to suggest that firms may be expected to establish an FX-specific governance framework, which may be in tension with pre-existing centralized risk management structures.

Governance should also embed a strong culture of ethical and professional conduct. Within this culture of ethical conduct, personnel should be encouraged to effectively challenge senior management and should be aware of the applicable law and conduct standards relevant to them, as well as the disciplinary actions that may result from inappropriate behavior. In order to reinforce this culture of ethical conduct, firms should maintain policies and procedures that allow for the disclosure of potentially improper practices and the investigation and potential internal escalation of such disclosure. Remuneration and promotion structures should also promote ethical and professional market practices and behaviors.

Execution

Market Participants are expected to exercise care when negotiating and executing transactions in order to promote a robust, fair, open, liquid, and appropriately transparent FX Market.

Although the applicable standards may vary among market participants depending on the capacity in which they act, the Code prescribes an

over-arching principle of greater transparency with respect to the negotiation and execution of FX trades. Market participants should disclose to clients and be clear on the role in which the market participant is acting, whether as a principal or agent, how orders are handled (including descriptions of order types), whether prices are firm or indicative, and the rules, terms, or conditions under which the transaction is executed. Market participants should also document and disclose to clients how mark-ups are determined, as well as providing internal guidance to personnel in determining an appropriate and fair mark-up for each transaction. In many areas, these standards go beyond the requirements that currently apply under CFTC rules and MiFID.

Order Types and Order Handling

The Code distinguishes among order types and recommends specific actions the market participants should engage in for those order types. Market participants handling a client's order to transact at a particular fixing rate, for example, are expected to behave consistently with the FSB FX Benchmark Report recommendations. The Code also requires disclosure of order handling practices, including aggregation and time priority, as well as disclosure regarding the point in time at which market risk may transfer. In connection with these matters, market participants will likely wish to consider how (and at what price) they allocate inventory positions and what order cancellation practices they permit. Notably, although the Code does not prescribe what order aggregation or priority practices are appropriate, it does suggest that trading in a manner inconsistent with those practices that a market participant discloses would constitute a violation of the Code.

Pre-Hedging

Market participants acting as agents for clients are prohibited from pre-hedging, while market participants acting as principals may pre-hedge only if they do so fairly and with transparency. The Code requires pre-hedging to occur in a manner not meant to disadvantage the client or disrupt the market and in a manner meant to enable clients to understand their choices as to execution. The Code does acknowledge that in the course of pre-hedging, activities market participants may engage in are risk management, market making, and execution of client orders in the same or related markets, which may disadvantage the pre-hedged client, but does not provide specific guidance as to when conduct would be "meant to" disadvantage the client. Additional issues relating to pre hedging are addressed below.

Last Look

The Code allows market participants to employ last look practices, but market participants employing last look should disclose explanations regarding

whether, and if so how, changes to price in either direction may impact the decision to accept or reject a trade, the expected or typical period of time for making that decision, and more broadly the purpose for using last look. The Code suggests that last look should only be a risk control mechanism to verify validity and/or price. Last look should not be used merely to gather information, and, in particular, use of customer information in connection with any order other than that customer's order during the last look window, including with respect to hedging activity, is likely an abuse of confidential customer information and inconsistent with good market practice, as such activity is highly likely to skew market prices against the customer. The Code further requires market participants to have governance and controls around the design and use of last look consistent with its disclosed terms.

Algorithmic Trading Services

Enhanced disclosure is required of market participants who provide algorithmic or aggregation services to clients, including:

- (i) a clear description of the algorithmic execution strategy or the aggregation strategy and sufficient information to enable the client to evaluate the performance of the service, in a manner that is consistent with appropriate protection of related confidential information;
- (ii) whether the algorithm provider or the aggregation service provider could execute as principal;
- (iii) the fees applicable to the provision of the services;
- (iv) in the case of algorithmic trading services, general information regarding how routing preferences may be determined; and
- (v) in the case of aggregation services, information on the liquidity sources to which access may be provided.

The Code does not address whether market participants who access proprietary liquidity sources in connection with executing algorithmic orders may charge a mark-up in addition to the specific execution fees they disclose.

Anti-Manipulation

In addition to recommending good practices, the Code prohibits market participants from engaging in actions with the purpose of manipulating prices or misleading clients or other market participants. As a result, market participants should always provide quotations only with an intent to trade and avoid engaging in transactions that create a false sense of market price, depth, or liquidity (prohibiting "spoofing," "flashing," "layering," "quote stuffing," or "wash trades"). Market participants may also decline to enter into transactions they suspect may have the intent of disrupting or distorting market functioning.

Trade Discrepancies

As part of a market participant's obligations with respect to orderly execution, the Code expects market participants to identify and resolve trade discrepancies as soon as practicable. The Code notes that in the prime brokerage context in particular, where the client is known, prime brokerage clients and executing dealers are responsible for resolving trade discrepancies to ensure timely amendments and matching of trade terms through the prime broker. Current confirmation and portfolio reconciliation rules under the Dodd-Frank Act and EMIR are largely consistent with the Code's requirements (albeit that the former are of narrower application). Those rules require that material discrepancies be resolved in a timely fashion, and requires written agreements with counterparties regarding the terms of portfolio reconciliation. In addition, dealers are required to maintain policies and procedures reasonably designed to ensure they engage in portfolio reconciliations, with minimum frequencies determined by reference to the type of counterparty and the size of the swap portfolio.

Information Sharing

Market Participants are expected to be clear and accurate in their communications and to protect Confidential Information to promote effective communication that supports a robust, fair, open, liquid, and appropriately transparent FX Market.

Market participants should protect confidential information by first identifying such information and then limiting access to and use of such information to only external parties with a valid reason for receiving the confidential information. For example, market participants acting as prime brokers should have appropriate information barriers in place, as well as an appropriate level of separation between their prime brokerage business and other business. The Code identifies specific circumstances under which confidential information may be disclosed, including to agents or market intermediaries to the extent necessary for executing, processing, clearing, novating, or settling a transaction. The Code does not specifically address use of confidential information in connection with pre-hedging activity, but care should be taken to disclose to clients how confidential information may be used or disclosed, and where necessary, appropriate consents with respect to use and disclosure should be obtained. With respect to the dissemination of market color, the Code recommends that market participants only share information that has been effectively aggregated and anonymized, so as to prevent the disclosure of confidential information.

In their communications, market participants are expected to use language that is appropriate for the intended audience and is neither misleading nor false. Generally, market participants should:

(i) attribute information derived from a third party to that third party (for example, a news service);

(ii) identify opinions clearly as opinions;

(iii) not communicate false information;

(iv) exercise judgment when discussing rumors that may be driving price movements, identify rumors as rumors, and not spread or start rumors with the intention of moving markets or deceiving others; and

(v) not provide misleading information in order to protect confidential information—for example, when executing partial orders (for example, by declining to disclose whether their request to transact is for the full amount rather than inaccurately suggest that it is for the full amount).

Risk Management and Compliance

Market Participants are expected to promote and maintain a robust control and compliance environment to effectively identify, manage, and report on the risks associated with their engagement in the FX Market.

Market participants should have risk management and compliance frameworks appropriate to the size and complexity of their FX activities, which are subject to oversight by a senior body or individuals and regular, independent review. A market participant's compliance framework should identify applicable laws and standards and establish processes for preventing and detecting abuse, capturing and retaining adequate records, escalating identified issues, training personnel, and providing guidance to senior management and personnel. The risk management framework should identify the risks to which the market participant may be exposed, as well as providing for risk mitigating practices. For example, prime brokers should have risk management and compliance frameworks that account for their role as intermediaries. More generally, as part of the risk management framework, market participants should have practices in place to monitor trading activities in order to detect misconduct and/or the violation of an established risk limit.

The Code further outlines a number of good practices relevant to the following key risk types:

- *Credit/Counterparty risk*. Market participants should have adequate

processes—which may include the use of netting agreement and credit support arrangements, the diversification of counterparty exposure, and the monitoring of exposure limits—for managing counterparty risk exposure.

- *Market risk*. Market participants should measure, monitor, report, and manage market risk. Market participants should also have independent processes in place to mark-to-market trading positions.
- *Operational risk*. Market participants should have adequate processes to account for the operational risks resulting from human error, failed systems, time differences, differences in industry conventions, and unforeseen external circumstances. Market participants should also establish business continuity plans appropriate for their FX business.
- *Technology risk*. Market participants should thoroughly test their systems and implement controls to reduce the likelihood and mitigate the harm of any technological failing.
- *Settlement risk*. Market participants should monitor and limit settlement exposure to counterparties and, where applicable, consider payment netting and bilateral obligation netting.
- *Compliance risk*. Market participants should accurately and timely record transactions and have processes in place to retain such records, including applying sufficiently granular and consistent time-stamping. In addition, market participants should perform know-your-customer checks on their counterparties and limit trading access to authorized personnel only.
- *Legal risk*. Market participants should identify and manage legal risks by understanding applicable law, mitigating material legal risks, and maintaining a record of their legal agreements with counterparties.

In addition to the good practices outlined above, the Code recommends that prime brokerage participants develop robust control systems that adequately manage risks and include the timely allocation, monitoring, amendment, and/or termination of credit limits and permissions. While prime brokerage clients should strive for real-time monitoring of their available lines and permitted transaction types, executing dealers should strive for real-time monitoring of designation limits.

The categories of risk addressed in the Code are similar to those addressed under CFTC risk management rules[6] and guidance from the Basel Committee

[6] *See* CFTC Regulations § 23.600.

("Basel Guidance") on settlement of foreign exchange transactions.[7] In some areas, CFTC rules and the Basel Guidance go beyond the scope of FX risks addressed in the Code (*e.g.* impact on capital), however, several elements of the Code's best practices identified in connection with risk management and compliance go beyond the scope of CFTC rules and the Basel Guidance, in particular with respect to FX-specific risks (*e.g.* independent reporting and review of trader profit/loss statements). Market participants should conduct a review of existing risk management and compliance policies and procedures against the Code to address any relevant gaps that may exist.

Confirmation and Settlement Processes

Market Participants are expected to put in place robust, efficient, transparent, and risk-mitigating post-trade processes to promote the predictable, smooth, and timely settlement of transactions in the FX Market.

With respect to the overall operations of market participants, the Code recommends that market participants establish consistency between their operating practices and their documentation, monitor and manage capacity in peak conditions as well as normal ones, implement straight-through automatic transmission of trade data from their front office systems to their operations systems, and conduct any novations, amendments, and cancellations of transactions in a controlled manner.

The Code provides further, specific recommendations with respect to the confirming trades, which should be done as soon as practicable after execution, amendment, or cancellation of a trade. Market participants are encouraged to use automated trade confirmation matching systems, in order to decrease the time difference between when a trade is executed and when it is confirmed, and to identify and resolve confirmation and settlement discrepancies as soon as practicable. Similarly, market participants should review and affirm block trade details as soon as practicable after execution of the trade. Although investment managers may allocate block trades to specific underlying counterparties, such underlying counterparties should be an approved and existing counterparty prior to allocation.

Pursuant to the Code, market participants should measure, monitor, and mitigate their settlement risk, including by netting FX settlements and by using payment-versus-payment settlement mechanisms. For parties with whom they have a trading relationship, market participants should use standing settlement

[7] Basel Committee on Banking Supervision, Supervisory guidance for managing risks associated with the settlement of foreign exchange transactions (February 2013), *available at* http://www.bis.org/publ/bcbs241.pdf.

instructions, which should be securely stored. Further, market participants are encouraged, in order to reduce operational risk, to request direct payments rather than engaging in third-party payments. Finally, market participants should have clear procedures to monitor and manage their intraday and end-of-day funding requirements.

With respect to account reconciliation, the Code recommends that market participants reconcile expected cash flows against actual cash flows on a timely basis, in order to detect missing or erroneous entries. Market participants should also maintain policies and procedures to identify settlement discrepancies and submit compensation claims in a timely manner.

LEGAL RISKS AND ISSUES

There will be areas where local law or regulation may impose additional or higher standards than those imposed by the Code. These are most evident for FX derivative activities, where conduct and market regulation across the major jurisdictions impose obligations that may constrain practice to a greater degree than contemplated by the Code.

U.S. and EU: Enhanced Disclosures

CFTC business conduct requirements require certain disclosures to be provided to its counterparties prior to the execution of a swap transaction, including the material risks and characteristics of a particular swap, as well as material incentives and conflicts of interest in connection with a particular swap. The International Swaps and Derivatives Association ("ISDA") has developed certain form disclosures to generally address these disclosure requirements.[8] Similarly, in the EU MiFID requires certain disclosures to be made in advance of dealing in financial instruments with a client.

The Code requires specific disclosures that go beyond these existing disclosure obligations, and current disclosures may need to be expanded to accommodate these additional Code requirements and details. Specifically, the Code requires disclosure of:

- Order types—market participants should be aware that different order types may have specific considerations for execution;
- Mark-ups—market participants should make it clear to clients that their final transaction price may be inclusive of mark-up and help clients understand the determination of mark-up and how mark-ups

[8] *See* ISDA August 2012 DF Protocol Supplement; ISDA March 2012 DF Protocol Supplement; General Disclosure Statement for Transactions (August 5, 2015).

may affect execution of any order linked or triggered at a specific level;

- Last look—with respect to last look (which provides a market participant receiving a trade request a final opportunity to accept or reject a request against its quoted price) market participants should disclose, at a minimum, explanations regarding whether, and if so how, changes to price in either direction may impact the decision to accept or reject the trade, the expected or typical period of time for making that decision, and more broadly the purpose for using last look;
- Algorithmic trading—market participants providing algorithmic trading services to clients should disclose: (i) a clear description of the algorithmic execution strategy; (ii) sufficient information to enable the client to evaluate the performance of the service; (iii) whether the algorithm provider or the aggregation service provider could execute as principal; (iv) the fees applicable to the provision of the services; and (v) general information regarding how routing preferences may be determined.

U.S. and EU: Pre-Hedging and Confidentiality

As discussed above, the Code requires pre-hedging to occur in a manner not meant to disadvantage the client or disrupt the market and in a manner meant to enable clients to understand their choices as to execution. The Code does acknowledge that in the course of pre-hedging activities, market participants may engage in risk management, market making, and execution of client orders in the same or related markets, which may disadvantage the pre-hedged client, but does not provide specific guidance as to when conduct would be "meant to" disadvantage the client. These principles are generally consistent with the CFTC's confidentiality requirements for swaps and the written authorization language that ISDA developed to apply those requirements.[9] Due to the broad scope of the Code, however, even CFTC registered swap dealers may wish to obtain similar authorization in connection with transaction types or counterparties not covered by the relevant ISDA protocol (such as spot transactions or certain non-U.S. counterparties). Also, the Code appears to envisage more detailed disclosure regarding pre-hedging practices—sufficient to enable clients to make choices as to execution—than is contained in standard ISDA disclosure documents.

More vexing issues can, however, arise in the EU. In the EU, as indicated above, FX contracts that amount to financial instruments for the purpose of MiFID II attract investor protection requirements. Financial instruments are

[9] *See* CFTC Regulations § 23.410(c)(2); ISDA August 2012 DF Protocol Supplement, Section 2.15(b).

also within MAR, which prohibits insider dealing, improper disclosure, and market manipulation. MAR prohibits trading in financial instruments which are admitted to trading to a trading venue ("traded financial instruments"), or in financial instruments whose price or value depends on or has an effect on the price of such instruments ("related financial instruments"), "on the basis of" inside information, including information relating to a pending client order.

Recital 30 specifies that "front running" of client orders in financial instruments is insider dealing. MAR does not define what amounts to front running: the FCA provides guidance in the Code of Market Conduct to the effect that front running amounts to "a transaction for a person's own benefit, on the basis of and ahead of an order (including an order relating to a bid) which he is to carry out with or for another (in respect of which information concerning the order is inside information), which takes advantage of the anticipated impact of the order on the market or auction clearing price", but provides no further detail in the context of pre-hedging.[10]

To permit ordinary course market making and brokerage activities, Article 9 of MAR includes various "safe harbors". These include for trading as a market maker or counterparty, where the transaction is "made legitimately in the normal course of the exercise of its function as a market maker or as a counterparty for that financial instrument."[11] The safe harbors are subject to a further qualification: if the competent authority establishes that "there was an illegitimate reason for" the transactions concerned, then the transaction may still amount to insider dealing.

Principle 11 of the Code contemplates pre-hedging[12] of client orders being permissible where a market participant acts as principal and does so "in a manner that is not meant to disadvantage the Client", subject to appropriate client disclosure. By contrast, it is not wholly clear that pre-hedging traded financial instruments is permissible under MAR. In practice, pre-hedging of material orders involves dealing whilst in possession of inside information within the scope of the insider dealing prohibition. The key question is therefore whether the dealing falls within the safe harbor. MAR does not

[10] In 2003 the Financial Services Authority (the predecessor to the FCA) introduced guidance in the Code of Market Conduct to the effect that pre-hedging convertible bond issuance amounted to insider dealing under the UK's market abuse regime then in effect. It is unclear whether the FCA policy still applies under the current regime.

[11] MAR Article 9(2).

[12] Defined as "[t]he management of the risk associated with one or more anticipated Client orders, designed to benefit the Client in connection with any such orders and any resulting transactions."

address the question of whether, and in what circumstances, pre-hedging is both "made legitimately in the normal course of the exercise of its function as a market maker" and not undertaken "for an illegitimate reason." The Code's approach—that pre-hedging "not meant to" disadvantage the client is permissible—may appear reasonable to avail a market participant of the safe harbor, but it is not clear that it will in fact do so. The Code is not binding on the EU regulatory authorities (notwithstanding the involvement of a number of them in the generation of the Code), and compliance with it does not amount to a defense for MAR purposes.

Pending guidance or case law on the standing of pre-hedging under MAR, market participants will need to assess their risk tolerance for pre-hedging material client orders in FX products which are within the scope of MAR.

U.S.: Incorporation of FSB FX Benchmark Report Recommendations

As discussed above, FSB FX Benchmark Report recommendations are incorporated into the Code. U.S. regulators have not adopted any specific benchmark regulations, however, many major firms are subject to enhanced undertakings following settlements with U.S. regulators. The undertakings generally focus on monitoring, surveillance, and oversight of conduct concerning FX benchmark rates. The FSB Benchmark Report recommendations are more specific, and address issues such as avoiding and managing conflicts of interest, data quality, transparency, and adequate rights of redress for investors and consumers.

U.S. and EU: Mark-up Requirements

Principle 14 of the Code establishes an expectation that mark-up be "fair and reasonable" supported by certain disclosure requirements. The substantive requirement has no immediate parallel under U.S. or EU rules.

As noted above, in the U.S., swap dealers are currently required to disclose, in connection with the price of a swap, that the mid-market mark of the swap is the price of the swap, excluding amounts for profit, credit reserve, hedging, funding, liquidity, or any other costs or adjustments. Disclosure is generally provided to counterparties regarding the calculation of the mid-market mark.

The Code, on the other hand, requires disclosure of mark-up, which is described as the spread or charge that may be included in the final price of a transaction in order to compensate the dealer for a number of considerations, which might include risks taken, costs incurred, and services rendered to a particular client. The Code contemplates fulsome disclosure, including disclosure that:

- makes it clear to clients that their final transaction price may be

inclusive of mark-up;

- makes it clear to clients that different clients may receive different prices for transactions that are the same or similar;
- helps clients understand the determination of mark-up; and
- discloses to clients how mark-up may impact the pricing and/or execution of any order linked to or triggered at a specific level.

Firms will be expected to maintain policies and procedures that enable personnel to determine fair and reasonable mark-ups and market participants should have processes to monitor whether their mark-up practices are consistent with their policies and procedures, and with their disclosures to clients.

For EU market participants, work is underway as part of MiFID II implementation to enhance disclosures associated with mark-ups relating to transactions in financial instruments. As the scope of the Code is wider than, and the disclosures above go beyond what is required by, MiFID II, signatories will need to reassess their disclosures, policies, and procedures relating to FX transactions.

U.S. and EU: Order Ticket Requirements

CFTC Regulations require retention of all documents that demonstrate the existence and nature of an order or transaction, including records of all orders, with additional recordkeeping requirements applicable to swaps executed with a counterparty.

The Code similarly requires market participants to keep an accurate and timely record of orders and transactions that have been accepted and triggered/executed, to create an effective audit trail for review and to provide transparency to clients, where appropriate.

The detail required for records under the Code goes beyond current CFTC requirements, and may include, but is not limited to, the date and time, product type, order type (for example, a stop loss order, or an order where price is subject to last look), quantity, price, trader, and client identity. With respect to timing data, market participants are to apply sufficiently granular and consistent time-stamping so that they record both when an order is accepted and when it is triggered/executed. Retention of CFTC timing data is currently required to the nearest minute for all customer quotes and executions, but there is no similar requirement for orders.

Similarly for EU market participants, whilst MiFID II includes highly detailed record-keeping requirements, the wider scope of the Code will require the review of record-keeping for FX transactions outside the scope of MiFID II.

EU: Impact on Best Execution

A further point of interaction between the Code, and the compliance procedures likely to be expected to demonstrate compliance with it, and the EU regulatory regime relates to best execution. Best execution obligations apply under MiFID to dealings by investment firms in financial instruments (other than where the investment firm deals with an eligible counterparty or across a regulated market or MTF) where the investment firm executes a client order. EU Commission guidance provided on the best execution requirement at the time of MiFID implementation in 2007[13] indicated that the MiFID best execution requirement applies only where the investment firm executes an order "on behalf of" a client—contrasting this position with request-for-quote dealings as principal, which do not attract best execution obligations. It remains standard practice for investment firms dealing in principal markets to contract on the basis that they do not owe best execution obligations. Principle 9 of the Code establishes expectations as to disclosure about order handling, including as to the point of transfer of market risk. Principal dealings undertaken where market risk is borne by the client could be characterized as execution of orders on behalf of the client, to which best execution applies.

EU: Client's Best Interests Rule

In respect of dealings in financial instruments, MiFID II provides an overriding obligation on an investment firm dealing with a retail or professional client to act "honestly, fairly and professionally in accordance with the best interests of the client" (known as the "client's best interests rule"). Where investment firms trade in FX financial instruments, the client's best rule will apply. The rule applies a higher standard than that of the Code, and may merit consideration in respect of disclosure and dealing protocols and processes (for example, last look arrangements).

Suitability/Appropriateness

The Code suggests that market participants should perform counterparty-specific suitability or appropriateness analyses. For example, the Code says that market participants should have adequate processes in place to support the rejection of client orders for products they believe to be inappropriate for the client.[14] In contrast, CFTC regulations (like other U.S. regulations) and

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[13] The Committee of European Securities Regulators (May 2007), *available at* https://www.esma.europa.eu/sites/default/files/library/2015/11/07_320.pdf.

[14] Strangely, the Code appears to take a different approach to algorithmic trading services, where it is the client—not the service provider—whom the Code identifies as responsible for

MIFID II provide safe harbors from counterparty-specific suitability or appropriateness obligations in connection with institutional or otherwise sophisticated counterparties.

. . .

evaluating the appropriateness of the algorithmic trading strategy to the client's execution strategy.

APPENDIX A—ILLUSTRATIVE COMPARISON OF THE CODE TO KEY EU AND U.S. REQUIREMENTS

FX Global Code Principles	Key MiFID II/MiFIR Provisions	Key U.S. Statutory and Regulatory Provisions
ETHICS		
Principle 1 Market Participants should strive for the highest ethical standards.	*Article 9 MiFID II* Management Body *Article 24 MiFID II* General Principles and Information to Clients	*Commodity Exchange Act ("CEA") § 4p; Appendix B to CFTC Regulations Part 3* Ethics Training
Principle 2 Market Participants should strive for the highest professional standards.	*Article 9 MiFID II* Management Body *Article 24 MiFID II* General Principles and Information to Clients *Article 25 MiFID II* Assessment of Suitability and Appropriateness and Reporting to Clients	*CEA § 4s(h)(1)(B); CFTC Regulations §§ 23.602, 166.3* Diligent Supervision
Principle 3 Market Participants should identify and address conflicts of interest.	*Article 9(3) MiFID II* Management Body *Article 16(3) MiFID II* Organizational Requirements *Article 23 MiFID II* Conflicts of Interest *Article 45(6) MiFID II* Requirements for the management body of a market operator *Article 63(4) MiFID II* Requirements for the management body of a data reporting services provider *Article 64(3) MiFID II* Organizational Requirements for APAs *Article 65(4) MiFID II* Organizational Requirements for CTPs Article 66(2) *MiFID II* Organizational Requirements for ARMs	*CEA § 4s(j)(5); CFTC Regulations § 23.605* Conflicts of Interest *CEA § 4s(k)(2)(C); CFTC Regulations § 3.3(d)(2)* Conflict of Interest Resolution *CEA § 4s(h)(3)(B)(ii); CFTC Regulations § 23.431(a)(3)* Conflict of Interest Disclosure

FX Global Code Principles	Key MiFID II/MiFIR Provisions	Key U.S. Statutory and Regulatory Provisions
GOVERNANCE		
Principle 4 The body, or individual(s), that is ultimately responsible for the Market Participant's FX business strategy and financial soundness and should put in place adequate and effective structures and mechanisms to provide for appropriate oversight, supervision, and controls with regard to the Market Participant's FX Market activity.	*Article 9 MiFID II* Management Body *Article 16(3) MiFID II* Organizational Requirements	*CEA § 4s(h)(1)(B); CFTC Regulations §§ 23.602, 166.3* Diligent Supervision
Principle 5 Market Participants should embed a strong culture of ethical and professional conduct with regard to their FX Market activities.	*Article 9(3)(c)MiFID II* Management Body *Article 27 MiFID II Delegated Regulation* Remuneration Policies and Practices	*CEA § 4p; Appendix B to CFTC Regulations Part 3* Ethics Training
Principle 6 Market Participants should have remuneration and promotion structures that promote market practices and behaviors that are consistent with the Market Participant's ethical and professional conduct expectations.	*Article 9(3)(c)MiFID II* Management Body *Article 27 MiFID II Delegated Regulation* Remuneration Policies and Practices	*CFTC Regulations §§ 75.4(b)(2)(v) and 75.5(b)(3)* Compensation Arrangements in Connection with Market-Making and Hedging Activities
Principle 7 Market Participants should have appropriate policies and procedures to handle and respond to potentially improper practices and behaviors effectively.	*Article 73 MiFID II* Reporting of Infringements	*CEA §§ 4s(k)(2)(F) and (G); CFTC Regulations §§ 3.3(d)(4) and (5)* Identification and Remediation of Noncompliance Issues

FX Global Code Principles	Key MiFID II/MiFIR Provisions	Key U.S. Statutory and Regulatory Provisions
EXECUTION		
Principle 8 Market Participants should be clear about the capacities in which they act.	*Article 25(2) MiFIR* Obligation to Maintain Records *Article 26 MiFIR* Obligation to Report Transactions	*CEA § 4s(h)(5)(A)(ii); CFTC Regulations § 23.450(g)* Special Entity Capacity Disclosure *CEA § 4s(h)(3)(B); CFTC Regulations § 23.431* Disclosures of Material Information
Principle 9 Market Participants should handle orders fairly and with transparency in line with the capacities in which they act.	*Article 18 MiFID II* Trading Process and Finalization of Transactions in an MTF and an OTF *Article 27 MiFID II* Obligation to Execute Orders on Terms Most Favorable to the Client	*CEA § 4s(h)(5)(A)(ii); CFTC Regulations § 23.450(g)* Special Entity Capacity Disclosure *CEA § 4s(h)(3)(B); CFTC Regulations § 23.431* Disclosures of Material Information *CEA § 4s(h)(3)(C); CFTC Regulations § 23.433* Communications—Fair Dealing
Principle 10 Market Participants should handle orders fairly, with transparency, and in a manner consistent with the specific considerations relevant to different order types.	*Article 27 MiFID II* Obligation to Execute Orders on Terms Most Favorable to the Client	*CEA § 4s(h)(1)(A); CFTC Regulations § 23.410(a)* Prohibition on Fraud, Manipulation, and Other Abusive Practices *CEA § 6(c); CFTC Regulations §§ 180.1 and 180.2* Prohibition Against Manipulation *CEA § 4s(h)(3)(C); CFTC Regulations § 23.433* Communications—Fair Dealing
Principle 11 A Market Participant should only Pre-Hedge Client orders when acting as a Principal, and should do so fairly and with transparency.	-	*CEA § 4s(h)(1)(A); CFTC Regulations § 23.410(a)* Prohibition on Fraud, Manipulation, and Other Abusive Practices *CEA § 4s(h)(1)(A); CFTC Regulations § 23.410(c)* Confidential Treatment of Counterparty Information

FX Global Code Principles	**Key MiFID II/MiFIR Provisions**	**Key U.S. Statutory and Regulatory Provisions**
		CEA § 4s(h)(3)(C); CFTC Regulations § 23.433 Communications—Fair Dealing
Principle 12 Market Participants should not request transactions, create orders, or provide prices with the intent of disrupting market functioning or hindering the price discovery process.	*Article 81(1) MiFID II Delegated Regulation* Circumstances where significant infringements of the rules of a trading venue or disorderly trading conditions or system disruptions in relation to a financial instrument may be assumed *Annex III MiFID II Delegated Regulation*	*CEA § 4s(h)(1)(A); CFTC Regulations § 23.410(a)* Prohibition on Fraud, Manipulation, and Other Abusive Practices *CEA § 4s(h)(3)(C); CFTC Regulations § 23.433* Communications—Fair Dealing *CEA § 6(c); CFTC Regulations §§ 180.1 and 180.2* Prohibition Against Manipulation
Principle 13 Market Participants should understand how reference prices, including highs and lows, are established in connection with their transactions and/or orders.	-	*CEA § 4s(h)(3)(C); CFTC Regulations § 23.433* Communications—Fair Dealing
Principle 14 The Mark-up applied to Client transactions by Market Participants acting as Principal should be fair and reasonable.	-	-
Principle 15 Market Participants should identify and resolve trade discrepancies as soon as practicable to contribute to a well-functioning FX Market.	*Article 48(4) MiFID II* Systems Resilience, Circuit Breakers, and Electronic Trading	*CEA § 4s(i); CFTC Regulations § 23.502* Portfolio Reconciliation *CEA § 4s(i); CFTC Regulations § 23.504* Swap Trading Relationship Documentation
Principle 16 Market Participants acting as Voice Brokers should	-	-

FX Global Code Principles	Key MiFID II/MiFIR Provisions	Key U.S. Statutory and Regulatory Provisions
only employ name switching where there is insufficient credit between parties to the transaction.		
Principle 17 Market Participants employing last look should be transparent regarding its use and provide appropriate disclosures to Clients.	-	-
Principle 18 Market Participants providing algorithmic trading or aggregation services to Clients should provide adequate disclosure regarding how they operate.	*Article 17 MiFID II* Algorithmic trading	-
INFORMATION SHARING I. Handling Confidential Information		
Principle 19 Market Participants should clearly and effectively identify and appropriately limit access to Confidential Information.	*Article 16(3) MiFID II* Organizational Requirements *Article 21(2) MiFID II Delegated Regulation* General Organizational Requirements *Article 29MiFID II Delegated Regulation* Personal Transactions *Article 31(2)(j)MiFID II Delegated Regulation* Outsourcing Critical or Important Operational Functions *Article 16(5) MiFID II* Organizational Requirements *Article 66(3) MiFID II* Organizational Requirements for ARMs	*CEA § 4s(h)(1)(A); CFTC Regulations § 23.410(c)* Confidential Treatment of Counterparty Information

FX Global Code Principles	Key MiFID II/MiFIR Provisions	Key U.S. Statutory and Regulatory Provisions
	Article 76 MiFID II Professional Secrecy N.B.No specific detail on Prime Brokers	
Principle 20 Market Participants should not disclose Confidential Information to external parties, except under specific circumstances.	*Article 16(3) & 16(5) MiFID II* Organizational Requirements *Article 73 MiFID II Delegated Regulation* Outsourcing Critical or Important Operational Functions	*CEA § 4s(h)(1)(A); CFTC Regulations § 23.410(c)* Confidential Treatment of Counterparty Information
INFORMATION SHARING II. Communications		
Principle 21 Market Participants should communicate in a manner that is clear, accurate, professional, and not misleading.	*Article 24(3) MiFID II* General Principles and Information to Clients *Article 44 MiFID II Delegated Regulation* Fair, Clear, and Not Misleading Information Requirements *Article 30 MiFID II* Transactions Executed with Eligible Counterparties	*CEA § 4s(h)(3)(C); CFTC Regulations § 23.433* Communications—Fair Dealing
Principle 22 Market Participants should communicate Market Color appropriately and without compromising Confidential Information.	-	*CEA § 4s(h)(1)(A); CFTC Regulations § 23.410(c)* Confidential Treatment of Counterparty Information *CEA § 4s(h)(3)(C); CFTC Regulations § 23.433* Communications—Fair Dealing
Principle 23 Market Participants should provide personnel with clear guidance on approved modes and channels of communication.	*Article 16 MiFID II* Organizational Requirements	*CEA § 4s(h)(1)(B); CFTC Regulations §§ 23.602, 166.3* Diligent Supervision

FX Global Code Principles	Key MiFID II/MiFIR Provisions	Key U.S. Statutory and Regulatory Provisions
RISK MANAGEMENT AND COMPLIANCE I. Frameworks for Risk Management, Compliance, and Review		
Principle 24 Market Participants should have frameworks for risk management and compliance.	*Article 16(2) MiFID II* Organizational Requirements *Article 22 MiFID II Delegated Regulation* Compliance *Article 25(2) MiFID II Delegated Regulation* Responsibility of Senior Management *Article 16(5) MiFID II* Organizational Requirements *Article 23 MiFID II Delegated Regulation* Risk Management	*CEA § 4s(j); CFTC Regulations § 23.600* Risk Management Program
Principle 25 Market Participants should familiarize themselves with, and abide by, all Applicable Laws and Standards that are relevant to their FX Market activities and should have an appropriate compliance framework in place.	*Article 16(2) MiFID II* Organizational Requirements *Article 22 MiFID II Delegated Regulation* Compliance *Article 25MiFID II Delegated Regulation* Responsibility of Senior Management *Article 16(5) MiFID II* Organizational Requirements *Article 23 MiFID II Delegated Regulation* Risk Management	*CEA § 4s(k); CFTC Regulations § 3.3* Chief Compliance Officer
Principle 26 Market Participants should maintain an appropriate risk management framework with	*Article 16(5) MiFID II* Organizational Requirements *Article 23 MiFID II Delegated Regulation* Risk	*CEA § 4s(j); CFTC Regulations § 23.600(b)* Risk Management Program

FX Global Code Principles	Key MiFID II/MiFIR Provisions	Key U.S. Statutory and Regulatory Provisions
systems and internal controls to identify and manage the FX risks they face.	Management *Article 25(2) MiFID II Delegated Regulation* Responsibility of Senior Management	
Principle 27 Market Participants should have practices in place to limit, monitor, and control the risks related to their FX Market trading activity.	*Article 16(5) MiFID II* Organizational Requirements *Article 23 MiFID II Delegated Regulation* Risk Management *Article 24 MiFID II Delegated Regulation* Internal Audit *Article 25(2) MiFID II Delegated Regulation* Responsibility of Senior Management	*CEA § 4s(j); CFTC Regulations § 23.600(c)* Elements of the Management Program
Principle 28 Market Participants should have processes in place to independently review the effectiveness of and adherence to the risk management and compliance functions.	*Article 16(5) MiFID II* Organizational Requirements *Article 24 MiFID II Delegated Regulation* Internal Audit *Article 25(2) MiFID II Delegated Regulation* Responsibility of Senior Management	*CEA § 4s(j); CFTC Regulations § 23.600(e)* Risk Management Program Review and Testing
RISK MANAGEMENT AND COMPLIANCE II. Key Risk Types		
Credit/Counterparty Risk		
Principle 29 Market Participants should have adequate processes to manage counterparty credit risk exposure, including, where appropriate, through the use of appropriate netting and collateral arrangements, such as legally enforceable	-	*CEA § 4s(i); CFTC Regulations § 23.504(b)* Swap Trading Relationship Documentation *CEA § 4s(j); CFTC Regulations §§ 23.600(c)(4)(ii), (iv), and (v)* Credit Risk, Foreign Currency Risk, and Legal Risk

FX Global Code Principles	Key MiFID II/MiFIR Provisions	Key U.S. Statutory and Regulatory Provisions
master netting agreements and credit support arrangements.		
Principle 30 Market Participants should have processes to measure, monitor, report, and manage market risk in an accurate and timely way.	-	*CEA § 4s(j); CFTC Regulations §§ 23.600(c)(4)(i) and (iv)* Market Risk and Foreign Currency Risk
Principle 31 Market Participants should have independent processes in place to mark-to-market trading positions to measure the size of their profit and loss and the market risk arising from trading positions.	-	*CEA § 4s(j); CFTC Regulations §§ 23.600(c)(4)(i) and (iv)* Market Risk and Foreign Currency Risk
Operational Risk		
Principle 32 Market Participants should have appropriate processes in place to identify and manage operational risks that may arise from human error, inadequate or failed systems or processes, or from external events.	*Article 16(5) MiFID II* Organizational Requirements *Article 23 MiFID II Delegated Regulation* Risk Management	*CEA § 4s(j); CFTC Regulations § 23.600(c)(4)(vi)* Operational Risk *CFTC Regulations § 23.603* Business Continuity and Disaster Recovery
Principle 33 Market Participants should have business continuity plans (BCPs) in place that are appropriate to the nature, scale, and complexity of their FX business and that can be implemented quickly and effectively in the event of large-scale disasters, loss of	*Article 16 MiFID II* Organizational Requirements *Article 21(3) MiFID II Delegated Regulation* General Organizational Requirements *Article 17(1) MiFID II* Algorithmic Trading *Article 48(1) MiFID II* System Resilience, Circuit	*CFTC Regulations § 23.603* Business Continuity and Disaster Recovery

FX Global Code Principles	**Key MiFID II/MiFIR Provisions**	**Key U.S. Statutory and Regulatory Provisions**
access to significant trading platforms, settlement, or other critical services, or other market disruptions.	Breakers,and Electronic Trading	
Technology Risk		
Principle 34 Market Participants should have in place processes to address potential adverse outcomes arising from the use of or reliance on technological systems (hardware and software).	*Article 16(5) MiFID II* Organizational Requirements *Article 23 MiFID II Delegated Regulation* Risk Management	*CEA § 4s(j); CFTC Regulations § 23.600(c)(4)(vi)* Operational Risk
Settlement Risk		
Principle 35 Market Participants should take prudent measures to manage and reduce their settlement risks, including prompt resolution measures to minimize disruption to trading activities.	-	*CEA § 4s(j); CFTC Regulations § 23.600(c)(4)(vii)* Settlement Risk
Compliance Risk		
Principle 36 Market Participants should keep a timely, consistent, and accurate record of their market activity to facilitate appropriate levels of transparency and auditability and have processes in place designed to prevent unauthorized transactions.	*Article 27 MiFIR* Obligation to Supply Financial Instrument Reference Data	*CEA § 4s(j); CFTC Regulations § 23.600(d)* Risk Management Program—Business Trading Unit
Principle 37 Market Participants should perform "know-your-customer" (KYC) checks on their counterparties to ascertain that	*Article 25(1) MiFIR* Obligation to Maintain Records	*CFTC Regulations §§ 23.402(b) and (c)* KYC and True Name and Owner

FX Global Code Principles	Key MiFID II/MiFIR Provisions	Key U.S. Statutory and Regulatory Provisions
their transactions are not used to facilitate money laundering, terrorist financing, or other criminal activities.		
Principle 38 Market Participants should have in place reasonable policies and procedures (or governance and controls) such that trading access, either direct or indirect, is limited to authorized personnel only.	*Article 9 MiFID II* Management Body	*CEA § 4s(j); CFTC Regulations § 23.600(d)* Risk Management Program—Business Trading Unit
Principle 39 Market Participants should generate a timely and accurate record of transactions undertaken to enable effective monitoring and auditability.	*Article 25 MiFIR* Obligation to Maintain Records	*CEA §§ 4s(f) and (g); CFTC Regulations §§ 23.201 and 23.202* Required Records and Daily Trading Records
Legal Risk		
Principle 40 Market Participants should have processes in place to identify and manage legal risks arising in relation to their FX Market activities.	*Article 16(5) MiFID II* Organizational Requirements *Article 23 MiFID II* *Delegated Regulation* Risk Management	*CEA § 4s(j); CFTC Regulations § 23.600(c)(4)(v)* Legal Risk
Considerations Related to Prime Brokerage Activities		
Principle 41 Prime Brokerage Participants should strive to monitor and control trading permissions and credit provisions in Real-Time at all stages of transactions in a manner consistent with the profile of their activity in the market to reduce risk to all parties.	-	*CEA § 4s(j); CFTC Regulations § 23.600(c)(4)(ii)* Credit Risk

FX Global Code Principles	Key MiFID II/MiFIR Provisions	Key U.S. Statutory and Regulatory Provisions
CONFIRMATION AND SETTLEMENT I. Overarching Principles		
Principle 42 Market Participants should establish consistency between their operating practices, their documentation, and their policies for managing credit and legal risk.	-	*CEA § 4s(j); CFTC Regulations § 23.600* Risk Management Program
Principle 43 Market Participants should institute a robust framework for monitoring and managing capacity in both normal and peak conditions.	*Article 48(1) MiFID II* Systems resilience, circuit breakers, and electronic trading	*CEA § 4s(j); CFTC Regulations §§ 23.600(c)(4)(vi)* Operational Risk
Principle 44 Market Participants are encouraged to implement straight-through automatic transmission of trade data from their front office systems to their operations systems.	-	-
Principle 45 Market Participants should conduct any novations, amendments, and/or cancellations of transactions in a carefully controlled manner.	*Article 17 MiFID II* Algorithmic Trading *Article 31 MiFID II* Monitoring of Compliance with the Rules of the MTF or the OTF and with Other Legal Obligations	-
CONFIRMATION AND SETTLEMENT II. Confirmation Process		
Principle 46 Market Participants should confirm trades as soon as practicable, and in a secure and efficient manner.	-	*CEA § 4s(i); CFTC Regulations § 23.501* Swap Confirmation

FX Global Code Principles	Key MiFID II/MiFIR Provisions	Key U.S. Statutory and Regulatory Provisions
Principle 47 Market Participants should review, affirm, and allocate block transactions as soon as practicable.	-	*CEA § 4s(i); CFTC Regulations § 23.501* Swap Confirmation *CEA § 2(a)(13); CFTC Regulations § 45.3(f)* Allocations
Principle 48 Market Participants should identify and resolve confirmation and settlement discrepancies as soon as practicable.	-	*CEA § 4s(i); CFTC Regulations § 23.501* Swap Confirmation *CEA § 4s(i); CFTC Regulations § 23.504(b)(1)* Swap Trading Relationship Documentation *CFTC Regulations § 23.502* Portfolio Reconciliation
Principle 49 Market Participants should be aware of the particular confirmation and processing features specific to life cycle events of each FX product.	-	*CEA § 4s(i); CFTC Regulations § 23.501* Swap Confirmation
CONFIRMATION AND SETTLEMENT III. Netting and Settlement Processes		
Principle 50 Market Participants should measure and monitor their settlement risk and seek to mitigate that risk when possible.	-	*CEA § 4s(j); CFTC Regulations § 23.600(c)(4)(vii)* Settlement Risk
Principle 51 Market Participants should utilize standing settlement instructions (SSIs).	-	*CEA § 4s(j); CFTC Regulations § 23.600(c)(4)(vii)* Settlement Risk
Principle 52 Market Participants should request Direct Payments.	-	*CEA § 4s(j); CFTC Regulations § 23.600(c)(4)(vii)* Settlement Risk

FX Global Code Principles	Key MiFID II/MiFIR Provisions	Key U.S. Statutory and Regulatory Provisions
Principle 53 Market Participants should have adequate systems in place to allow them to project, monitor, and manage their intraday and end-of-day funding requirements to reduce potential complications during the settlement process.	-	*CEA § 4s(j); CFTC Regulations § 23.600(c)(4)(iii)* Liquidity Risk
CONFIRMATION AND SETTLEMENT IV. Account Reconciliation Processes		
Principle 54 Market Participants should perform timely account reconciliation processes.	*Article 16(9) MiFID II Directive* Organizational Requirements *Article 2(1)(c) MiFID II Delegated Directive* Safeguarding of Client Financial Instruments and Funds	*CFTC Regulations § 23.502* Portfolio Reconciliation
Principle 55 Market Participants should identify settlement discrepancies and submit compensation claims in a timely manner.	-	*CEA § 4s(i); CFTC Regulations § 23.501* Swap Confirmation *CEA § 4s(i); CFTC Regulations § 23.504(b)(1)* Swap Trading Relationship Documentation *CFTC Regulations § 23.502* Portfolio Reconciliation

APPENDIX B—BASIC LIST OF POLICIES REQUIRED UNDER THE CODE

The table below sets out key policies required under the Code. Some of these policies will be discretionary based on the type of business that a firm is offering, and some policies may be consolidated with others, such as in a compliance manual.

Principle	Content of policy	Recipient
3	Conflicts of interest (including personal dealing controls, and gifts and entertainment guidance)	Internal
7	Whistle blowing, complaints, reporting, and handling of improper practices and behaviors	Internal
9	Order execution policy for firms executing FX orders as agents	Clients
14	Mark-up policy setting out guidance on prices charged to clients (with consideration of applicable market conditions and internal risk management practices), and acting honestly, fairly, and professionally in determining mark-up	Internal
15	Identification and resolution of trade discrepancies arising from FX activities	Internal
19-23	Identification and management of confidential information, in line with local laws, and information sharing/ communication of market information	Internal
24-28	Risk management and compliance frameworks	Internal
29	Record retention policy	Internal
32-34	Operational continuity, business continuity plans, and technological failure policies	Internal
35	Settlement risk policy (including appropriate resolution measures)	Internal
37 and 52	Know your client and anti-money laundering policy (including use of or reliance on third-party payment)	Internal
38	Trading access policy (permitted products for trading, authorized personnel, and post-trade surveillance)	Internal

Principle	Content of policy	Recipient
49	Confirmation, exercise, and settlement of FX products	Internal
53	Account funding requirement procedures	Internal
54	Account reconciliation procedures	Internal

APPENDIX C—KEY DISCLOSURES REQUIRED UNDER THE CODE

The table below sets out key disclosures required under the Code. Some of these disclosures may be consolidated in order handling policies or terms of business provided to a client.

Principle	What needs to be disclosed?	To whom?	When?
3	Conflicts of interest that cannot reasonably be avoided or effectively managed	Affected parties	Before transaction/ provision of service
8	Terms of business/ agreement for setting out capacity in which a participant acts when managing orders or executing transactions	Clients	Before transaction/ provision of service/on a trade-by-trade basis
9	Order handling terms: see further detail in order handling checklist below	Clients	Before transaction/ provision of service/on a trade-by-trade basis
10	The possibility of executing risk management transactions	Clients	Before transaction
14	Mark-up disclosures (reflects whether final price is inclusive of mark-up, indicates factors contributing to mark-up, and sets out how mark-up can affect orders triggered at a specific level)	Clients	Before transaction
17	Last look practices	Clients	Before transaction
18	Algorithmic trading strategy (including a description of the strategy, when the firm may execute as principal, applicable fees, and how routing preferences are determined)	Clients	Before transaction

Principle	What needs to be disclosed?	To whom?	When?
18	Aggregation strategy (including a description of the strategy, when a firm may execute as principal, applicable fees, and information on the liquidity sources to which the firm may provide access)	Clients	Before transaction
39	Records of transactions undertaken—upon reasonable clients request only	Clients	Only upon clients request

APPENDIX D—CLIENT ORDER HANDLING POLICY CHECKLIST

General

- Overarching requirements
  - Ensure statements are truthful.
  - Ensure language is clear and unambiguous.
  - Ensure alignment with market abuse regulations within local jurisdiction.
- Are you providing firm or indicative pricing?
- Do you have adequate processes for rejection of client orders?
- How do you handle orders that may cause market disruption?
- Have you considered all relevant disclosures and information required under local law prior to accepting an order?
- What is the process for accepting orders and executing them? Are they aggregated or time prioritized?
- Are orders executed electronically or manually? How does discretion interact with each of these methods?
- When do you take the risk on for a client?
- What is the time-stamping policy? Is it applied both when the order is accepted and when it is triggered or executed?
- Are your fees and commissions transparently set out?
- How will you fill client orders and will you partially fill orders?

Agency: where you execute orders on behalf of a client pursuant to client instructions and without taking on market risk in respect of the order.

- Have you disclosed how the agency relationship operates?
- Do you have a transparent order execution policy?
  - Where can the firm execute orders?
  - What affects the choice of execution venue?
  - How will you provide prompt, fair, and expeditious execution?

Principal: where you take on risks in connection with an order, such as market and credit risks. Principals acting on their own behalf do not have an obligation to execute the order until both parties are in agreement. Any discretion that is exercised needs to be specified how it is exercised.

- Have you disclosed that you are acting on your own behalf as a counterparty to the client?
- How will you communicate and transact with respect to:
  - Requests for quotes;
  - Indicative pricing;
  - Discussion/placement of orders; and
  - Other expressions of interest.
- When does market risk transfer?
- How does market-making and risk management activity (*e.g.* hedging) fit with trading strategy?
- Are your mark-up policies clear and disclosed to the client?