GUIDE TO THE FX GLOBAL CODE

March 2019 v1.0

PROVENANCE OF THE CODE

The FX Global Code (the Code) was produced by a collaboration between central banks and Market Participants across 16 jurisdictions.

In 2015, the Markets Committee of the Bank of International Settlements established a Foreign Exchange Working Group "to strengthen code of conduct standards and principles in foreign exchange markets".

As part of its development of what became the Code, this Working Group of central bank representatives then formed a (private sector) Market Participants Group in order to help co-ordinate engagement with the many regional foreign exchange committees that exist globally, and with private sector representatives more widely.

Following its adoption, the first edition of the Code was issued in May 2017. At that time, the Global Foreign Exchange Committee was formed, inter alia, "to promote, maintain and update on a regular basis the [Code] and to consider good practices regarding effective mechanisms to support adherence." The GFXC has updated the Code with an August 2018 edition. This note relates to that edition.

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APPLICATION OF THE CODE

THE WHOLESALE FX MARKET

The Code is expressed to be a set of global principles of good practice in the wholesale foreign exchange market ("the FX market"). The Code does not otherwise define the FX market as such, but by referring to Market Participants as the principal category of persons affected and then providing an indicative list of the same, it underlines how widely the term "wholesale market", is to be read.

"Market Participant" is a person or organisation (regardless of legal form) that:

(i) is active in FX Markets as a regular part of its business and is engaged in the activity of the purchase or sale of one currency against another, or in transactions designed to result in gains or losses based upon the change in one or more FX rates, such as derivatives, whether deliverable or non-deliverable, either directly or indirectly through other market participants; or
(ii) operates a facility, system, platform, or organisation through which participants have the ability to execute the type of transactions described in (i); or
(iii) provides FX benchmark execution services; and
(iv) is not considered a retail market participant in the relevant jurisdiction(s).

From the point of view of an asset manager, the wholesale FX market captures those markets (other than those clearly directed at the retail customer market) relating to:

- the purchase or sale of one currency against another
- transactions designed to result in gains or losses based upon the change in one or more FX rates, such as derivatives, whether deliverable or non-deliverable

(such transactions together "*FX transactions*")

It follows, when considering its ambit, particularly as regards existing regulatory oversight, that the Code is not limited only to areas subject to classic securities regulation, such as financial instruments under the EU's MiFID regime; nor is it just limited to spot FX, previously covered under the UK's NIPS Code; rather it covers both areas.

This cross-cutting application might have an impact in determining whether alignment with the Code's principles introduces a set of standards in areas that are not already prescribed by the FCA Handbook. However, in the case of asset managers the distinction between financial instruments and spot FX (and any other FX product which may fall outside the definition of financial instrument) is often of little real world import. This is because most (but not all) of the obligations falling upon asset managers relate to their activity of managing investments in the widest sense and so there is a consequent obligation to act in their clients' best interests in all and any FX transactions, whether concerning FX-related financial instruments or any non-investment FX.

Accordingly, in the analysis below, any obligations are assessed against existing expectations upon asset managers as regards any part of the wholesale FX market without distinction; unless any distinction is made explicitly clear.

ASSET MANAGERS AS MARKET PARTICIPANTS

Fund management companies operating collective investment schemes and investment managers will be Market Participants as regards any FX transactions carried out for clients. They meet the definition at (i) above which requires them to be:

(1) *active in FX Markets as a regular part of its business* – which they will be if they manage FX products or use FX as part of their management of portfolios or funds (including share class hedging), and, connected with this,
(2) that such activity relates to one or both of the groups of *FX transactions* (see above).

The Code notes that MPs will include "asset managers, sovereign wealth funds, hedge funds, pension funds, and insurance companies".

VOLUNTARY AND PROPORTIONATE NATURE AND OTHER RULES

Asset managers – in this Guide, fund management companies and investment management companies – themselves vary greatly in the scale and nature of their engagement in the FX market. They have in common their agency relationship to their clients but otherwise will vary from those for whom FX is limited to share class hedging effected via standing instructions with custodians, all the way to specialist active FX managers where the FX instruments comprise a key component of the investment exposure.

Our guide for IA members on signing up discusses the voluntary nature of the Code and proportionality. It suffices here to re-iterate that asset managers are not under a regulatory obligation to sign up to the Code, and even if they do decide to align their practice to them, they are not obliged to make this publicly known, whether or not through one of the Public Registers[1].

THE CODE

The remainder of the Guide considers the substantive provisions of the Code itself.

STRUCTURE OF THE CODE

The 55 Principles are organised under six "leading Principles" of general application relating to:

1. Ethics;
2. Governance;
3. Execution;
4. Risk Management and Compliance;
5. Information sharing; and,
6. Confirmation and Settlement.

Each of the 55 Principles is then further articulated with explanatory text, and for some this is supported by illustrative case studies (set out in Annex 1 to the Code).

Annex 2 of the Code provides a Glossary of Terms used.

Annex 3 of the Code is the text of the Statement of Compliance (use of which is further described in the IA guide to signing up).

There have been two papers published in February 2019 by the GFXC, that whilst not extending the Code, do bear careful consideration. One relates to a form of last look, cover and trade, and is cited under Principle 17 below.

The other is the Role of Disclosure and Transparency in the Global FX Market and this has wide application across the Code, setting out as it does 8 characteristics that Market Participants can use to develop and review FX disclosures. These are as follows:

> The FX disclosure is readily available; the relation between multiple FX disclosures is clear; the FX disclosure is shared as a standard part of the Client on-boarding process and similar related processes; contains language and terminology that is clear and concise; is structured and organized in a manner to allow readers to easily navigate to find information. Also there is an internal governance process in place to

[1] https://www.globalfxc.org/global_index.htm

review FX disclosures, and update as appropriate; there is bilateral dialogue on the content of the FX disclosure as appropriate; and the information provided is useful and relevant.

Whilst the text of the Principles is reproduced below, it is presumed that readers of this Guide will have the Code at hand.

STRUCTURE OF THE COMMENTARY

The commentary follows the order of the leading principles and within them their underlying principles.

Under each principle, or if in common, under the relevant leading principle, the Guide may provide:

- An application assessment – this will note any particular emphasis for asset managers ("FIRMS"); and, any particular application to individuals within the asset manager ("INDIVIDUALS");
- A regulatory gap analysis; and,
- Any specific commentary, including any reference to note one or more of the illustrative examples provided in the Code's Annex 3.

IMPORTANT NOTICE CONCERNING ASSESSMENTS BELOW

READERS ARE TO NOTE THAT REFERENCES IN THIS GUIDE TO THERE BEING A GAP OR NO GAP AGAINST EXISTING REGULATORY STANDARDS ARE TO BE READ AS INDICATIVE ASSESSMENTS PRESUMING COMMON APPROACHES BASED ON THE READING OF THE FCA HANDBOOK AND A COMPARISON WITH THE TEXT OF THE CODE. INDIVIDUAL FIRMS MAY DETERMINE THAT THEIR OWN POSITION IS DIFFERENT; THIS IS BECAUSE THE APPLICATION OF THE CODE IS PROPORTIONATE, BUT ALSO THIS MAY BE DUE TO IDIOSYNCRATIC CHARACTERISTICS OF A FIRM'S BUSINESS MODEL, ITS CLIENTS OR ITS OWN RISK APPETITE OR JUST BECAUSE THEY CHOOSE TO APPROACH ALIGNMENT THROUGH A DIFFERENT ANALYTICAL LENS.

Additionally, as more firms develop familiarity with the Code and any procedures needed to secure alignment, the Association may vary these assessments.

ETHICS

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

APPLICATION OF LEADING PRINCIPLE AND PRINCIPLES 1 - 3

FIRMS and INDIVIDUALS

This leading principle is directly applicable to asset managers and their personnel, as are the three principles which are organised under it. *Relevant individuals* here will include any in relation to whose own ethical behaviour depend good client outcomes; the promotion of market integrity; and, prudential soundness of the firm.

PRINCIPLE 1:

Market participants should strive for the highest ethical standards.

RGA

A. No GAP as to the standard
B. Check GAP as regards application to *relevant individuals* who are not FCA approved persons.
C. Check GAP as regards monitoring and recording pro-activity and leadership

Code Principle 1 does not impose a standard that is higher or in conflict with existing standards, particularly:

FCA Principle 1 Integrity: A firm must conduct its business with integrity

COBS 2.1.1R (1): A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule)

The requirement to act with integrity is extended to *relevant individuals* who are FCA approved persons directly under APER 2.1A.3R Statement of Principle 1.

Firms can be expected to require under their terms of employment all other *relevant individuals* to act with integrity.

COMMENTARY

The standard expected under this Principle, and its unpacking in the Code to cover honesty, fairness and integrity, should already be part of the culture and individual behaviours exhibited at any asset manager. These standards are to be assessed not only by reference to what might be normative in a regulated financial institution, but also having regard to the high level of reliance placed on the asset manager by its clients.

Firms will wish to consider how they would both display, and evidence, efforts to promote such values internally and in particular how best to both support and monitor senior and front-line management in discharging their own responsibilities to provide leadership and guidance to those reporting to them and with whom they interact. Firms will take a proportionate response to matters related to the promotion of such values having regard to the nature and extent of the firm's participation in the FX market.

PRINCIPLE 2:

Market participants should strive for the highest professional standards.

RGA

A. No GAP as to the standard
B. Check GAP as regards application to *relevant individuals* who are not FCA approved persons.

C. Check GAP as regards monitoring and recording training and competence

Code Principle 2 does not impose a standard that is higher or in conflict with existing standards, particularly:

> FCA Principle 2 Skill, care and diligence: A firm must conduct its business with due skill, care and diligence
>
> SYSC 5.1.1 is the rule applying to fund management companies (not common platform firms) that they must employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them.
>
> Common platform firms are subject to Article 21 of the MiFID Delegated Regulation (EU) 2017/565 and in particular here, Article 21.1(b) and (d).
>
> SYSC 6 and in particular SYSC 6.1.3 R and 6.1.3A G, set out requirements relating to the need to understand and comply with Applicable Law

The requirement to act with skill and competence, and applying professional judgement, is extended to *relevant individuals* who are FCA approved persons directly under APER 2.1A.3R Statement of Principle 2.

Firms can be expected to require under their terms of employment all other *relevant individuals* to act with skill and care and exercise judgement.

Compliance and legal functions can be expected to provide material assistance in supporting senior management in understanding what is needed to comply with Applicable Law.

COMMENTARY

The standard expected under this Principle, and its unpacking in the Code to cover competence, skill and knowledge, should already be part of the culture and individual behaviours exhibited at any asset manager. Again, these standards are to be assessed not only by reference to what might be normative in a regulated financial institution, but also having regard to the high level of reliance placed on the asset manager by its clients.

Firms will wish to consider how they would both display, and evidence, assessments of competence and judgement specifically in relation to FX market business. Firms will take a proportionate response to such matters, and to the reference in the Code to engaging in efforts to strive for highest standards in the wider FX market, having regard to the nature and extent of the firm's participation in the FX market.

PRINCIPLE 3:

Market participants should identify and address conflicts of interest.

RGA

A. No GAP as to the standard
B. No GAP as regards application
C. No GAP as regards monitoring and recording

Code Principle 3 does not impose a standard that is higher or in conflict with existing standards, particularly:

> FCA Principle 8 Conflicts of Interest: A firm must manage conflicts of interest fairly, both between itself and its customers and between a customer and another client.
>
> SYSC 10.1.3 R A firm must take all appropriate steps to identify and to prevent or manage conflicts of interest …..

SYSC 10.1.7 R A firm must maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps to prevent conflicts of interest as defined in SYSC 10.1.3 R from adversely affecting the interests of its clients.

See as well

COBS 2.3 and 2.3A Inducements

COBS 11.7 Personal account dealing

SYSC 10.2 Chinese Walls

COMMENTARY

The standard expected under this Principle should already be part of the culture and individual behaviours exhibited at any asset manager. The structure reflects UCITS, AIFMD and MiFID requirements as implemented in the UK to identify, manage and mitigate and if not then avoid or disclose.

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.

APPLICATION OF LEADING PRINCIPLE AND PRINCIPLES 4-7

FIRMS and INDIVIDUALS

This leading principle is directly applicable to asset managers, as are the four principles which are organised under it. Whilst personnel will be impacted by the requirements, by their nature these principles address the very organisation of the firm.

PRINCIPLE 4:

The body, or individual(s), that is ultimately responsible for the market participant's FX business strategy and financial soundness 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.

RGA

A. No GAP as to the standard
B. No GAP as regards application
C. No GAP as regards monitoring and recording

Code Principle 4 does not impose a standard that is higher or in conflict with existing standards, particularly:

FCA Principle 2 Skill, care and diligence: A firm must conduct its business with due skill, care and diligence

FCA Principle 3 Management and Control: A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems

SYSC 3.1.1 R A firm must take reasonable care to establish and maintain such systems and controls as are appropriate to its business

COMMENTARY

Appropriate oversight, supervision and controls ought to be already present within an asset manager. Naturally, having regard to any other commitments within the Code, firms will wish to consider whether any additional controls or reports are required. The requirement for appropriateness, whilst ensuring controls and reports are tailored to the particular FX activity, is also a reminder of the proportionate approach that can be taken by a firm.

PRINCIPLE 5:

Market participants should embed a strong culture of ethical and professional conduct with regard to their FX market activities.

RGA

A. No GAP as to the standard
B. No GAP as regards application
C. No GAP as regards monitoring and recording

Code Principle 5 does not impose a standard that is higher or in conflict with existing standards, particularly:

FCA Principle 1 Integrity: A firm must conduct its business with integrity

FCA Principle 2 Skill, care and diligence: A firm must conduct its business with due skill, care and diligence

COBS 2.1.1R (1) A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).

Additionally, as regards approved persons, APER's Statements of Principle are relevant

COMMENTARY

Whilst it cannot be said that there is one FCA rule that uses the language of this Principle in terms, it is a given that a regulated asset manager should embed a culture of such conduct generally, including by those engaged with its FX market activities.

PRINCIPLE 6:

Market participants should have remuneration and promotion structures that promote market practices and behaviours that are consistent with the market participant's ethical and professional conduct expectations.

A. CHECK GAP as to the standard
B. CHECK GAP as regards application
C. CHECK GAP as regards monitoring and recording

COMMENTARY

For MiFID, UCITS and AIFMD managers, there are remuneration requirements, principally set out in SYSC 19A, B, C and E. These derive from, and implement, the remuneration codes introduced across the EU under MiFID, UCITS and AIFMD.

Each one of the three remuneration codes that may apply – dependent upon the regulatory categorisation of the asset manager – has firm-wide application in some aspects and more targeted application to specific roles and individuals "code staff" in others. Firms will wish to consider whether the staff upon the market practices and behaviours of the firm depend, are code staff and so receiving remuneration under structures subject to the design constraints of these codes.

The FCA IFPRU, BIPRU and AIFM remuneration codes are directed at promoting sound and effective risk management which is not identical to the prescribed focus of Code Principle 6, even if frequently confluent with it. The UCITS remuneration code however also is directed at not impairing the management company's compliance with its duty to act in the best interests of the UCITS it manages; this could be seen as being more aligned with Code Principle 6.

Even absent the remuneration code, firms will commonly have remuneration ad promotion structures that will seek to operate in a manner that promotes market practices and behaviours.

PRINCIPLE 7:

Market participants should have appropriate policies and procedures to handle and respond to potentially improper practices and behaviours effectively.

A. No GAP as to the standard
B. No GAP as regards application
C. No GAP as regards monitoring and recording

Code Principle 7 does not impose a standard that is higher or in conflict with existing standards, particularly:

FCA Principle 1 Integrity: A firm must conduct its business with integrity

FCA Principle 2 Skill, care and diligence: A firm must conduct its business with due skill, care and diligence

COBS 2.1.1R (1) A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).

SYSC 18 Whistleblowing (noting 18.6.1R and 18.6.4G)

Additionally, as regards approved persons, APER's Statements of Principle are relevant

COMMENTARY

FCA regulation already requires asset managers both to proactively monitor compliance, handle complaints and have whistleblowing policies. These extend to considering individual conduct with training and competence requirements and through managerial and disciplinary interventions.

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.

COMMENTARY

Many of Principles 8 to 18 speak much more naturally to executing brokers and execution platforms. Nevertheless asset managers will wish to have regard to the existence of these principles with two distinct focuses:

1. As regards asset manager's own compliance as a market participant, and
2. As regards what could be expected by an asset manager of a broker or counterparty.

1. As regards asset manager's own compliance as a market participant, Principles 12 and 15 have some application. The obligation not to create false or disorderly markets applies here as with any other market. Principles 8, 9 and 10 are matters for some asset managers but vis-à-vis their clients rather than directly as a Market Participant.

As the introductory section above entitled Wholesale FX market notes, asset managers are required to approach FX with the same standards as they do other assets. It is to be noted that the best execution obligations in COBS 11.2.1 (which derive from MiFID II):

> A firm must take all reasonable steps to obtain, when executing orders, the best possible result for its clients taking into account the execution factors

apply only to orders in relation financial instruments and so for the Code's purposes do not encompass all FX transactions. Its application to portfolio managers placing orders with other entities for execution is similarly proscribed in COBS 11.2.30 (deriving from the MiFID Organisational Delegated Regulation). However both provisions are expressions in MiFID of the fundamental provision to act honestly, fairly and in the best interests of clients. When placing orders which will result in FX transactions that do not relate to financial instruments, it must be the case that a portfolio manager still needs to take all reasonable steps to obtain the best possible result for its clients.

Articles 25 and 26 of the UCITS implementing directive[2] makes equivalent reference to acting in the best interests of the fund when executing or placing orders. Similarly these are probably limited to orders in financial instruments, but again due to the wider obligation to act in the best interests of the fund and its unitholders, a fund management company is required to act with as high standards even for spot FX.

Accordingly, the Code does not require a higher standard of behaviour as regards an asset manager's own compliance with Code Principles 8 to 18 when acting as a Market Participant placing orders for execution.

2. As regards what could be expected by an asset manager of a broker or counterparty, it is particularly important that the asset manager considers the Principles from an informed position about the operation and structure of Market Participants that provide or facilitate execution services. In this regard, the Illustrative Examples at pages 51 onwards of the Code bear careful scrutiny. Some themes may be drawn from them:

- The importance of the terms and conditions agreed with a Market Participant – several examples permit more or less strong modifications of agency and principal obligations. In this regard, the continued existence of "battle of the forms" contractual interactions in the market, where the status of any terms as agreed is unclear, including due to a failure to appreciate the role and capacity of the asset manager, remains a challenge.

[2] COMMISSION DIRECTIVE 2010/43/EU

- The importance of ensuring that due diligence is carried out on order handling policies and the operation of any automated processes in order to underpin the transparency that may be expected
- The need to understand how reference prices are formed and benchmark design
- The extent and nature of any pre-hedging that may be used and the ability to articulate to one's clients how this is in the their interests
- The policies around the use of last-look and how and when an asset manager will be informed of trade rejection reasons

Accordingly, firms will wish to ensure that they have sufficient understanding of the risks to which their clients are exposed in the trading process and how these are mitigated; this demands market-specific training amongst the individuals responsible at an asset manager for oversight of the FX business. But it also places considerable reliance upon the other Market Participants to communicate key pieces of information and to do so using clear and unambiguous language. Asset managers will want to consider the detailed provisions under these Execution Principles in assessing what it is that as a minimum those other Market Participants should be providing them with.

No GAP as to the standard narrowly focussed on own activities in placing orders

CHECK GAP as to the application, training, oversight, monitoring and recording of counterparty activities

PRINCIPLE 8:

Market participants should be clear about the capacities in which they act.

PRINCIPLE 9:

Market participants should handle orders fairly and with transparency in line with the capacities in which they act.

PRINCIPLE 10:

Market participants should handle orders fairly, with transparency, and in a manner consistent with specific considerations relevant to different order types.

PRINCIPLE 11:

A market participant should only pre-hedge client orders when acting as a principal, and should do so fairly and with transparency.

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.

PRINCIPLE 13:

Market participants should understand how reference prices, including highs and lows, are established in connection with their transactions and/or orders.

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.

PRINCIPLE 16:

Market participants acting as voice brokers should 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.

> The IA has published a paper on last look which is accessible here.
>
> Additionally, in February 2019, the GFXC published a paper on cover and deal, a form of last look.

PRINCIPLE 18:

Market participants providing algorithmic trading or aggregation services to clients should provide adequate disclosure regarding how they operate.

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.

A. CHECK GAP as to the standard
B. CHECK GAP as regards application
C. CHECK GAP as regards monitoring and recording

APPLICATION OF LEADING PRINCIPLE AND PRINCIPLES 19 - 23

FIRMS and INDIVIDUALS

This leading principle is directly applicable to asset managers and their personnel, as are the five principles which are organised under it under two headings. *Relevant individuals* here will include any who deal with Market Participants or who may have confidential information, including information about client trades and positions.

I. HANDLING CONFIDENTIAL INFORMATION

PRINCIPLE 19:

Market participants should clearly and effectively identify and appropriately limit access to confidential information.

PRINCIPLE 20:

Market participants should not disclose confidential information to external parties, except under specific circumstances.

> *COMMENTARY*
>
> Principles 19 and 20 might appear to be uncontroversial to an asset manager. It is a fundamental part of acting in a client's best interests to protect information relating to such clients, including market information (that is, information concerning a client order or decision to trade). The misuse of such information, especially to benefit the asset manager, would be a breach of COBS 2.1.1R (1)
>
> > A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).
>
> and would not comply with Principle 6…

A firm must pay due regard to the interests of its customers and treat them fairly.

But the Code itself and the illustrative examples in the Code (at pages 61 and 62) demonstrate that the drafters of the Code had a more expansive view of the ambit of this Principle.

The glossary states that confidential information is information that is to be treated as confidential. This is in distinction to "designated" confidential information where Market Participants agree to a higher standard of disclosure.

FX Trading Information will be confidential – if it is not in the public domain – since it will be received or created by a Market Participant. It can take various forms, as the Code states, "*including information relating to the past, present, and future trading activity or positions of the Market Participant itself or of its Clients, as well as related information that is sensitive and is received or produced in the course of such activity.*

Examples include but are not limited to:

- *details of a Market Participant's order book;*
- *other Market Participants' Axes;*
- *spread matrices provided by Market Participants to their Clients; and*
- *orders for benchmark fixes.*"

The last two illustrative examples relate to client facing obligations, but given these Principles aim to address market behaviour, it is notable that the first two of the six examples illustrate poor behaviour by asset managers and hedge funds. These examples show the following:

- The first example: Disclosure of confidential information by an asset manager includes its choosing to inform a bank market maker of an unsolicited call from another *named* bank that it has an Axe to buy EUR/SEK. The Code expects that non-public trading interests of a bank are not disclosed to another bank. Unusually, the illustrative example does not address the same situation when describing what is acceptable, but rather one in which the asset manager has no interest in EUR/SEK; which presumably it had in the first part of the example.
- The second example is an example of a hedge fund trying to solicit confidential information by asking if the market maker is long Sterling. This reinforces the Code text that that the duty not to disclose includes a duty not to solicit another to disclose.

Accordingly, firms will wish to ensure that their policies, training and monitoring ensure market information is not disclosed to others, that traders do not seek to solicit information about another market participant's position, and if they receive it in a situation not covered by a designated confidential information agreement, it is only used in the interests of (i.e. to benefit) its clients, or as needed for risk management, legal or regulatory requirements (which in an agency asset manager will not be against the client's best interests anyway).

II. COMMUNICATIONS

PRINCIPLE 21:

Market participants should communicate in a manner that is clear, accurate, professional and not misleading.

COMMENTARY

Principle 21 echoes the general communications rule at COBS 4.2.1 (fair, clear and not misleading). It is important to note that the Code is also concerned with statements

into the FX market; as the illustrative example at page 63 notes it is not acceptable to positively aver something about trading interest that is not true and accurate – in this case that total buying interest of an asset manager was $50m when it was not. The Principle does not require disclosure where no duty to disclose arises.

PRINCIPLE 22:

Market participants should communicate market colour appropriately and without compromising confidential information.

COMMENTARY

The third illustrative example about Principle 22 (to be found at page 64), relates to an asset manager going too far in seeking market colour and crosses the line into soliciting confidential information – and so could stand as an example in relation to Principle 20 as well.

PRINCIPLE 23:

Market participants should provide personnel with clear guidance on approved modes and channels of communication.

COMMENTARY

Principle 23 is addressing not the content of conversations as such, which is covered under the other Principles but the operational conduct of such. Taped lines, approved messaging systems and any other protocols should exist to support the need for record-keeping and audit to protect clients and the firm itself from legal and regulatory risk, and in a manner that protects clients and the firm against cyber threats and human and physical risks. Given the expectation that traders' lines will be taped, firms may not always require Market Participants to confirm they are taping on every occasion, but they may want to be aware of the circumstances in which lines are not taped.

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.

RGA

A. No GAP as to the standard
B. No GAP as regards application
C. No GAP as regards monitoring and recording

This leading principle does not impose a standard that is higher or in conflict with existing standards, particularly:

SYSC 3.2.2G	Organisation and reporting lines
SYSC 3.2.6R	Compliance, financial crime and money laundering systems and controls
SYSC 3.2.7R	The Compliance function
SYSC 3.2.10G	The Risk Assessment function (not always required)
SYSC 3.2.11A	Management information
SYSC 3.2.15G	Audit committee (not always required)
SYSC 3.2.16G	Internal audit (not always required)
SYSC 3.2.17G	Business strategy
SYSC 3.2.18G	Remuneration policies
SYSC 3.2.19G	Business continuity
SYSC 3.2.20R	Records
SYSC 7.1.1	Risk control

COMMENTARY

The high-level Principle and Principles 24 - 41 should be business as usual for regulated firms already carrying on business that includes FX management and trading for client portfolios. These obligations exist for UK regulated asset managers under the FCA Handbook. FX is but one of many assets managed by such a firm and the Code does not demand a different approach.

Firms will wish to familiarise themselves with the illustrative examples in relation to Principles 27 and 33.

IA GUIDANCE

Firms may also wish to consider some of the following Guidance documents issued by the IA

Financial Crime

- AML market practice in the UK investment funds and investment management sectors (May 2014)
- Bribery Risk Assessment (July 2016)

Conduct Risk

- Good Practice Guide (July 2015)

Operational and Enterprise Risk

- Operational and Enterprise Risk Principles for Asset Managers (May 2017)
- Good Practice Guide (September 2010)

Stress testing procedures and practices

- Member feedback (May 2010)

Internal capital adequacy assessment process (ICAAP)

- Guidance for investment management firms (May 2016)

I. FRAMEWORK FOR RISK MANAGEMENT, COMPLIANCE, AND REVIEW

PRINCIPLE 24

Market participants should have frameworks for risk management and compliance.

PRINCIPLE 25:

Market participants should familiarise themselves with, and abide by, all applicable law and standards that are relevant to their FX market activities and should have an appropriate compliance framework in place.

PRINCIPLE 26:

Market participants should maintain an appropriate risk management framework with systems and internal controls to identify and manage the FX risks they face.

PRINCIPLE 27:

Market participants should have practices in place to limit, monitor, and control the risks related to their FX market trading activity.

PRINCIPLE 28:

Market participants should have processes in place to independent review the effectiveness adherence to the risk management and compliance functions.

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 master netting agreements and credit support arrangements.

MARKET RISK

PRINCIPLE 30:

Market participants should have processes to measure, monitor, report, and manage market risk in an accurate and timely way.

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.

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 external events.

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 access to significant trading platforms, settlement, or other critical services, or other market disruptions.

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).

SETTLEMENT RISK

PRINCIPLE 35:

Market participants should take prudent measures to manage and reduce their settlement risks, including prompt resolution measures to minimise disruption to trading activities.

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 unauthorised transactions.

PRINCIPLE 37:

Market participants should perform 'know-your-customer' (KYC) checks on their counterparties to ascertain that 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 authorised personnel only.

PRINCIPLE 39:

Market participants should generate a timely and accurate record of transactions undertaken to enable effective monitoring and auditability.

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.

CONSIDERATIONS RELATED TO PRIME BROKERAGE ACTIVITIES

PRINCIPLE 41:

Prime brokerage participants should strive to monitor and control trading permissions and credit provision 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.

CONFIRMATION AND SETTLEMENT

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.

COMMENTARY

The high-level Principle and Principles 42 – 55 should be business as usual for regulated firms already carrying on business that includes FX management and trading for client portfolios. These obligations exist for UK regulated asset managers under the FCA Handbook. FX is but one of many assets managed by such a firm and the Code does not demand a different approach. The IA's securities post-trade sub-committee has prepared the following commentary table which notes under Comments some existing market approaches that might differ in detail from that which could be expected.

Principle	How does this affect a firm's Interaction with counterparties?	Comments
Overarching Principles		
42. MARKET PARTICIPANTS SHOULD ESTABLISH CONSISTENCY BETWEEN THEIR OPERATING PRACTICES, THEIR DOCUMENTATION, AND THEIR POLICIES FOR MANAGING CREDIT AND LEGAL RISK.	Internal controls.	
43. MARKET PARTICIPANTS SHOULD INSTITUTE A ROBUST FRAMEWORK FOR MONITORING AND MANAGING CAPACITY IN BOTH NORMAL AND PEAK CONDITIONS.	Internal controls.	
44. MARKET PARTICIPANTS ARE ENCOURAGED TO IMPLEMENT STRAIGHT-THROUGH AUTOMATIC TRANSMISSION OF TRADE DATA FROM THEIR FRONT OFFICE SYSTEMS TO THEIR OPERATIONS SYSTEMS.	Internal controls.	
45. MARKET PARTICIPANTS SHOULD CONDUCT ANY NOVATIONS, AMENDMENTS, AND/OR CANCELLATIONS OF TRANSACTIONS IN A CAREFULLY CONTROLLED MANNER.	Internal controls.	
Confirmation Process		
46. MARKET PARTICIPANTS SHOULD CONFIRM TRADES AS SOON AS PRACTICABLE, AND IN A SECURE AND EFFICIENT MANNER.	Confirmations received from counterparties, typically via SWIFT to back office systems.	
47. MARKET PARTICIPANTS SHOULD REVIEW, AFFIRM, AND ALLOCATE BLOCK TRANSACTIONS AS SOON AS PRACTICABLE.	Allocations usually provided with the order or entered to the trading platform to generate the block trade. Affirmation typically undertaken only at the allocation level. High rate of same day affirmation.	Affirmation of the aggregated block in addition to the allocations would require additional processing with no added value.

48. MARKET PARTICIPANTS SHOULD IDENTIFY AND RESOLVE CONFIRMATION AND SETTLEMENT DISCREPANCIES AS SOON AS PRACTICABLE	Timely engagement required to resolve matching breaks and settlement fails. Low matching/settlement fail rates.	
49. MARKET PARTICIPANTS SHOULD BE AWARE OF THE PARTICULAR CONFIRMATION AND PROCESSING FEATURES SPECIFIC TO LIFE CYCLE EVENTS OF EACH FX PRODUCT	Internal controls.	
Netting and Settlement Processes		
50. MARKET PARTICIPANTS SHOULD MEASURE AND MONITOR THEIR SETTLEMENT RISK AND SEEK TO MITIGATE THAT RISK WHEN POSSIBLE.	Most firms aim to settle net in CLS as far as possible. Some have bilateral netting arrangements with individual counterparties for trades that cannot be settled in CLS. Interest in using CLSNet for netting calculations when trading non-CLS currencies.	Some local custodians do not offer CLS settlement. Bilateral arrangements with different counterparties can be less efficient due to fragmentation in approaches. CLSNet currently offers only calculation/agreement of net settlement; doesn't yet arrange actual settlement.
51. MARKET PARTICIPANTS SHOULD UTILISE STANDING SETTLEMENT INSTRUCTIONS (SSIS).	Many use DTCC ALERT for client SSIs, but consumption from banks more fragmented.	SSIs provided manually by some sell-side.
52. MARKET PARTICIPANTS SHOULD REQUEST DIRECT PAYMENTS	All settlements direct between client custody accounts and counterparty banks	
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.	Internal controls.	

Account Reconciliation Processes		
54. MARKET PARTICIPANTS SHOULD PERFORM TIMELY ACCOUNT RECONCILIATION PROCESSES.	Largely internal controls. Timely engagement required to resolve reconciliation breaks caused by counterparties.	
55. MARKET PARTICIPANTS SHOULD IDENTIFY SETTLEMENT DISCREPANCIES AND SUBMIT COMPENSATION CLAIMS IN A TIMELY MANNER.	Firms aim to correct errors as soon as they are discovered. Most follow ISITC best practice for submission and settlement of claims.	Requires compensation to be made proactively where payment delayed or received in error, but actual market practice across both buy- and sell-side is to await a claim before paying compensation.

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