The FX Global Code – a guide for IA members on signing up

March 2019 v1.1

The FX Global Code was developed by what is described as a partnership between central banks and Market Participants from 16 jurisdictions around the globe.

Our guide to the FX Global Code describes how the Global Code is organised and reviewed, and what it expects of Market Participants.

This guide is produced to assist members of the IA in understanding how to sign up, and to consider changes and developments to the Code over time. It draws upon the Global Foreign Exchange Committee's own document about the standardised Statement of Commitment. The GFXC is the body tasked with the ongoing maintenance of the Global Code.

1. Where can I find the latest text of the Global Code?

The latest version is dated August 2018 and can be found on the GFXC website[1].

2. Does the Global code apply to asset managers?

The Code applies to all "Market Participants" that engage in the wholesale foreign exchange market (FX Market).

A "Market Participant" is a person or organisation (regardless of legal form) that falls within one of three categories but is not considered a retail market participant in the relevant jurisdiction.

As regards the IA's membership, the categories include any asset manager (including fund management or investment management companies) 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.

3. Are we obliged to adopt the Global Code?

Formally the answer is no; the Code is voluntary and so is the use of the Statement of Commitment (as to which see FAQ 4).

However, the Bank of England, and the other members of the GFXC, believe that widespread adoption of the Global Code across the diverse and broad spectrum of market participants is vital to the integrity and effective functioning of the foreign exchange market. The purpose of the Global Code is "to promote a robust, fair, liquid, open, and appropriately transparent market in which a diverse set of Market Participants, supported by resilient infrastructure, are able to confidently and effectively transact at competitive prices that reflect available market information and in a manner that conforms to acceptable standards of behaviour". This ought to bring benefits, especially as regards the behaviour of counterparties.

Where they are UK authorised firms, IA members that are Market Participants are subject to FCA Principle 5 when operating in the wholesale FX market; P5 states that "a firm must observe proper standards of market conduct".

[1] https://www.globalfxc.org/fx_global_code.htm?m=62%7C371

We have provided a high-level regulatory gap analysis in our Guide to the Code and have not been able to conclude yet on the potential additional workload and related responsibility that the implementation of the Principles would put on our members as compared to the existing set of regulatory requirements that they have to comply with.

The Code has been submitted to the FCA for recognition under the FCA's renewed initiative to recognise certain industry codes. If recognised, the Code would operate as an evidential code in relation to questions of individual's behaviour under the SMCR, but only as regards their unregulated activities. It must be expected that most if not all of an asset managers will be carrying on activities that are regulated. When the position of the FCA is known, the IA expects to revise these FAQs.

The effectiveness of this voluntary Code depends upon its widespread adoption amongst Market Participants. As of 6 August 2018 (the last public report), over 300 Market Participants have made Statements of Commitment and published that fact on one of the Registers that exist to record such. Registration on these is said to be simple, and without charge. The global index of Public Registers can be found at https://www.globalfxc.org/global_index.htm.

It is not however an obligation to make, let alone publish, or enter on a register, a Statement of Commitment. Firms may refer privately to clients about their stance as regards the Code, for example as to being aligned with its Principles; a firm is free to do so having regard to general regulatory duties, such as the requirement to ensure communications with clients are fair, clear and not misleading.

The IA has made and published its support as a trade association to the Code and its objectives.

4. What is the Statement of Commitment?

In Annex 3 to the Global code, there is a Statement of Commitment which Market Participants can use publicly, or bilaterally, to support key objectives of the Code such as enhancing transparency, efficiency and functioning in the FX Market.

The text of the standardised Statement of Commitment to the Global Code is promulgated by the GFXC and available on its website[2]. For ease of Reference the text of the Statement is set out in Annex I to this guide.

The website also contains FAQs about the Statement of Commitment[3]. This Guide seeks both to restate them for asset managers and provide further commentary to assist IA members.

5. What are we representing if we sign up?

An asset manager will be representing that:

(i) it has carried out its own review of the Global Code
(ii) it recognises the Code as a set of principles of good practice for the wholesale FX Market;
(iii) it is committed to conducting its FX Market activities in a manner that is consistent with the principles of the Code; and
(iv) it considers that it has taken appropriate steps, based on the size and complexity of its activities, and the nature of its engagement in the FX market, to align its activities with the principles of the Code.

[2] https://www.globalfxc.org/docs/statement_of_commitment.pdf
[3] https://www.globalfxc.org/statement_of_commitment.htm?m=62%7C373

It is not a requirement to agree that your Statement of Commitment is made public on one of the registers that have sprung up globally.

It is important to note that whilst the regulated institution makes the representation, its import extends to the expected conduct and competence of relevant personnel. Critically, therefore each representation will, as it says something about the firm, say something about those individuals.

6. What are the principles?

The Code describes itself as being organised "around six leading principles". These are Ethics; Governance; Execution; Information sharing; Risk Management and Compliance; and, Confirmation and Settlement Processes. However these are broad section headings and under them are 55 numbered principles that provide quality and conduct targets; it is these principles to which the Statement of Commitment is directed. Annex 1 of the Global Code provides highly stylised examples intended to illustrate both some of the principles and the situations in which they could apply.

7. How do we carry out a review of the Global Code?

As with any review that might lead to an adoption of changed or confirmed operating policies and potential representations as to expected conduct – whether to clients or counterparties, firms will want to follow their usual governance and approval processes at what level of seniority and with whatever participation, it thinks fit.

That said, such a review will need to be made independently of other firms and the IA. The review will, at least, consider:

(i) what FX market activities the firm presently (and even prospectively) engages in;
(ii) to what extent each of the 55 principles are relevant and how, given those identified market activities (see FAQ 7 below on proportionality);
(iii) where the firm's current practice, policies or agreements are not wholly consistent with those Principles and the materiality of any difference;
(iv) the steps that need to be taken to remedy any inconsistencies and otherwise "align its activities" with the 55 Principles; and,
(v) the likely timescale to prepare to use the Statement of commitment.

The review will take into account the fact that delivery of good outcomes depends not merely on systems but critically upon the conduct of many individual employees, senior managers and the Board. The section on ethics, for example, is explicitly extended to embrace personnel; and other leading principles will need to be similarly applied. Accordingly, some of the steps that will likely need to be taken will involve education or training for a range of personnel that are engaged in the FX market activities, and have oversight or management of those individuals and the systems on which they depend.

8. Can we apply the Code proportionately?

In short, yes. The Global Code is expected to apply to all Market Participants in the global wholesale FX market. It will necessarily be implemented in differently between different institutions.

Firstly, there are a diverse range of institutions that could fall within this cohort from Central banks, brokers, e-trading platforms and settlement platforms to corporate treasurers, pension funds and asset managers.

Secondly, within them, institutions will engage with the FX market in different ways and to different extents. Some asset managers might confine their activities to a small number share class hedging activities effected with a custodian on an almost automated basis; but others may be using the FX market actively as investment component of mandates or funds, or to hedge other investment classes, where the trades are of significant size.

Obviously, some of the behaviours which the Principles are aiming to evince are of inviolate effect; the requirement to act with honesty, for example. But it is also clear that many Principles, and their associated expected outcomes, use language which supports a proportionate approach – e.g. Principle 7's reference to appropriate policies and procedures. As with more formal areas of rules and compliance, proportionality does not offer some firms the chance to have lower standards. Proportionality does offer the chance to ensure procedures are tailored to reflect both the nature and complexity of the issues which any particular firm is likely to experience having regard to its own FX market activities, and also the size and complexity of the firm itself.

9. We have several companies in Group that could be affected, do we have to sign up each?

As the GFXC's commentary on the Statement makes clear, members are free to determine what best suits them. The Statement has been designed flexibly to accommodate group companies providing a single, group-level statement, or individual group entities providing their own statements.

10. How can we use the Statement of Commitment?

The GFXC states that firms are free to use it as they wish, for example:

- using the Statement publicly, by publishing it on their website; or,
- using it bilaterally, by providing it directly to other Market Participants, such as existing or prospective clients or counterparties.

Use and publication of the Statement ought to provide a positive signal to clients, counterparties and the wider market, of a Market Participant's commitment to following good practice.

It is hoped that widespread use of the Statement will raise the profile of the Code, supporting a common understanding across the FX Market of what constitutes good practice in key areas and encouraging the broadest constituency of Market Participants to engage with and support the Code and its objectives.

As with any statement made publicly or to clients, firms will need to consider marketing and disclosure rules, as well as, legal risk aspects.

11. When do we have to review our commitment to the Code or the Statement of Commitment?

Some reviews will be driven by a firm's own review procedures. As with any policies and procedures, a firm will likely have a review cycle measured in some small number of years. Additionally, such a review may be triggered by factors such as material changes to FX market activities, whether in terms of lines of business, size of business, nature of clients, internal re-organisations and new system developments and alterations. What to do with the outcome of any review is explored below.

Additionally, it is foreseeable that the Code itself may be revised. What firms should do will be affected by the nature of that revision:

> Were there to be a major revision, that is to say: an alteration to the text of the 55 Principles themselves; the addition of a new principle; or, a change to the organisation, or text, of the

six leading principles, it must be likely that the GFXC will provide guidance as to what it expects as regards commitments to the existing Code. In the unlikely event they did not, firms will likely want to scope a fuller review to assess both the impact of any change in and of itself and also within the context of the set of principles – since a change might provide a differently focussed context to reading connected principles.

A minor revision may operate at the level below the 55 Principles. This occurred with the revision made to the Code for its August 2018 edition. In this case, the GFXC agreed to add one example to the Code's Annex. This example was viewed as clearly highlighting negative behaviour. The GFXC considered it a useful addition to the Code since Principle 11 already has two positive examples associated with it. In such a case, a firm will want to ensure that its reading of the relevant Principle was not inconsistent with the new example or other descriptive text. As such no Principle was changed. Therefore if an institution was surprised by the example, then that may indicate it had not properly understood the Principle originally when it signed up and sought to align its practices with it. This would identify the risk that it had made the Statement on mistaken grounds and it will need to take steps to remedy this.

In any event, whether the revision is major or minor, it is to be hoped that a sufficient period of time will be given to adapt to the new version of the Code and that a clear path is provided where firms feel unable to sign up to the new version, whether or not the firm feels able to continue to align to the prior version.

A firm is always required to act with honesty and integrity and to ensure its communications are clear, fair and not misleading. Where a firm no longer complies with the Code it will need to ensure its communications reflect this. It may be that a firm will wish to ensure that it has always publicly referred to a particular edition of the Code and that, for example, its website notes that it is reviewing some later edition. Using the example of the August 2018 revision however, it is not obvious why a firm would need to explain it was reviewing that edition or to qualify its commitment (in the absence of the mistaken interpretation scenario mentioned above) since the 55 principles were not altered.

Signing up to the Code does not formally prevent a firm from later communicating that it no longer is in a position to use or be bound by its Statement of Commitment; and it may sometimes obliged to do this. It is recognised this may need handling from a reputational or client relationship standpoint, but firms will be aware of the need not to make misleading statements in communications with clients.

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ANNEX I

STATEMENT OF COMMITMENT TO THE FX GLOBAL CODE

[*enter institution name*] (“Institution”) has reviewed the content of the FX Global Code (“Code”) and acknowledges that the Code represents a set of principles generally recognised as good practice in the wholesale foreign exchange market (“FX Market”). The Institution confirms that it acts as a Market Participant as defined by the Code, and is committed to conducting its FX Market activities (“Activities”) in a manner consistent with the principles of the Code. To this end, the Institution has taken appropriate steps, based on the size and complexity of its Activities,
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and the nature of its engagement in the FX Market, to align its Activities with the principles of the Code. [*enter institution name*]

Date: ____