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TO:

Directorate-General for Financial Stability, Financial Services and Capital Markets Union  
European Commission  
1049 Bruxelles/Brussel  
Belgium

Submitted via electronic portal

May 7, 2021

**European Commission “Targeted consultation on the review of the Directive on settlement finality in payment and securities settlement systems.”**

Dear European Commission,

The Global Foreign Exchange Division (GFXD) of the Global Financial Markets Association (GFMA) welcomes the opportunity to comment on behalf of its members on the European Commission’s “Targeted consultation on the review of the Directive on settlement finality in payment and securities settlement systems” (the “Consultation Paper”).

The GFXD was formed in co-operation with the Association for Financial Markets in Europe (AFME), the Securities Industry and Financial Markets Association (SIFMA) and the Asia Securities Industry and Financial Markets Association (ASIFMA). Its members comprise 24 global foreign exchange (FX) market participants,<sup>1</sup> collectively representing a significant portion of the foreign exchange inter-dealer market. Both the GFXD and its members are committed to ensuring a robust, open and fair FX marketplace and welcome the opportunity for continued dialogue with global regulators.

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<sup>1</sup> Bank of America, Bank of New York Mellon, Barclays, BNP Paribas, Citi, Credit Agricole, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, JP Morgan, Lloyds, Mizuho, Morgan Stanley, MUFG, NatWest, Nomura, Northern Trust, RBC, Standard Chartered, State Street, UBS, Wells Fargo and Westpac.

The FX market is the world's largest financial market. Effective and efficient exchange of currencies underpins the world's entire financial system. Many of the current legislative and regulatory reforms have had, and will continue to have, a significant impact upon the operation of the global FX market, and the GFXD wishes to emphasize the desire of our members for globally coordinated regulation, which we believe will be of benefit to both regulators and market participants alike.

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We provide the following comments in response to the Consultation Paper:

1. Given the very large notional amounts that are exchanged in the settlement of FX transactions on a daily basis, and as acknowledged by the Bank for International Settlements<sup>2</sup>, settlement risk is a major risk that can have systemic implications for stability within the financial markets as a whole.
2. We wish to express our support for the extension of the protections set forth in the Settlement Finality Directive (the "SFD") to systems governed by the law of a third country ("third country systems") with EU participants. We believe that the preferred approach would be to achieve this through explicit protection via designation under the SFD as opposed to reliance on each EU Member State's implementation of Recital 7 of the SFD. In expressing this support, we point to the basis for the request and reasons for it, with which we agree, outlined in CLS Bank International's ("CLS") response to Question 1.1.1 of the Consultation Paper.
3. We agree with CLS's comment in response to Question 1.2.1 that, in the event that third country systems with EU participants ultimately cannot be designated under the SFD, it is imperative that Recital 7, in some form, remains in place, ideally incorporated within the text of the SFD. It is important that the current protections provided to third country systems via the implementation of Recital 7 are not weakened, but instead are expanded and enhanced as appropriate to ensure that the ability of EU institutions to participate in third country systems such as CLS's settlement system is not jeopardized, and that systems that are currently protected will continue to be protected.
4. We agree with CLS's response to Question 1.2.1 that it is important to implement a significant transition period with respect to any new regime established, to ensure that

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<sup>2</sup> [https://www.bis.org/publ/qtrpdf/r\\_qt1912x.htm](https://www.bis.org/publ/qtrpdf/r_qt1912x.htm)

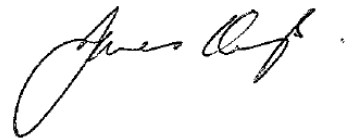
transfer orders previously entered into relevant third country systems prior to the implementation of the new regime will be “covered” by the new regime.

5. We agree with CLS’s comment in response to Question 1.5(a) that the extension of SFD protections should not be contingent on whether or not the third country extends protections to third country systems. Providing SFD protection to third country systems benefits EU financial institutions as participants in the third country system, and the financial ecosystem as a whole (as opposed to just the third country itself).
6. We also agree with CLS’s response to Question 6.1.3 that it is important to extend the BRRD’s protections and exemptions to third country systems, including the CLS settlement system (ideally through the designation of such third country systems, as proposed in our response to Question 1.1.1), in order to maximize the likelihood that an EU member in resolution will be able to continue to participate in such third country systems. In expressing this support, we point to the basis for the request and reasons for it, with which we agree, outlined in CLS’s response to Question 6.1.3.

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Thank you for considering our comments. Please do not hesitate to contact Andrew Harvey on +44 20 3828 2694, email [aharvey@eu.gfma.org](mailto:aharvey@eu.gfma.org) or Victoria Cumings on +1 212 313 1141, email [vcumings@us.gfma.org](mailto:vcumings@us.gfma.org) should you have questions about or wish to discuss any of the points raised above.

Yours sincerely,

A handwritten signature in black ink, appearing to read "James Kemp".

James Kemp  
Managing Director  
Global Foreign Exchange Division, GFMA