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<u>TO:</u>
Mr. David A. Stawick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW.
Washington,
DC 20581

14 May 2012

RIN 3038-AD08 – 17 CFR Part 43 – Real-time Public Reporting of Swap Transaction Data

Dear Mr. Stawick

The Global Foreign Exchange Division ("**GFXD**") of the Global Financial Markets Association 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**"). Our members comprise 22 global FX market participants[1], collectively representing more than 90% of the FX market[2].

The GFXD and its members are committed to ensuring a robust, open and fair market place. We welcome the efforts of the Commodity Futures Trading Commission (the "Commission") to enhance regulatory oversight and promote greater transparency and the opportunity to submit comments on the further notice of proposed rulemaking in respect of **Procedures to Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades** as issued by the Commission to implement provisions of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("**Dodd-Frank Act**").

We are aware of and agree with the comments submitted by ISDA and SIFMA in their response. In order to minimize duplication, we have focused on issues that are of particular relevance to the foreign exchange market.

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[1] Bank of America Merrill Lynch, Bank of New York Mellon, Bank of Tokyo-Mitsubishi, Barclays Capital, BNP Paribas, Citi, Credit Agricole, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, JP Morgan, Lloyds, Morgan Stanley, Nomura, RBC, RBS, Société Générale, Standard Chartered Bank, State St., UBS, and Westpac

[2] According to Euromoney league tables

1. Introduction

We consider that determining appropriate sizes for block trades and large notional swaps is critical to preserving liquidity in the FX markets. A market participant's ability to hedge its position would be hindered by sub-optimal disclosure. This in turn could impact liquidity and / or increase end-user costs to compensate for that increased risk. Whilst the FX market does demonstrate high levels of liquidity, particularly in certain spot markets and (of more relevance to the Dodd Frank Act and the Commission's rulemakings) in areas of the forwards and swaps markets, this picture is not uniform across the product space that the Commission is seeking to regulate. Certain products, e.g. FX options, exhibit very low liquidity and the adverse impact that immediate public reporting would have on dealers' abilities to make reliable markets for end-users would be significant. For FX, an approach that incorporates a more dynamic assessment of block sizes based on a number of liquidity and risk factors is appropriate when considering the different types of transactions and the full range of currency pairs. The issues of comparability and the risks pertaining to a 'one size fits all' approach would be exacerbated should US Treasury decide not to make final its current proposed determination concerning whether FX forwards and swaps should be treated as a swap for the purposes of the Dodd-Frank Act and therefore bring such products within the scope of this proposed rulemaking.

In the proposed rulemaking, the Commission asks for specific data and analysis to support the block trades proposal. At this time, it is difficult to provide such statistical analysis given that there are no central bodies responsible for collecting sufficiently granular detail – an issue that swap data repositories ("SDRs") are in part intended to address. GFXD therefore advocates an approach that allows the Commission flexibly to assess the appropriate methodologies for determining swap categories, block sizes and cap sizes. As the Commission is aware, GFXD has been working with its members to support the forthcoming reporting requirements, both in terms of recommending a partner for swap data repository services through a transparent, open and competitive request for proposal process and also through industry-led discussion and analysis of proposed workflows to enable reporting across the FX industry.

2. Swap categories

a. Product type and tenor

The Commission proposes to set swap categories for FX based on unique currency combinations. This approach is based upon the "observation that FX swaps and instruments with identical currency combinations draw upon the same liquidity pools". Whilst we agree that unique currency pair is a necessary factor in determining liquidity, it is not sufficient on its own as liquidity will vary depending upon instrument type and tenor.

A swap category based upon currency pair alone would group together swaps with varying liquidity and risk profiles and apply a level of transparency that would be inappropriate across products (e.g. forwards against options) in that currency pair as a whole. Accordingly, we recommend that the Commission introduce more granular swap categories that not only take into account the unique currency pair but within those group specific instruments according to the similarity of their liquidity profiles.

Within the currency and product matrices, we believe that FX swaps should be distinguished by reference to their tenor, as is suggested for interest rate and credit asset classes. This is to reflect the fact that the liquidity profile across the maturity range is variable. As discussed above, categories should be set to ensure that swaps with only similar levels of liquidity are grouped together. At this time, without more granular data, it is difficult to assess the appropriate tenor ranges, the distribution of trades within those ranges and therefore their associated liquidity.

b. Infrequently transacted swaps

The Commission states that it is considering characterising certain swap categories as "infrequently transacted" and goes on to state that "[i]nfrequently transacted swaps would exhibit all or some of the following features: (1) The constituent swap or swaps to which they are economically related are not executed on, or pursuant to the rules of, a SEF or DCM; (2) few market participants have transacted in these swaps or in economically-related swaps; or (3) few swap transactions are executed during a historic period in these swaps or in economically-related swaps."

We agree that such a characterisation would be helpful in determining those swaps which are illiquid. Within these swap categories, block treatment should be permitted for any trade irrespective of its size due to the impact that real time public dissemination may have in such illiquid markets.

3. Methodologies for determining appropriate minimum block sizes

a. Block size thresholds

The Commission's approach to block sizes is to set them, relative to a three-year rolling and trimmed data set, to ensure that a specified percentage should be treated as blocks and therefore subject to delayed transparency (the 67% notional amount calculation). Block sizes would then be reassessed 'no less than once a year'.

At this stage we are unable to comment whether the 67% notional test sets the appropriate threshold in the absence of actual swap data[3]. If the Commission is to go down the route of specifying a percentage test we believe that it should (i) introduce this in a phased manner to assess the impact on the market over time and (ii) ensure it has sufficient flexibility to amend the notional percentage.

The determination of block sizes should also be more flexible. The FX market often exhibits changing liquidity both intra-day and intra-period. This suggests that:

(i) Block sizes should be allowed to vary during different periods of the day to take account of liquidity across time zones. Given the 24 hour nature of the market, liquidity in less commonly traded currencies is variable across time zones, with greatest liquidity often during home market trading hours.

(ii) Block sizes should be assessed on a more frequent basis than annually.

[3] We note that the Commission had previously considered adopting a 50% test. We would suggest that if this is being reconsidered then a consistent approach should be adopted across the asset classes.

(iii) The three-year rolling data set is unlikely to be sensitive enough to shorter term changes in market liquidity and therefore risks setting block sizes that do not reflect current market conditions.

Finally, we believe there may be scenarios in which the Commission may wish to reset block sizes without reference to a dataset to accommodate significant shifts in market structure and liquidity away from certain instruments. In such a scenario, block sizes may end up being significantly too large for a newly illiquid market and cause trading to cease entirely. One example of this is the recent pegging of the Swiss Franc by the Swiss Central Bank which left key elements of the Swiss Franc related option markets with limited or no liquidity. In this situation we believe it would be better for the CFTC to have a mechanism by which it can swiftly alter block trade levels to enable some trading to be conducted in a newly illiquid market.

b. Initial period

Broadly, we do not see any particular harm in the Commission's approach to setting block sizes in the initial period. We note that, where applicable, the Commission has selected the lowest non-zero block size for contracts offered by a designated contract market. The fact that differences exist between those block sizes might suggest that they have been set not specifically with liquidity risk in mind but taking into account other criteria e.g. RUB / USD contracts on CME and ICE show 100% variance in block size. As the Commission rightly suggests a longer term solution should rely on an analysis of underlying trade data once an SDR or SDRs are up and running.

As discussed above, because of the differing liquidity and risk profiles of the various FX instruments, we strongly disagree with the alternative proposed approach that would see FX swaps treated in the same manner as equity swaps (i.e. subject to public dissemination as soon as technologically practicable). This is premised on: "(1) The existence of very liquid FX spot, futures and forwards markets; and (2) the absence of a centralized FX market structure."

It is not clear what the significance of the absence of a centralized FX market structure should have for public dissemination of trade information. A decision on whether trade information should be subject to delays should be taken against the liquidity and risk profiles of a particular instrument and the consequent impact of transparency on liquidity in that market. Market structure in itself should not be a determining factor. Similarly, the presence of liquid spot, futures and forwards markets cannot be taken as a whole to imply that liquidity in all instruments is high, particularly when looking at FX NDFs and options.

In response to question 43, and as discussed above, we believe that the Commission should disaggregate swap categories further to take account different instrument tenors.

c. New products

For new products, the appropriate minimum block size should be derived when there is a minimum amount of trade data to support making a reasonable determination of how the market executes and how it will develop. Volumes traded in new swap instruments are typically low when they are first introduced; consequently, data should be collected for a sufficient period of time to be able to determine how a new instrument will be traded. During this period all transactions should be treat as blocks.

4. Cap sizes

The Commission proposes using the 75% notional amount calculation to determine the appropriate cap sizes for transactions. We believe that despite the different statutory imperatives underlying the existence of the block and cap sizes, the same rationale should apply in setting them as disclosure in both circumstances has potential negative impacts on liquidity.

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We appreciate the opportunity to share our views on the proposed rule. Please do not hesitate to contact me at +44 (0) 207 743 9319 or at jkemp@gfma.org should you wish to discuss any of the above.

Yours sincerely,

James Kemp

Managing Director

Global Foreign Exchange Division