



Global Foreign Exchange Division
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TO:

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

9 June 2011

**Re: RIN 3038-AD48 – 17 CFR Part 46 – Swap Data Recordkeeping and Reporting Requirements:
Pre-Enactment and Transition Swaps**

Dear Mr. Stawick

The Global Foreign Exchange Division 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 22 global FX market participants¹, collectively representing more than 90% of the FX market².

The Global Foreign Exchange Division is committed to ensuring a robust, open and fair market place. We welcome the goal of the Commodity Futures Trading Commission (the “**Commission**”) to enhance regulatory oversight and promote greater transparency and are keen to stress that the Global Foreign Exchange Division and its members are committed to supporting the establishment of an SDR to accommodate the foreign exchange asset class. Accordingly, we welcome the opportunity to comment on the Notice of Proposed Rulemaking in respect of **Swap Data Recordkeeping and Reporting: Pre-enactment and Transition Swaps** 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**”).

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

In relation to the applicability of the proposed rules to the foreign exchange market, we set out below relevant issues which we believe should be considered in advance of promulgating any final rules.

1. Compliance Date

It is difficult to comment on the appropriate Compliance Date until the rules and associated obligations have been finalized. However, in general terms, the Compliance Date for regulatory reporting should afford the industry sufficient time to build the appropriate technology infrastructure. The SDR is a new, critical market infrastructure whose implementation across FX and potentially other asset classes will provide valuable regulatory and other information to the Commission, other regulators and market participants.

We believe that at the very least, the industry would require a minimum period of 12 months from the publication of all final rules before the start of regulatory reporting, and in the case of the foreign exchange industry potentially longer given the specific challenges faced by the market, being:

- the scale issues that are involved in building reporting capability for a market with as many transactions and participants as FX
- the absence of any existing trade or swap data repository infrastructure (unlike in rates, equity and, of course, credit).

Any compliance period should take into account the work needed for FX market participants to establish connectivity to the SDR, once the final standards for data provision are known, as well as the time needed for the SDRs themselves to be properly established. This should then be followed by phased implementation, which might focus initially on certain classes of reporting counterparty and / or particular products. We also suggest that reporting to regulators should precede public reporting in order to provide regulators with the information required to inform other rule makings e.g. block trades. In this way, the Commission would be able to make due and appropriate consideration of the different asset classes and their underlying instruments.

2. Reporting requirements for historic swaps

The FX market presents some unique challenges when compared with other asset classes. There is a high volume of transactions in FX compared to any other asset class. In addition, the universe of participants is also significantly wider given that FX forms the basis of the global payments system. This presents a practical challenge to ensuring that all relevant reporting participants are able to report. FX contracts are also typically short-dated. Latest analysis conducted by Oliver Wyman of the BIS April 2010 survey and the JSC/FXC figures of the same period show the following maturity profile for FX forward, swap and option trades:

- Up to 7 days maturity = 64% of daily traded volumes;
- 7 days – 1 month = 14%;
- 1 month – 6 month = 18%; and
- Over 6 months = 4%

These dynamics imply a significant backloading requirement for historic swaps where it is not clear the practical use in having such a high volume of expired trade data.

Another practical difficulty is in ascertaining the reporting counterparty for expired swaps. Reporting parties would be obliged to agree the appropriate submitter of information. This may be problematic given there may be no continuing relation with such a counterparty. The proposed rules suggest that the hierarchy rules for reporting be used. However, as we have highlighted in our previous letter on swap data reporting³ and as summarised below, determining which counterparty of the same hierarchy should report is more problematic for FX than other asset classes.

In other asset classes, there is usually a distinct buyer and seller of a swap. In credit, where the majority of trades are conducted by SDs and MSPs, the seller of protection is usually responsible for loading the trade into existing market infrastructure e.g. MarkitWire or DTCC. Real-time systems would typically capture trade details (i.e. the primary economics) and feed these into MarkitWire. The buyer of protection then affirms the trade and this constitutes legal confirmation. In the FX market, each FX swap consists of a near and far leg. Market conventions will need to be established to determine whether both legs should be reported by which counterparty (potentially based on an agreed hierarchy of currency pairs i.e. buyer or seller of major currency reports) or whether the swap transaction is reported separately as two legs by two counterparties with two separate trade IDs. This is further complicated by the fact that trade capture systems may book the swap as a single trade but split it into two trades in back-office systems with two separate trade IDs and, moreover, that these systems vary across the range of market participants.

As regards the requirements for reporting UCIs for historic swaps in existence on or after 25 April 2011, these will be onerous given the number of counterparties active in the FX market. In particular, the requirements for non-reporting parties UCIs to obtain a relevant UCI and report it to the reporting counterparty, who must then report the UCI to the SDR, will place significant additional reporting burdens on all parties. It also assumes that parallel work on LEIs will be completed prior to the compliance date. We also query what the situation would be for a trade conducted with a non SD/MSP counterparty that is not subject to the regulations.

Similarly, the requirement to report additional data relating to master agreements is likely to add significant burden. This is because such information may be stored on separate systems i.e. not those from which reporting of PET data occurs. Mapping and enrichment of data would therefore be required and it is difficult to see the additional value to be gained from such information particularly in the case for swaps that may have expired prior to the compliance date.

In order to address the above, we believe that there should be no mandatory reporting requirements for historic swaps that have expired prior to the Compliance Date. We propose that banks should be required to keep records of such swaps, which would be available on request. In respect of the UCI reporting, we suggest that the CFTC only require UCI data to be reported with trade data once such a UCI has been obtained by a non-reporting counterparty.

³ Please see the Global Foreign Exchange Division letter dated 7th February 2011 Re: RIN 3038-AD19 – 17 CFR Part 45 – Swap Data Recordkeeping and Reporting Requirements And RIN 3038-AD08 – 17 CFR Part 43 Real-time Public Reporting of Swap Transaction Data

Furthermore, to facilitate uploading of such high volumes of data, we would suggest a phase-in period be allowed. An appropriate period might be 3 months.

As a final comment on reporting, we believe the estimate of the reporting burden for each entity of 24 hours underestimates the true burden, given the volumes exhibited in the market. If applicable to all historic swaps, the burden will be much higher, especially taking into account additional information requirements, for example, including the UCI.

3. Recordkeeping

In respect of confirmations, most electronic confirmation for FX is SWIFT based. Parties may use the SWIFT Accord system to retrieve relevant information but such information is only kept for 10 years post the trade date, rather than 5 years from the termination of the swap, the date of which may not be known from the outset of the trade. Specific archiving for long-term contracts confirmed electronically via SWIFT will therefore be required. As regards paper confirms these would need to be archived in a format that is reportable and retrievable on request.

In addition, with respect to both recordkeeping and reporting, it is possible that between the enactment of Dodd Frank and the compliance date for reporting, internal systems may have gone through a number of upgrades or migrations. At greater risk of data loss are longer-dated pre-enactment swaps, for which information may be incomplete. We would urge the Commission to consider that both recordkeeping and reporting, prior to the Compliance Date should be undertaken by reporting parties on a best efforts basis without the need to recreate or report data that might have been lost.

As a final point, we believe that the estimation of the recordkeeping time burden of 40 hours for an SD or MSP / 10 hours for non SD or MSP underestimates the impact that the rules on retention and retrieval will require on internal system amendments.

4. Terms to be reported

We note that in terms of data to be recorded and reported, it may not be possible to report trade times, or to report them accurately. In particular, for non-electronic trades (i.e. those that do not feed instantly upon execution) trade times will not reflect time of execution. We would question the value of including trade times in Primary Economic Terms data reporting. In general, we suggest that for swaps not expired on 25 April 2011, market participants should provide only the data elements set out in the PET that are currently available and, furthermore, to provide those in the form currently available to minimise any requirement to recreate or reformat historic data.

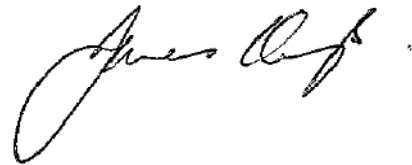
5. Inter-affiliate transactions

Given the high volume of transactions in FX compared to any other asset class, we believe that for reporting purposes, the Commission should include only transactions settling with an un-affiliated third party. Many millions of trades occur daily between different affiliates of the same institution which are not relevant to that institution's external market positioning and would increase ticket volumes at any SDR significantly. We would also point out that FX is used to manage balance sheet and foreign asset exposures for income attribution, which under this rule would be subject to reporting. We do not believe that reporting inter-affiliate trades will achieve

the Dodd-Frank goals of reducing systemic risk and increasing transparency. Inter-affiliate trades represent allocation of risk within a corporate group and do not give rise to the same systemic risk issues that are raised by trades by one corporate group with another. Also, reports about inter-affiliate FX trades will not give meaningful indications about the overall FX market or the overall exposure of the relevant corporate group. We would appreciate the Commission confirming that inter-affiliate foreign exchange trades are not subject to the reporting requirements.

We appreciate the opportunity to share our views on the proposed rules relating to Swap Data Recordkeeping and Reporting Requirements for Pre-Enactment and Transition Swaps. Please do not hesitate to contact me at +44 (0) 207 743 9319 or at james.kemp@afme.eu should you wish to discuss any of the above.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'James Kemp', with a stylized flourish at the end.

James Kemp

Managing Director

Global Foreign Exchange Division