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25 September 2013

Mr. David Van Wagner, Chief Counsel
Ms. Nancy Markowitz, Deputy Director
Division of Market Oversight
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Request for Time-Limited Relief Relating to Commission Regulation Parts 37, 43 and 45 for FX Asset Class

Dear Mr. Van Wagner and Ms. Markowitz:

The Global FX Division ("GFXD") of the Global Financial Markets Association ("GFMA")¹ is writing to request time-limited relief providing that the Division of Market Oversight (the "Division") of the Commodity Futures Trading Commission (the "Commission") will not recommend an enforcement action against an entity that fails, on or after October 2, 2013 ("Compliance Date"), to comply with certain provisions of (1) Part 37 relating to swap execution facilities ("SEF");² (2) Part 43 (real-time reporting); or (3) Part 45 (trade reporting) – in each case, as may be applicable to the trading of FX products on these platforms solely in connection with FX products which are not currently subject to a clearing requirement so long as such entity complies with an alternative compliance schedule set forth below.

We support continued discussions between the Commission and swaps market participants on the best manner to timely effect the migration of swaps trading activity from existing venues to regulated SEF platforms. However, in light of the fast approaching Compliance Date and the many technological, operational and legal hurdles that still need to be overcome within this short timeframe, we believe time-limited relief is warranted. For these reasons, we support the recent letters from the Asset Management Group of the Securities Industry and Financial Markets Association ("SIFMA AMG") and International Swaps and Derivatives Association, Inc. ("ISDA") requesting time-based relief for compliance with confirmation and reporting requirements for all asset classes. Additionally, as the FX market faces unique challenges in transitioning to a SEF environment, we request **specific time-limited relief for the FX asset class**³ for the reasons set forth below (and as further supplemented in the annex to this letter):

- **There was no expectation in the swaps market, including the FX market, that multiple-to-multiple venues executing FX products would need to register as SEFs when the underlying products were not subject to any clearing obligation.**⁴ Since the passage of Dodd-Frank, the swaps

¹ The members of the GFXD comprise 22 global FX market participants, collectively representing more than 90% of the FX market. See Euromoney FX Survey 2013: Global Market Share. GFMA joins together some of the world's largest financial trade associations to develop strategies for global policy issues in the financial markets, and promote coordinated advocacy efforts. GFMA currently has three members: the Association for Financial Markets in Europe ("AFME"), the Asia Securities Industry and Financial Markets Association ("ASIFMA"), and, in North America, the Securities Industry and Financial Markets Association ("SIFMA").

² Core Principles and Other Requirements for Swap Execution Facilities, 78 Fed. Reg. 33,476 (June 4, 2013) ("Final SEF Rules").

³ We support a similar request for FX specific relief for additional time submitted by Thomson Reuters (SEF) LLC and FX Alliance, LLC ("TR/FXAll") to the CFTC.

⁴ Final SEF Rules at 33,481 n.88 ("The Commission notes that it is not tying the registration requirement in CEA section 5(h)(a)(1) to the trade execution requirement in CEA section 2(h)(8), such that only facilities trading swaps subject to the trade execution requirement

market has been principally focused on the issues relating to SEF migration of trading activity in products subject to a proposed or final clearing obligation, as once a “made available to trade” (“MAT”) determination is made with respect to these products, a SEF trade execution requirement will exist. In contrast to other asset classes (e.g., credit and rates), (i) the vast majority of FX products (i.e., deliverable FX swaps and FX forwards, collectively “Exempt FX Products”) are not defined as “swaps” under Dodd-Frank except for limited purposes;⁵ and (ii) the remaining FX products (i.e., FX non-deliverable forwards (“NDFs”) and FX options, collectively “Non-Exempt FX Products”) which are not currently subject to a proposed or mandatory clearing obligation.⁶ Trading in FX markets averaged \$5.3 trillion per day in April 2013,⁷ with Non-Exempt FX Products representing less than 10% of FX market activity.⁸

- **The large number of multiple-to-multiple trading venues that serve as an integral part of the highly transparent global FX trading market and the high percentage of Non-Exempt FX Products trading on such venues means that any migration of participants and FX trading activity into a SEF environment will be complex but also important to effect in a manner that avoids any disruption.** Over 40% of FX NDFs and 24% of FX options are traded on/via multiple-to-multiple electronic broking systems, electronic trading systems and voice brokers, contributing to a globally integrated FX market with high pre-trade transparency and high-turnover which exists today.⁹ GFXD outreach sessions to potential SEFs this summer suggest that there will be approximately 20 venues that will be registering as SEFs for the FX asset class.
- **There are significant FX market structure, IT and operational workflows that exist in the current (non-SEF) environment for bilateral FX trading which largely have not been replicated in a SEF environment.** These key structural issues and challenges have contributed to the general inability of existing venues to on-board market participants, i.e., migrating them from existing venues to the SEF registered platforms. Issues specific to Non-Exempt FX Products include:
 - The fact that SEFs have not as of yet been able to accommodate FX prime brokerage arrangements due to incorrect assumptions that a transaction exists between a prime brokerage client and an executing dealer as principal, instead of the credit intermediation model utilized in the FX market, whereby a trade executed by a client is between the dealer and prime broker if such transaction is within specified limits identified by the prime broker.¹⁰ In the absence of SEF rules that recognize this model, executing dealers may be in violation of CFTC rules (including business conduct and swap trading relationship documentation requirements), and both executing dealers and prime brokers would have both contractual problems and internal risk management issues; and
 - The fact that SEFs have still not incorporated well-established industry terms, conditions, templates and fallbacks for market disruption developed by the FX market for contractual certainty and operational efficiencies for this activity which includes emerging market/restricted currencies.

would be required to register as a SEF. Therefore, a facility would be required to register as a SEF if it operates in a manner that meets the SEF definition even though it only executes or trades swaps that are not subject to the trade execution mandate...” (“Footnote 88”).

⁵ Determination of Foreign Exchange Swaps and Foreign Exchange Forwards Under the Commodity Exchange Act, 77 Fed. Reg. 69694 (Nov. 20, 2012) (“Treasury FX Determination”).

⁶ Clearing Requirement Determination Under Section 3(h) of the CEA, 77 Fed. Reg. 74,284 (December 13, 2012). The CFTC has issued a final determination that certain interest rate and credit default swaps are required to be cleared, the first and, currently, only clearing determinations under Dodd-Frank.

⁷ See Bank for International Settlements (“BIS”), Monetary and Economic Department, *Triennial Central Bank Survey: Foreign exchange turnover in April 2013: preliminary global results*, September 2013 (“BIS Survey”), available at <https://www.bis.org/publ/rpfx13fx.pdf>.

⁸ See Bank of England Semi-Annual FX Turnover Survey, April 2013, (“BOE Survey”), available at <http://www.bankofengland.co.uk/markets/Pages/forex/fxjse/default.aspx>.

⁹ See BOE Survey.

¹⁰ FX prime brokerage arrangements currently represent approximately 30% for FX NDFs and 10% for FX options of the global FX market (see CFTC NAR Letter No 13-11, footnote 15). Such activity is critical to the provision of liquidity described above and thus does not only impact the FX prime brokerage market, but all market participants using the same source of liquidity.

Although we recognize that multiple-to-multiple platforms exclusively trading Exempt FX Products (or FX spot) would not be subject to a SEF registration requirements, we are concerned the trading on these platforms of Non-Exempt FX Products which are not covered by a clearing obligation, and therefore would not be in scope for any trade execution mandate, would effectively nevertheless *need to comply within the same timeframe*. Without additional time to comply with Footnote 88 for the FX asset class, there is a risk of disruption to the current, well functioning market in Non-Exempt FX Products. The main causes of concern include (i) the potential loss, or fragmentation of, liquidity; (ii) the impairment of credit risk management and (iii) the potential for undermining the regulatory objectives of Dodd-Frank.

Request for Relief

The GFMA Global FX Division members are requesting that the Commission provide time-limited relief that establishes deadlines based on asset class, an approach that is similar to the phased-in approach used in the part 45 trade reporting compliance schedule.¹¹ This approach would support an orderly migration into a new market structure for the FX asset class, which includes SEFs, by providing existing venues sufficient time to address the fundamental flaws and deficiencies in rulebooks and to replicate existing IT/operational workflows, and therefore avoid unnecessary potential disruption to the current well-functioning market in Non-Exempt FX Products.

We believe that the FX asset class should be granted the appropriate amount of time to address the significant technology, documentation and operational issues created in shifting sizeable trading activity onto the SEF platforms. Where appropriate, such as with on-boarding, there is also precedent for the CFTC granting time-based no-action relief to the FX asset class for longer periods of time than other asset classes to achieve compliance with, e.g., part 45 trade reporting requirements, business conduct rules relating to prime brokerage arrangements and part 23 swaps trading relationship documentation.¹²

- Part 37 general on-boarding. We request that the Commission provide time-limited no-action relief **for swaps in the FX asset class** from part 37 of the Commission's regulations **until April 1, 2014**. We note that this is consistent with the cross-asset class SIFMA AMG letter and FX specific TR/FXAll Letter requesting additional time, until April 1, 2014, to achieve compliance with the Final SEF Rules.¹³
- Part 37 confirmation. We request that the Commission provide time-limited no-action relief from the requirement for a SEF to provide confirmations **for swaps in the FX asset class** executed on its platform, provided that the swap dealers and major swap participants continue to provide their counterparties with legally binding confirmations (as defined in Commission Rule 23.500(c) and as required by Commission Rule 23.501), **until June 2, 2014**. We note that the request is consistent with the FX-specific TR/FXAll Letter; and is also consistent with the cross-asset class ISDA letter¹⁴ request for additional time, specifically until June 2, 2014, to achieve compliance with the confirmation requirements, *but with an added clarification ensuring that the SEFs do not generate confirms for swaps in the FX asset class* in order to avoid SEF-generated confirms which may inaccurately represent the transaction (e.g., representing a trade between two parties on the SEF as principals when resulting from FX prime brokerage arrangements which are instead based on a credit intermediation model).

¹¹ 77 Fed. Reg. 35,200 (June 12, 2012). The view that establishing deadlines based on asset class is prudent is shared by TR/FXAll in its letter dated September 25, 2013 to the CFTC, Request under Rule 140.99 for Time-Limited No-Action Relief for Swap Execution Facilities to Comply with Commission Regulations §§ 37.6(b); 37.201(b); 37.202; 37.205(a); 43.3(b); and 45.3(a) ("TR/FXAll Letter").

¹² CFTC NAR Letter No. 12-42, 12-53, 13-11, 13-12 and 13-38.

¹³ By requesting this relief, we underscore the scope of the impact of SEF migration to the FX market if prime brokerage arrangements are not accommodated within the on-boarding process, namely, the significant scope of FX execution accomplished by these arrangements, the sheer number of FX trading venues and product volume impacted, and the number of platform connections and authorized traders impacted in a global web of trading.

¹⁴ Letter dated September 23, 2013 from ISDA to CFTC, Request for Relief for Confirmation Requirements under Part 37 for Swaps Executed on Swap Execution Facilities.

- Parts 43 & 45 reporting. We request that the Commission provide time-limited no-action relief to reporting parties with respect to duplications or obligations relating to their obligations under parts 43 and 45 regulations **for swaps in the FX asset class** executed or pursuant to a SEF until **June 30, 2014**. We note that the duration of relief requested is generally consistent with the cross-asset class ISDA letter¹⁵ and FX-specific TR/FXAll Letter requesting additional time, until June 30, 2014, to achieve compliance with these reporting requirements.

* * *

For the reasons stated above, we respectfully request that Division provide specific time-limited no-action relief described in this letter. We thank you for your consideration of these issues. We would be happy to discuss these issues or the conditions described above further if it would be helpful. If you have questions, please contact Mandy Lam (mlam@gfma.org; 212-313-1229) or Andrew Harvey (aharvey@gfma.org; 44-207-743-9312).

Yours sincerely,



James Kemp
Managing Director
GFMA Global FX Division

cc The Honorable Gary Gensler, CFTC Chairman
 The Honorable Scott O'Malia, CFTC Commissioner
 The Honorable Bart Chilton, CFTC Commissioner
 The Honorable Mark Wetjen, CFTC Commissioner
 Laurie Gussow, CFTC Division of Market Oversight
 Amir Zaidi, CFTC Division of Market Oversight

¹⁵ Letter dated September 23, 2013 from ISDA to CFTC, Revised Request for Division of Market Oversight Staff No-Action Letter Pursuant to CFTC Regulation 140.99: Reporting Requirements for Swaps Executed on a Swap Execution Facility.

Certification Pursuant to Commission Regulation 140.99(c)(3)

As required by Commission Regulation 140.99(c)(3), I hereby (i) certify that the material facts set forth in the attached letter dated September 25, 2013 are true and complete to the best of my knowledge; and (ii) undertake to advise the Commission, prior to the issuance of a response thereto, if any material representation contained therein ceases to be true and complete.

A handwritten signature in black ink, appearing to read "James Kemp". The signature is fluid and cursive, with a large initial "J" and "K".

James Kemp
Managing Director
GFMA Global FX Division

Annex

Background

In order to understand the current level of preparedness of the FX industry, we would firstly like to reference the granting by Treasury of the exemption of FX swaps and FX forwards from the definition of the “swap” and, secondly, the current lack of any mandatory clearing obligation for FX options and FX NDFs as this was thought to be a prerequisite for a SEF trading mandate. Both of these have resulted with the FX industry holding the common view that FX options and FX NDFs would not at this stage be required to be traded via a SEF. The net result of this conclusion is that participants within the FX Industry have not yet built the required technological architecture for compliance with Commissions Rule 37 and have yet to put legal documentation and operational processes in place to replicate those in current use.

With the current highly automated trade execution and confirmation practices,¹⁶ it could be viewed that the FX market is already as operating in a similar fashion to that expected by the Commission with the implementation of Part 37. Such automated trading and confirmation practices have developed organically over time and help facilitate high levels of transparency, with advances in proprietary and more widely used market architectures allowing for considerable growth within the market¹⁷. It is also worth considering that the FX industry has been reporting trades to the swap data repository (“SDR”) for the FX industry since February 28, 2013, thus technical builds and operational processes to manage and control this reporting are already established and embedded within the FX industry. Such processes, with the implementation of the Commissions Rule 37 would need to be replicated by a SEF.

On the understanding that FX NDF and FX options traded on a multiple-to-multiple basis are Permitted Transactions under Footnote 88, we have identified key challenges and impacts that the FX industry must address in order to be compliant with the Compliance Date, discussed below. Despite these challenges, we expect one prominent outcome – that market participants will, if wishing to execute on a multiple-to-multiple basis, have to choose the venue they use depending on that venue’s ability to achieve compliance as of the Compliance Date. The impacts of this are:

- The current liquidity channels accessed by participants may not be available to them thus participants may lose their current ability to access such liquidity, or the liquidity becomes more expensive for them to access.
- That current multiple-to-multiple electronic execution trading activity could move to other venues, such as bilateral, single-dealer platforms, and thus significantly impact established trading relationships and market practices.

Concluding, the net result is that the inclusion of Footnote 88 has presented significant challenges for the FX market in order to achieve compliance by the Compliance Date.

Challenges with the Compliance Date for the FX Asset Class

The FX market is characterized by the wide number of market-participants and the high percentage of those participants trading FX NDFs and FX options on an electronic multiple-to-multiple basis. Such a market will, based on Footnote 88, require migration to a SEF compliant environment and will need to overcome key challenges.

¹⁶ BOE Survey suggests that almost 40% of total monthly volume for NDF and 24% for FX Options were traded on a multiple-to-multiple basis via electronic broking systems/multi-electronic trading systems/voice brokers. For confirmations, the June 2013 ODSG submission for the G15 banks records the level of electronic confirmation for FX NDF and FX options, with the FX industry average for eligible products being 99% for FX NDFs and 99% for FX vanilla options.

¹⁷ <http://www.bis.org/press/p130905.htm>.

- **Legal concerns with the content of rulebooks.** To meet CFTC regulatory requirements under Commission Rule 37.6(b), rulebooks call for SEFs to provide contract specifications and for SEF confirmations to take priority and supersede any other agreements and confirmations (regardless of sufficiency of the SEF confirmation). Venues registering as SEFs, however, have not yet provided contract specifications to their participants and discussions have yet to take place to ensure that the SEF listed contract matches exactly the contract traded in the wider market; this is critical to prevent any basis risk for the contracts traded. Also, within a normally functioning market, any SEF product descriptions which do not conform to current industry standards are likely to be treated as a separate, new product which entails different pricing mechanics and risks from existing products. Such new listing could lead to market bifurcation with separate risk management practices needed for on/off SEF transactions in what was intended to be the same contract.

SEFs have indicated that they do not presently intend to include in confirmations well-established industry terms and conditions, templates and fallbacks for market disruptions. For transactions, such as those involving emerging market/restricted currencies, the FX industry has developed such terms for contractual certainty and operational efficiency, examples including:

- i. ISDA form of master confirmation agreement (“MCA”). The MCA contains all of the static terms relating to a particular ‘contract’ allowing dynamic terms to be confirmed via an electronic message;
- ii. EMTA¹⁸ currency-specific templates which address market disruption events with respect to valuation and settlement and generally incorporated by reference as part of the confirmation;
- iii. Credit support annexes (“CSA”);
- iv. FX prime brokerage give-up arrangements; and
- v. Clearing arrangements.

FX prime brokerage also raises key challenges with respect to the content of rulebooks. Any current references to FX prime brokerage in rulebooks assume that a transaction is between the prime brokerage client and dealer, both acting as principals. This assumption is incorrect as FX prime brokerage uses the credit intermediation model. It should be noted that the FX prime brokerage market is significant with respect to its importance on the FX market as a whole currently representing approx 10% for FX Options and 30% for FX NDFs of the global FX market (as reported in CFTC Letter No 13-11, footnote 15). Such activity is therefore critical to the provision of liquidity to the wider market. Any market changes that could cause disruption to both the FX prime brokerage market and subsequently other market participants accessing the same source of liquidity (i.e on-SEF) will need to be carefully considered, especially if the net result is a concentration of liquidity onto non-electronic venues. Trading practices within the FX prime brokerage market will therefore be liable to change and participants will potentially find alternative execution venues if SEF execution is not feasible for the FX prime brokerage model.

Challenges also exist with respect to the post-trade modification and cancellation rights of a SEF. A number of SEF rulebooks provide for a SEF to use price-banding in its calculations to determine the appropriateness of any such modifications or cancellations. However, unlike exchange-traded markets, the concept of historical data supporting a “no bust” range does not currently exist for the (on-SEF) FX markets, itself providing legal uncertainty to participants, and the lack of specificity as to timing for resolution and discretionary basis for making these determinations raises concerns as to contractual certainty and corresponding risk management

- **The disruption of well-established electronic execution trading methods.** Large numbers of electronic venues contribute to the globally integrated FX flow market, demonstrating an already high

¹⁸ <http://emta.org/>

level of pre-trade transparency and turnover. For example, according to the April 2013 Bank of England Semi-Annual FX Turnover Survey¹⁹, over 40% of FX NDFs and 24% of FX Options are traded on / via electronic broking systems, electronic trading systems (multiple-to-multiple basis) and voice brokers. Any migration from this well established and transparent market will need to ensure that the current high-levels of transparency and automated execution are not reduced both in quality and quantity and that the direction of travel towards a highly efficient and transparent environment continues. Given the very short time-frame to the Compliance Date, it is highly unlikely that any such changes can be made without causing degradation in existing practices, the implication being increased operational and market risks.

- **IT and operational hurdles.** It is a key requirement that any established FX market or firm-specific workflows need to be fully understood by both the SEF and their participants to prevent any unintended malfunction of established trading and operational practices. At this stage, there are significant processes that have yet to be fully analyzed, technology builds built and tested and new controls to be incorporated into existing practices. A specific example being the SEFs role within existing confirmation flows. There still remains a current lack of understanding as to how to adapt existing well-established markets practices for the electronic and timely confirmation of trades and reflection of such in firms' books and records. This is particularly acute for short-dated transactions where confirmation and settlement may happen in relatively short order, and for which the overall volume of both individual transactions and aggregate notional amount is extremely large. The implication of replacing such existing processes with new, and as of yet, untested processes will reintroduce extra operational and market risks that the industry has, over time, been actively engaged in eradicating and thus do not exist in the current processes.
- **Legal dialogue and timeframes for on-boarding.** Given the global nature of the FX market and the significantly large number of participants it is logical to expect that SEFs and their participants will find it challenging to ensure that the correct due-diligence is performed with respect to the signing of rulebooks and associated contracts before the Compliance Date. New relationships will need documenting as will the appropriate trading parameters at each SEF. The FX market is expecting approximately twenty venues to register as SEFs and thus the scale of the on-boarding process faced by SEFs and their participants is considerable, and any delay in completion can only add to the prospect of liquidity moving to other venues.

Impact of CFTC Not Granting Relief of Additional Time to Comply with Footnote 88 for the FX Asset Class

- **Our key concern is the undesired impact on liquidity.**
 - It is highly likely that as of Compliance Date one or more SEF/participants will be signed and ready to trade whilst others may not be. In order to avoid being in non-compliance with the Commission's Rules, participants will clearly be faced with a venue choice if they are to continue trading FX NDFs and FX options on a multiple-to-multiple basis. The consequence could be that liquidity (for instance in emerging market currencies) is transferred from one venue to another, or from newly-registered SEFs to other execution venues, such as single dealer platforms or voice. Such migration could cause an increasing concentration of activity (and therefore liquidity) onto single dealer platforms or the fragmentation into un-linked liquidity pools.
 - Any loss or fragmentation of liquidity will also increase funding costs for participants due to the potential for their sub-optimal access to venues, with a reduction in the transparency of pricing. Participants may also be at risk of limited access to liquidity if SEFs prioritize their on-boarding practices to deal with the high number of participants going live at the same time, with the final result that some participants are simply not 'signed-up'.

¹⁹ <http://www.bankofengland.co.uk/markets/Pages/forex/fxjsc/default.aspx>

- It could also be expected that SEFs offering cross-asset functionality focus more on the asset classes likely to have MAT requirements published first, such as credit and rates. Such asset class prioritization could have a wider, negative impact on FX as an asset class.

➤ **We are concerned about undermining the regulatory objectives of Dodd-Frank.**

- The confirmation process is essential in providing legal, contractual certainty to the terms, conditions and pricing of a transaction. Under Dodd-Frank such practices are travelling towards more automation and shorter confirmation timelines, all intending to improve risk management and transparency for market participants. More fundamentally, this process is essential in managing the risks associated with trading practices. The FX market has evolved over the last 15 years multiple, highly automated confirmation practices and it is highly unlikely, given the very short period to the Compliance Date, that these practices will be replicated by the SEF, inclusive of all of the terms of the transaction.
- A key requirement for the SEF will be to replicate the current flows to the SDR for Commissions parts 43/45 and to do so without any degradation to the current integrity and quality of such data. Such a responsibility will be difficult to achieve without time to build and test connectivity to enable the passing of key terms between the participant and SEF; such connectivity does not currently exist. As the FX market has been live with trade reporting to the SDR since February 2013 many improvements will have been made to the quality of the data being passed to the SDR and subsequently the quality of the data being made available to the CFTC. Such evolution in the quality of the submission will invariably be due to in-house technology developments, all of which will need to be replicated between SEF and its participants to ensure a sufficiently high quality and accurate submission.
- Finally, there is an expectation that if, for example, there was a market event during the migration process, any lack of contractual/legal certainty (e.g., from insufficient confirmations, price-banding, etc.) would create a restricted credit risk management process for individual participants. Such risks would add undue pressure on participants and would negatively impact a participants' ability to assess positions/obligations and manage associated risks. The unintended implications could be far-reaching given the global nature of the FX market and its participants.