Global Foreign Exchange Division
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TO:

Mr. Christopher J. Kirkpatrick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

September 29, 2017

Re: Commodity Futures Trading Commission Request for Public Input on Simplifying CFTC Rules (Project KISS) – External Business Conduct Rules, Non-Cleared Margin Rules and Segregation of Independent Amount Requirements (RIN 3038–AE55)

Dear Mr. Kirkpatrick,

The Global Foreign Exchange Division ("GFXD") of the Global Financial Markets Association appreciates the opportunity to provide comments to the Commodity Futures Trading Commission ("CFTC") on its Project KISS initiative. We greatly appreciate the continuing efforts of the CFTC and its staff to review the CFTC's rules, regulations and practices to identify those areas that can be simplified and made less burdensome and costly to apply.

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). Our members comprise 25[1] global foreign exchange (FX) market participants collectively representing over 80%[2] of the FX inter-dealer market. The GFXD and its members are committed to ensuring a robust, open and fair marketplace and welcome the opportunity for continued dialogue with global regulators.

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[1] Bank of America Merrill Lynch, Bank of New York Mellon, Bank of Tokyo Mitsubishi UFJ, Barclays, BNP Paribas, Citigroup, Crédit Agricole, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, JP Morgan, Lloyds Bank, Mizuho, Morgan Stanley, Nomura, Royal Bank of Canada, Royal Bank of Scotland, Scotiabank, Société Générale, Standard Chartered Bank, State Street, UBS, Wells Fargo and Westpac.

[2] According to Euromoney league tables.

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. In its review, we urge the CFTC to consider a principles-based approach to formulation and implementation of derivatives regulation, rather than "one-size-fits-all". This will allow firms to implement compliance programs that are appropriate to the size, complexity, business, and control infrastructure of the relevant firm.

Additionally, a globally consistent approach to regulation is particularly important for the FX market, which supports vital international trade and investing. The FX market is the world's largest financial market, and effective and efficient exchange of currencies underpins the world's financial system. Sovereign entities, central banks and other government sponsored entities rely on the FX market being well-functioning and liquid, and corporations and investors regularly participate in the market for important operational needs: to reduce risk by hedging currency exposures; to convert their returns from international investments into domestic currencies; and to make cross-border investments and raise funding outside home markets.

We provide some specific comments and suggestions on the External Business Conduct Rules, Non-Cleared Margin Rules and Segregation of Independent Amount Requirements, as follows:

A. EXTERNAL BUSINESS CONDUCT RULES

We are supportive of the CFTC's review of the EBC rules, including issues raised in SIFMA's letter dated September 29, 2017.[3]

B. NON-CLEARED MARGIN RULES

The CFTC should take a practical and harmonized approach to margin requirements for non-cleared derivatives. In this regard, we recommend that:

a) The CFTC ensure deadlines for collecting margin account for logistical and operational considerations that impact the margin transfer process, so any deadlines are achievable and not excessively burdensome to meet, bearing in mind the costs and practicalities of margin exchange.

b) Of particular concern to the FX market, due to substantial activity being conducted cross-border, we urge the CFTC to promote global market access through promoting recognition of and reliance on substituted compliance.

[3] The application of EBC requirements to FX prime brokerage has also raised numerous issues. We plan to address the application of EBC and other requirements to these types of transactions in a separate submission.

We recommend that the CFTC issue broad, principles-based substituted compliance determinations with respect to foreign margin rules and regimes covering all elements of the margin framework, including scope of entities subject to margin requirements, so that in any instances where US rules overlap with rules of another jurisdiction that has a comprehensive regulatory framework for derivatives consistent with G20 or other internationally recognized principles, then the transacting parties—including US firms and their foreign branches and affiliates—are able to transact under the rules of that other jurisdiction, without any stricter-rule applies condition or other limits on substituted compliance. As part of this, we would hope to see the CFTC permit substituted compliance with the US Prudential Regulators' (PRs') non-cleared margin rules.

c) The CFTC should allow for practical and appropriate relief from the margin requirements in respect of exchange of margin with counterparties in jurisdictions where there is a lack of certainty as to netting and protection of collateral posted in the event of the counterparty's bankruptcy ("non-netting jurisdictions").

   In emerging market economies, which includes the majority of the non-netting jurisdictions, FX accounts for a significant amount of the turnover of OTC derivatives, reflecting the greater relevance of exchange rate risk in these economies. If margin obligations imposed are unworkable when facing counterparties in such jurisdictions, this could lead to a restriction of this necessary activity.

   We recommend that U.S. regulators harmonize their requirements with global requirements by either exempting transactions with counterparties in non-netting jurisdictions from non-cleared margin requirements (eg. as in Japan, Korea, Hong Kong, Singapore and Australia) or adopt a de minimis exemption for such transactions (eg. as in the EU). Our members would support an approach which accomplishes necessary risk mitigation objectives but with as little as possible disruption to broader business relationships.

d) We suggest that inter-affiliate swaps should be exempt from initial margin, so long as they are part of a centralized risk management program and remain subject to variation margin requirements. Inter-affiliate swaps provide an important risk management tool, allowing entities within a corporate group to transfer risk to the group entity best placed to handle it.

e) We urge the CFTC to coordinate with the PRs so that in proposing or making any changes to the CFTC non-cleared margin rules as a result of Project KISS comments or otherwise, this is done in coordination and in parallel with the PRs, to ensure harmonization and consistency across the respective rule sets, which is very important for the global FX market.

C. SEGREGATION OF INDEPENDENT AMOUNT REQUIREMENTS

We support the comments made by SIFMA in its letter to the CFTC on this topic dated September 29, 2017.

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We emphasize that the members of the Global FX Division have a strong interest in ensuring that the FX market continues to operate effectively, efficiently and safely at all times. We are very grateful for the opportunity to share our views on the concerns we have raised in this letter. Please do not hesitate to contact Victoria Cumings on 212-313-1141, email vcumings@gfma.org should you wish to discuss any of the above.

Yours sincerely,

James Kemp
Managing Director
Global Foreign Exchange Division, GFMA