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

28 February 2011

**Re: RIN 3038-AC96 – 17 CFR Part 23 – Confirmation, Portfolio Reconciliation and Portfolio Compression Requirements for Swap Dealers and Major Swap Participants**

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 21 global FX market participants[1], collectively representing more than 85% of the FX market[2].

The Global Foreign Exchange Division is committed to ensuring a well-functioning, open and fair market place. We welcome the efforts of the Commodity Futures Trading Commission (the "Commission") to enhance regulatory oversight and accordingly, the opportunity to submit comments on the Notice of Proposed Rulemaking in respect of **Confirmation, Portfolio Reconciliation and Portfolio Compression Requirements for Swap Dealers and Major Swap Participants** 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**").

There are some specific challenges that face the foreign exchange industry when compared to other asset classes, namely the high volume of transactions and the wider universe of participants. These arise because the foreign exchange market forms the basis of the global

[1] Bank of America Merrill Lynch, Bank of New York Mellon, 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

payments system. These two issues provide a practical challenge in ensuring that all relevant trades and counterparties are able to comply with any proposed rules. They also make certain requirements significantly more onerous and costly for market participants. The shorter-dated nature of a typical FX portfolio also has implications for both the effectiveness and practicality of a number of the proposed rules, particularly in respect of reconciliation and compression. We believe that the Commission should take into account the specific nature of the challenges facing each asset class when promulgating its final rules.

**1. Swap confirmation**

While the FX industry has developed specialized and bespoke infrastructure to support its differing underlying client bases, these systems have generally not been developed for the purposes of supporting confirmations as in certain other asset classes. Accordingly, the specification of many of the rules is more inappropriate for the FX market than for, say, credit or rates, where such infrastructure does presently exist.

Market participants have been actively engaging with regulators as part of the industry supervisory commitments letter process to agree confirmation targets across both electronically and non-electronically confirmable trades. This process has yielded continued improvements in confirmation procedures over the past few years. The G14 participants have worked in conjunction with the Federal Reserve Bank of New York and other supervisors to increase greatly the number of products confirmed electronically and continue to commit to several process improvements through commitments to regulators. These improvements to market practices should not be compromised by implementing a potentially conflicting process.

*Definitions*

As a general point, definitions used for affirmation, execution and confirmation should reflect the underlying conventions that are prevalent in the FX market, which may be different to those used in other asset classes.

As regards the proposed rules, we welcome clarification from the Commission as to whether, for bilaterally executed trades, a Swift confirmation is defined as electronic processing. Similarly, in defining ‘confirmation’ we would welcome clarity on whether this means actual legal confirmation execution or whether this includes matching services that do not provide legal confirmation e.g. vendor affirmation platforms, which many buy side clients use to ‘affirm’ the trade economics. Finally, we would welcome clarification as to whether ‘Trade Acknowledgement’ is the same as ‘Trade Affirmation’ which is the matching of economic fields only.

*Confirmation execution periods*

The proposed execution periods are significantly too short and are not consistent with current market capabilities. They would have a large impact on existing processes in the administration of derivative contracts, increasing risk and impacting accuracy. For example, a typical turnaround time to confirm a Swift trade with a market counterparty might be around two hours. For a paper confirm this would be next day at the earliest. Neither of these meets the current requirements of 30 minutes and same day respectively for Swap Dealer (SD) / Major

Swap Participant (MSP) to SD / MSP trades. Likewise where the counterparty is not a SD / MSP or financial entity there is a requirement to ensure confirmation the day after execution. For FX, these would typically consist of paper confirmations with turnaround times being commensurately higher.

In addition, there are different levels of complexity attached to different FX products, particularly to options, and the execution periods should take these into account. For example, whilst it may be feasible to implement a shorter execution period for vanilla options e.g. same day, it would not be practical to demand that a basket option be subject to same requirements.

Accordingly, we believe that the proposed execution periods should take into account not only the method of confirmation (electronic / paper) but the complexity of the underlying transaction, including the trade type, counterparty types and locations (e.g. cross-border) and time of execution (e.g. close to close of business).

Finally, we would point out that whilst market participants have control over the generation of confirmations, execution is dependent upon both parties complying with the proposed rules. An SD / MSP cannot control execution by a counterparty.

*Recordkeeping requirements*

The recordkeeping requirements would require significant technology investment as typically confirmation systems do not time stamp at issuance or receipt.

*Life cycle events*

We believe that trade life cycle events should be out of scope for FX. There are already efficient processes around trade events, where exercises are confirmed as new trades. The settlement process should provide evidence of such event occurring. We further believe that novations should certainly be treated as an exception here; the industry is moving towards a 'non-confirmation' environment through the ISDA Novation Protocol, which should become the industry norm.

**2. Swap portfolio reconciliation**

We welcome an approach that seeks to increase controls around portfolio reconciliation. However, we feel that the requirements as set out in the proposed rules are likely to be quite onerous and require significant investment in infrastructure. In addition, the shorter dated nature of FX portfolios may reduce the benefits to be derived from portfolio reconciliation as proposed. We believe that the approach should be cognisant of, and focus on improving, existing market practices. As an example, at present a typical bank and broker/dealer population reconciliation might occur on a weekly basis with the resolution of reconciling items often taking longer. Discrepancies with offshore clients that are regionally located in Asia and Europe might take a period of days simply to communicate an issue, even longer for resolution. The proposed rules should take these issues into account.

The Commission should also focus on leveraging existing market infrastructure for the purposes of improving reconciliation practices. As an example, major dealers currently use TriOptima to match interdealer portfolios and reconcile margin calls. Although this is designed to show differences in valuations on portfolios, it will not identify and reconcile discrepancies in trade specifics. However, provided that the swap confirmation process is itself robust, specific trade discrepancies should be avoided or identified through that process.

**3. Portfolio compression**

We believe that foreign exchange should be excluded from the portfolio compression requirements. The benefits that accrue from compression are limited at best and given the costs to implement, are likely to be disproportionate.

The average tenor of an FX portfolio is three to six months as a result of the shorter-dated nature of the market, and even around one month for option trades. It would be unusual to have two long-dated equal and offsetting trades residing on a dealer's books. This stands in contrast to other asset classes e.g. rates and credit where tenor is significantly longer. In addition, because of their short-dated nature, the time taken to prepare portfolios for compression may well mean that a significant number of trades would have matured by the time compression occurs.

Where the counterparty is not a swap dealer / major swap participant, portfolio compression would also not be necessary. Overall volumes with these types of clients are much smaller, and if a smaller client were to enter an equal and offsetting trade, this would soon be apparent and any 'portfolio compression' would be pro-actively carried out.

Finally, the timelines suggested by the proposed rules are extremely challenging given current market infrastructure.

**4. Implementation and phasing**

Any proposed rules need to set appropriate timelines and phasing for compliance. Not least, the implementation and phasing of the proposed rules should take account of the time taken for Treasury to determine which foreign exchange products are subject to the regime. It would be unrealistic to expect the market to invest in market infrastructure to support rules that may ultimately not apply. Where the rules do apply, we would recommend that the Commission leverage existing industry practices and infrastructure to minimise the potential burden on market participants.

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We appreciate the opportunity to share our views on the proposed rules. Please do not hesitate to contact me at +44 (0) 207 743 9319 or at [james.kemp@afme.eu](mailto:james.kemp@afme.eu) should you wish to discuss any of the above.

Yours sincerely,

James Kemp

Managing Director

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