October 15, 2010

Mr. David Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: Definition of Swap Execution Facility

Dear Mr. Stawick:

FX Alliance Inc. ("FXall") submits this letter in response to the opportunity for pre-proposal comments relating to upcoming rulemakings by the Commodity Futures Trading Commission (the "CFTC") on its implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act").

FXall Background

FXall is an electronic trading system for foreign exchange (FX) spot and certain FX derivatives such as FX swaps, FX forwards, and non-deliverable forwards.[1] About one thousand institutions trade through FXall. These institutions include a range of industrial companies, fund managers, banks, other financial institutions, and government and international agencies all over the world. FXall does not have any retail customers.

Over the last ten years, we have gained much experience in migrating over-the-counter ("OTC") FX trading (which was once 100% phone traded) from the phone to our transparent electronic trading system. Today, a large part of the FX market is traded on electronic systems such as FXall – including less liquid or infrequently traded instruments customized by end users to meet their specific commercial requirements.

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[1] FXall expects that foreign exchange spot trades will not be required to be cleared and/or traded through a SEF or DCM because such instruments do not meet the definition of a swap under the Act. Under Section 721(a)(21) of the Act, the Secretary of the Treasury must determine whether foreign exchange swaps and forwards will be excluded from the definition of swap, and thereby from the clearing and trading requirements. FXall offers these comments in anticipation of trading additional instruments that may be deemed to be swaps under the Act.

FXall facilitates competitive pricing, internal trading controls, risk management and a granular audit trail. We have succeeded in improving efficiency and transparency and reducing risk for an important market. Today our peak daily volumes exceed $100 billion in notional contract value.

Role of SEF Execution

Under the Act, all swaps that are required to be cleared are generally required to be traded through a swap execution facility ("SEF") or Designated Contract Market ("DCM"). The ability to clear swaps and the ability to trade swaps are related: the liquidity and price transparency engendered by efficient trading mechanisms will facilitate risk management by clearing houses and ultimately enable more swaps to be cleared. We believe that it is in the public interest and consistent with the goals of the Act for SEFs to be permitted to employ the most efficient trading mechanisms so that the largest portion of the OTC swaps market may be effectively cleared and traded on regulated facilities.

To that end, it is critical that market participants and SEFs be allowed to use a variety of trade execution protocols, consistent with the definition of a SEF, to accommodate the diverse range of end-user requirements in the OTC derivatives market. For example, to meet the varied needs of participants in the FX markets, FXall offers four methods of trading, ranging from request-for-quote ("RFQ") to a traditional central limit order book, depending on the particular characteristics of the product, the liquidity of the market and the commercial needs of participants. Competition and innovation among SEFs with respect to trading mechanisms will help ensure that SEFs collectively provide efficient markets for the greatest range of OTC derivatives instruments and participants.

Request For Quote Trading

The RFQ mechanism is chosen by participants in many electronic trading systems because it is both flexible and competitive. Using an RFQ, participants have the ability to tailor the deal terms to meet their exact commercial requirement or best hedge their risk. This flexibility is important because of the expansive range of potential deal terms such as value dates, exercise prices, currency pairs and so on. At the same time, an RFQ is competitive. Before dealing, a participant may choose to obtain quotes from multiple parties contemporaneously, and also has the ability compare quotes with reference prices for benchmark or on-the-run instruments, thus providing pre-trade transparency. The RFQ mechanism as used today meets the needs of the marketplace and is proven to provide excellent liquidity in instruments that are customized or that do not trade every day but when traded do so in large aggregate volumes.

The RFQ model is consistent with the definition of a SEF in the Act. We believe that the legislation was intentionally expansive in the language it used to define a SEF. Indeed, we believe that one of the legislation's objectives (and an objective that should be reflected in the regulations implementing the Act) is to maximize the amount of trading that takes place on a regulated SEF and thereby improve price discovery, competitive markets, and market surveillance.

The SEF definition reads (in relevant part):

> The term 'swap execution facility' means a trading system or platform in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce, including any trading facility, that —
>   (A) facilitates the execution of swaps between persons; and
>   (B) is not a designated contract market.

The RFQ protocol squarely comports with this definition. For example, in an RFQ trading system such as FXall, multiple participants may initiate responsive quotes by specifying the exact terms that the participant requires, such as expiration, strike, and so forth. Each participant has access to multiple liquidity providers. These liquidity providers will send the original inquirer bids and offers which the inquirer may accept through the system. This is the heart of an RFQ protocol as presented by an electronic system such as FXall and tracks the language of the Act.

Boundaries of the SEF Definition

Section 733 of the Act (addressing SEFs specifically) states that its goal is "to promote the trading of swaps on swap execution facilities and to promote pre-trade price transparency in the swaps market." We believe that the first goal is best served by maximizing competition, innovation and trading through SEFs. To do so, SEFs should be allowed reasonable discretion to determine their specific trade protocols, subject to meeting certain requirements that ensure compliance with the Act. These requirements are:

1. The actual trade execution should occur on the SEF.

2. The SEF should serve many participants.

3. Each participant should have the ability to accept bids and offers made by multiple other participants.

4. The SEF execution method should provide pre-trade transparency

We further comment on these four requirements below:

1. We believe that the clear intent of the Act is that SEFs are trade execution platforms, not merely processing facilities. The SEF definition requires that participants have the ability to "execute or trade" on the facility. As trade execution facilities, SEFs can best provide transparency, enhanced liquidity and surveillance.

2. SEFs are required to provide open access to multiple participants.

3. SEF participants must have access to multiple other participants who are sources of liquidity. At the same time, we believe it should be acceptable to allow a

participant to choose to request a quote from as few other participants as it chooses. The definitional phrase "have the ability to" [trade with multiple participants] should not preclude a SEF participant also having the ability to choose a few or even one counterparty for a particular trade inquiry out of the many counterparties accessible through the SEF. RFQ participants sometimes choose to send their quote requests to only one or two counterparties to minimize the potential market impact of their request in volatile or illiquid market conditions. The fact that sophisticated institutional participants sometimes choose to ask only one or two counterparties when they have the opportunity to ask more is an indication that this choice is valued by OTC market participants. The regulatory definition of SEF should not deprive market participants of this choice.

4. We believe that pre-trade price transparency means that participants can obtain an accurate indication of where a trade could get done on the SEF. This indication can be derived in a number of possible ways, some of which may be dependent on the manner in which a trade is done. Display of an order book, indicative pricing, formulaic methods of pricing, composite quotes, pricing data on related benchmark instruments, "at the market" orders, benchmark pricing and resting orders all involve transparent ways of pricing. In the case of RFQ trading, pre-trade transparency is achieved through a participant's ability to have access to competitive quotes prior to dealing. Pre-trade price transparency does not, however, mean that SEFs must disclose trade requests, or responses to trade requests, to other participants. SEFs and their participants should be allowed to maintain the confidentiality of their inquiries to minimize the potential for market impact or to protect proprietary strategies.

We believe that the view set forth in the immediately preceding commentary is entirely consistent with the Act. In particular, if Congress had wanted to require SEFs to offer trading functionality that required that bids and offers be open to multiple participants, Congress could have simply incorporated the existing Commodity Exchange Act definition of "trading facility" in its SEF definition.[2] However, Congress specifically chose not to do so. In at least one draft during the development of the Dodd-Frank Act, the text of the bill provided that a SEF was a "trading facility." The Conference Committee rejected that language and replaced it with the current SEF definition.

Thus, the difference in the language between the SEF definition and the trading facility definition is both intentional and critical. The phrase *"that are open to multiple participants"* which is included in the definition of trading facility is conspicuously absent from the definition of a SEF. The SEF definition contemplates that bids and offers be "made by" multiple participants, but does not mandate that they be "open to" multiple participants as does the definition of trading facility. Congress chose to exclude the

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[2] The phrase "trading facility" is defined in the Commodity Exchange Act (in relevant part) as a

. . . facility or system in which multiple participants have the ability to execute or trade agreements, contracts, or transactions . . . by accepting bids or offers made by other participants *that are open to multiple participants* [emphasis added] in the facility or system. . . or [additional language describing a central limit order book.]

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trading facility "open to multiple participants" requirement in defining a SEF. Accordingly, an interpretation by the Commission that bids and offers on a SEF must be open to multiple participants would contradict Congressional intent and would potentially undermine the purposes of the Act, one of which is the promotion of the migration of OTC derivatives to regulated trading platforms.

Conclusion

To maximize competition, innovation and SEF trading, SEFs should be allowed reasonable discretion to determine their specific trade protocols. Regulatory prescriptions relating to trade protocols should be limited to the essential elements of the SEF definition. In this way, SEF execution rules would (1) maximize the portion of the OTC swap market that will move to regulated execution facilities, (2) promote beneficial competition among SEFs to provide the most efficient and liquid markets, and (3) preserve the right of end users to choose execution methods which best hedge their risks and best meet their business requirements.

Thank you for the opportunity to comment in advance of the SEF rulemaking.

Respectfully submitted,

James F.X. Sullivan
General Counsel