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August 11, 2011

VIA FEDERAL EXPRESS

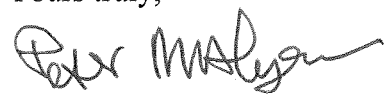
Chairman Gary Gensler
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

Re: FXall SEF Materials

Dear Chairman Gensler:

Following our previous meetings and discussions with several of your colleagues,
please find enclosed materials from FXall relating to swap execution facilities.

Yours truly,



Peter Y. Malyshev

- BEIJING
- CHARLOTTE
- CHICAGO
- GENEVA
- HONG KONG
- LONDON
- LOS ANGELES
- MOSCOW
- NEW YORK
- NEWARK
- PARIS
- SAN FRANCISCO
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- WASHINGTON, D.C.

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**FXall
SEF Materials**

**Washington, DC
August 9, 2011**



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March 8, 2011

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

Re: (RIN number 3038-AD18) Core Principles and Other Requirements for Swap Execution Facilities

Dear Mr. Stawick:

FX Alliance Inc. ("FXall") welcomes the opportunity to submit its comments on RIN 3038-AD18 Core Principles and Other Requirements for Swap Execution Facilities,¹ the Commodity Futures Trading Commission ("Commission" or "CFTC") proposed new rules (the "Proposed Rules") to implement Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "DFA")² as applied to the registration and operation of a swap execution facility ("SEF").

I. FXall Background

FXall operates an electronic trading system for foreign exchange ("FX") spot and FX derivative instruments.³ Approximately 1,000 institutions globally trade FX spot and derivative instruments in over 500 currency pairs 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. FXall facilitates competitive pricing, internal trading controls, risk management and a granular audit trail. It has succeeded in improving efficiency and transparency and reducing risk for an important market. FXall's peak daily volumes currently reach \$125 billion in notional contract value. 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. FXall presently

¹ 76 Fed. Reg. 1214 (proposed Jan. 7, 2011).

² Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, (2010) (to be codified as an amendment to the CEA).

³ 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 will be excluded from the definition of a swap under the DFA. Under Section 721(a)(21) of the DFA, the Secretary of the Treasury has been empowered to 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 DFA.



intends to register a trading platform as a SEF. Based upon its extensive experience, FXall believes that it is able to provide a valuable perspective on the impact of the Proposed Rules specifically affecting existing platforms that have operated heretofore without being registered.

II. Executive Summary

FXall supports the important stated goals of Congress to enhance transparency and accountability and to promote market integrity to protect against manipulative behavior in the financial system, as set forth in the amendments to the Commodity Exchange Act (the "CEA")⁴ enacted by Section 733 of the DFA. FXall is concerned, however, that some of the Proposed Rules: (1) go beyond the DFA's specific statutory requirements applicable to SEFs; (2) apply onerous designated contract market ("DCM") standards to SEFs that are inappropriate for SEFs; (3) are overly prescriptive, failing to provide SEFs with sufficient operational flexibility to accommodate differences in the various markets to be served by SEFs; and (4) will adversely affect the ability of SEFs to serve market participants effectively and efficiently.

As discussed further below, FXall respectfully asks the Commission to consider the following comments on the Proposed Rules:

- SEFs should have flexibility to determine which execution methods to use, including an RFQ only system and should not be required to provide an order book system.
- SEFs should not be required to have RFQs sent to at least five market participants, but should be able to give participants the choice to send an RFQ to as few as one market participant.
- When a broker is facilitating the execution of a customer order or solicits another customer willing to take the other side, the broker should not be required to delay entering the other side of the order for fifteen seconds, but SEFs should be able to use discretion in determining the appropriate duration of the delay, taking into account the particular characteristics of the market.
- The requirements in the Proposed Rules, which prescribe a full surveillance, investigation and enforcement program for SEFs and essentially obligates SEFs to become self-regulatory organizations ("SROs"), creates a barrier to entry for new SEFs. This is particularly the case with respect to start-ups as compared to DCMs and affiliates of existing DCMs (who can leverage the existing compliance, surveillance and enforcement infrastructure and resources of the affiliated DCM), effectively lessening the potential for competition among SEFs and with DCMs or their affiliates.
- SEFs will not be the entities to have the requisite market-wide data that would be necessary to form a coherent picture of participants' market activities to conduct meaningful compliance oversight. Therefore, FXall believes that SEFs are not the

⁴ Commodity Exchange Act, 7 U.S.C. 1 *et seq.*



proper regulated entities to perform all of the surveillance, investigation and enforcement tasks the CFTC has proposed.

- SEFs should not be burdened with onerous financial surveillance obligations, and should be permitted to delegate their financial surveillance functions to the Joint Audit Committee to the extent that its members are registered with the National Futures Association, and with respect to non-NFA members, SEFs should be permitted to delegate to another joint regulator or outsource this function.
- The term "senior officer" should be defined to mean the SEF's chief executive officer, chief legal officer, chief risk officer or other senior officer with supervisory authority for the SEF.
- The chief compliance officer should not be required to have supervisory duties within the SEF. The annual compliance report should be certified by the SEF's senior officer, not the chief compliance officer.
- The annual compliance report requirements should be streamlined so that SEFs provide sufficient detail and analysis to satisfy the DFA's requirements while conserving the resources of SEFs and the Commission. The board or senior officer should be permitted to make changes to the annual compliance report without submitting an objection to the Commission.

III. Overview of the Proposed Rules

FXall is concerned that, in many instances, the over reaching and overly prescriptive requirements set forth in the Proposed Rules and the costs associated with compliance with those requirements will prove to be prohibitively and unnecessarily burdensome and expensive. SEFs likely will be forced to pass those costs of compliance on to their participants, which may have the unintended consequence of discouraging trading on SEFs or encouraging market participants to move their trading business to less expensive foreign venues. This is contrary to the intent of Congress to encourage the movement of swaps transactions onto regulated markets. Moreover, the Proposed Rules may create barriers to entry for new SEFs, particularly with respect to start-ups as compared to affiliates of existing DCMs (who can leverage the existing compliance, surveillance and enforcement infrastructure and resources of the affiliated DCM), effectively lessening the potential for competition among SEFs and with DCMs or their affiliates. We want to highlight the fact that SEFs will be competing with each other for the trading of the same products by common market participants. This is fundamentally different than the situation that exists with DCMs, who receive the monopolistic benefit of being the sole market for the trading of their products. This is an unfair advantage that the CFTC will be making greater by placing DCM standards on SEFs and asking them to openly compete for business. SEFs will be forced to compete and innovate, which will be difficult if they are subject to overly prescriptive and onerous rules

Further, FXall notes that the Proposed Rules fail to recognize that a "one-size-fits-all" approach may not be appropriate for all SEFs, given that different SEFs will be trading different products and will employ different market mechanisms. Each SEF needs to "have reasonable discretion in establishing the manner in which the swap execution facility



complies with the core principles."⁵ By adopting overly prescriptive Proposed Rules that essentially would require every SEF to comply with the statutory core principles in the same way, the Commission will hinder the ability of SEFs to innovate and differentiate themselves in the market place and to compete effectively. The Proposed Rules do not make appropriate distinctions between swap markets and futures markets, the regulatory needs of such markets and the responsibilities of trading platforms for such markets.

Of particular concern are the requirements in the Proposed Rules which prescribe a full surveillance, investigation and enforcement program for SEFs that is almost indistinguishable from that which is required of DCMs. Congress could have required that swaps be executed on or subject to the rules of a DCM, but it did not do so. Congress specifically recognized the differences between products, participants, market structure, methods of execution and levels of regulation applicable to swap and futures trading platforms.

By authorizing the creation of SEFs, Congress intended that swaps be traded on facilities that function to meet the specific attributes and requirements of swap markets, while those facilities meet operational and regulatory requirements appropriate for that market and its participants. Much of a DCM's regulatory program is tailored to protect the interests of retail customers. Members of a SEF are required to be eligible contract participants ("ECPs"), and thus, retail customers will not be market participants on SEFs. ECPs trading on a SEF do not require the same level of protection as is afforded to retail customers trading on a DCM. This additional level of unnecessary protection will come at a price, which will be passed on to the participants, who do not require the protection.

IV. SEF Definition – The CFTC Should Not Interpret the SEF Definition To Require All SEFs to Provide an Order Book

FXall believes that the DFA was intended to be flexible enough to allow various methods of execution for each market, consistent with the Core Principles for SEFs. Under the DFA, 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."⁶ The Proposed Rules are much more restrictive than what is contemplated by the DFA and prescribe a limited trade protocol focused on an order book requirement. Unlike the Proposed Rules, FXall believes that the DFA's SEF definition permits a SEF to employ only an RFQ system if it determines that is the best trading model for its business.

FXall is concerned that the CFTC's requirement in the Proposed Rules that a SEF "must provide market participants with the ability to make a bid, make an offer, hit a bid, or lift an offer,"⁷ and "must provide market participants with the ability to post both firm and indicative quotes on a centralized screen such that they can be executed or traded against

⁵ See DFA Section 733(5)(h)(f)(1)(B).

⁶ CEA Section 1(a)(50).

⁷ Proposing Release, 76 Fed. Reg. at 1219.



by other multiple market participants"⁸ is a *de facto* requirement that every SEF must utilize an order book system. In addition, the Commission states "that an acceptable SEF platform or system must provide at least a basic functionality to allow market participants the ability to make executable bids or offers and indicative quotes, and to display them to multiple parties, including all other parties participating in the SEF, if the market participants wish to do so" (emphasis added).⁹ The Commission then refers back to this "basic functionality" when it states that "in addition to this basic functionality whereby market participants would have the ability to access all other market participants, a SEF *could* also provide a multiple-to-multiple request for quote trading system for those market participants that do not wish to display their bids, offers, or requests to all other market participants"(emphasis added).¹⁰ FXall believes that read together these statements have the effect of requiring every SEF to provide an order book, while it "could" also provide an RFQ system. This CFTC requirement goes beyond the DFA's "multiple participant to multiple participant" requirement for the SEF to give a participant the ability to access multiple other participants. The CFTC definition as proposed does not allow for a SEF to only provide the ability for a participant to send an RFQ to all liquidity providers on the SEF to satisfy the SEF requirement.

Under Section 723 of the DFA, all swaps that are required to be cleared are generally required to be traded through a SEF or 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. FXall believes that it is in the public interest and consistent with the goals of the DFA for SEFs to be permitted to employ the most efficient trading mechanisms so that the largest portion of the over-the-counter ("OTC") swaps market may be effectively cleared and traded on regulated SEFs. In many cases, this would necessitate permitting SEFs to offer RFQ services only, without also requiring them to provide an order book.

Congress could have specified the types of platforms it intended to be SEFs, or specified the manner of execution on SEFs, but Congress instead provided broad criteria that allows various platforms and methods to be utilized. If the CFTC requires that every SEF must have some form of an order book, it will push the trading of many products off SEFs because the order book trading method is just not compatible with some derivative markets. The users of these products will either move their trades to foreign markets or not participate in the market. For example, unlike many futures markets which typically list products that trade frequently and thus have continuous bid/offer quote streams, the transaction flow in many swap markets is less liquid and more discontinuous in nature, i.e., transaction sizes tend to be larger and trades are more infrequent. A central order book is a less efficient execution mechanism than an RFQ mechanism for such markets.

The traditional RFQ model is consistent with the definition of a SEF in the DFA. Congress intentionally used expansive language to define a SEF. Indeed, FXall believes that one of the DFA's objectives (and an objective that should be reflected in the CFTC's regulations implementing the DFA) is to maximize the amount of trading that takes place on a

⁸ *Id.* (discussion of Trading Systems or Platforms). See also Proposing Release, 76 Fed. Reg. 1241, Section 37.9(b)(2).

⁹ Proposing Release, 76 Fed. Reg. at 1219 (discussion of SEF Definition).

¹⁰ *Id.*



regulated SEF, thereby improving price discovery, competitive markets, and market surveillance. Section 733 of the DFA (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."¹¹ FXall believes that this 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.

If Congress had intended 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 CEA definition of "trading facility" in its SEF definition.¹² However, Congress specifically chose not to do so.¹³ The difference 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 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 always be open to multiple participants on an order book contradicts Congressional intent and undermines the purposes of the DFA, one of which is the promotion of the migration of OTC derivatives to regulated trading platforms.

To that end, it is critical that market participants and SEFs be allowed to use a variety of trade execution protocols, consistent with the DFA 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 currently offers four methods of trading, ranging from 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.

FXall agrees that "Congress intended a broad model for executing swaps on SEFs, both cleared, uncleared, liquid or bespoke," and that the best way to achieve the goals under the DFA to promote the trading of swaps on SEFs and promote pre-trade price transparency is to "adopt a model that provides the maximum amount of flexibility as to the method of trading."¹⁴ In order to satisfy the definition of a SEF, a system or platform should not need to be handcuffed to only one type of trading model – *i.e.*, always providing

¹¹ DFA Section 733(5)(h)(e).

¹² "Trading facility" is defined in the CEA (in relevant part) as "... a facility or system in which multiple participants have the ability to execute or trade agreements, contracts, or transactions – (i) by accepting bids or offers made by other participants *that are open to multiple participants* [emphasis added] in the facility or system; or (ii) through the interaction of multiple bids or multiple offers within a system with a pre-determined non-discretionary automated trade matching and execution algorithm." (i.e. an order book). CEA Section 1(a)(51).

¹³ In at least one draft during the development of the DFA, 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.

¹⁴ Proposing Release, 76 Fed. Reg. at 1259.



an order book. In our experience, there are some products in which participants do not want to trade under an order book protocol. To force a SEF to build an order book system that the participants don't want or use is wasting resources and raising costs with no benefit. FXall believes that the Proposed Rules should be modified to make it clear that an entity that wishes to register as a SEF could operate different trading models for different swap products, as long as each trading platform on its own meets the interpretation of the definition of SEF. For example, a SEF could operate both a multi-dealer RFQ mechanism for the trading of one particular swap product and a separate limit order book for the trading of a different swap product.

V. Request For Quote System

FXall provides an RFQ system that is available to all participants who can choose to send RFQs to one or multiple participants on a disclosed basis 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. The responses are only disclosed to the requestor. The requestor then chooses to execute with one or more of the responders, or even none.

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 price transparency in the swaps market. 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.

FXall believes that the current commonly used RFQ system meets the requirements of the DFA and comports with the practice of the foreign currency market and is similar to the operation of RFQ trading protocols in other derivative markets. The RFQ system is well established and understood by the market and market participants. RFQ has been widely implemented and accepted for many years in electronic over-the-counter markets and is broadly supported by both the buy-side and sell-side of swap transactions. The currently existing major RFQ platforms provide high quality pre-trade transparency, as each provides indicative levels at which standard lot size trades can be executed. However, in the Proposed Rules the CFTC's definition of the RFQ model is inconsistent with what the industry currently recognizes and uses as an RFQ trading method.

A. The CFTC RFQ Definition Does Not Provide Needed Flexibility

The CFTC's RFQ definition does not meet the market participants' need for a flexible trading method. Under Proposed Rule 37.9(a)(ii), in order for an RFQ system on a SEF to be compliant: (1) a market participant must transmit a request for a quote to buy or sell a specific instrument to no less than five market participants in the SEF, (2) all the market



participants receiving the request for a quote must be able to respond, and (3) the SEF must "take into account" and communicate to the requester any bids or offers "resting" on the SEF pertaining to the same instrument along with any "responsive quotes." As stated above, under current RFQ trading methods there is no notion of a "resting" bid or offer unless the RFQ system is combined with a limit order book. Therefore, FXall believes the requirement that the SEF must "take into account" and communicate to the requester any bids or offers "resting" on the SEF pertaining to the same instrument along with any "responsive quotes" is unduly restrictive and implicitly mandates that a SEF maintain an order book for all instruments it lists.

B. RFQ Transmitted to a Minimum of Five Market Participants Should be Changed to One

The CFTC has not articulated a clear basis for setting the minimum number of market participants to whom an RFQ must be disseminated at five, nor why a lower number would be insufficient. FXall believes that a more reasonable and flexible interpretation would allow a SEF to offer functionality to participants enabling them to choose to send a single RFQ to any number of specific liquidity providing participants on the SEF, including to just a single liquidity provider.

FXall agrees that SEF participants must have the ability to access multiple other participants who are sources of liquidity. However, that is not inconsistent with allowing 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 from 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 market participants. The CFTC's definition of RFQ should not deprive market participants of this choice.

An RFQ system should allow customers to choose the desired degree of exposure of their inquiry. FXall believes that providing market participants the flexibility to choose one or many counterparties is a way to balance the DFA goal of encouraging swap trading to move onto regulated markets with the goal of promoting greater transparency in the trading of these instruments. Providing market participants as much choice as possible in determining how to route an RFQ on a SEF may incentivize them to trade more on a SEF when they otherwise might not have made that choice. Since those market participants that have a fiduciary duty must seek best execution for a transaction, they may have an incentive to route to multiple dealers. However, this incentive may be impacted by the liquidity characteristics of the particular swap.

Over the last ten years, FXall has gained much experience in migrating OTC foreign currency trading (which was once 100% phone traded) from the phone to our transparent electronic trading system. Based on this experience, FXall has found that many market participants, including dealers and buy-side customers, are concerned about too much pre-trade disclosure of material swap terms. If other market participants know the terms of



a trade prior to the time it is executed, those other market participants could attempt to profit from the information to the detriment of the initiator by frontrunning the trade. In addition, requiring a broad level of pre-trade disclosure, particularly for illiquid products, may not lead to better prices and in certain circumstances may lead to worse prices being provided by dealers if the dealers' hedging is made more difficult because their intent to trade has been displayed to the market. Therefore, particularly for illiquid swaps, a market participant may determine that it is in its best interest not to disclose its trading intention, and may choose to send an RFQ to just one liquidity providing participant on the SEF. Providing investors the choice to send an RFQ to only one liquidity providing participant on the SEF – as long as they have the ability to send it to more than one if they chose to – may encourage investors to execute trades on a SEF even with respect to swaps that are not required to be traded on a SEF, thus supporting the development of trading on regulated platforms and venues in the United States, rather than in other jurisdictions.

C. Treatment of Responses and "Resting" Orders

FXall believes that pre-trade price transparency means that participants can obtain an accurate indication of the price at which a trade may be done on the SEF. In the case of RFQ trading, pre-trade price transparency is achieved through a participant's ability to access competitive and indicative quotes prior to dealing. Pre-trade price transparency should not, however, mean that SEFs must disclose RFQs, or responses to RFQs, 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.

The Proposed Rules require that the SEF must "take into account" any bids or offers "resting" on the trading system pertaining to the same instrument for which a market participant made a request for a quote. As stated above, we do not believe order books and "resting" orders should be mandated under the RFQ definition. The Proposed Rules creates an affirmative obligation on the SEF to inform the requester of not only responsive quotes, which the requester received from one or all of the market participants to which the requester sent a request, but also any other bids or offers that have been made by any other market participant for the same instrument. The CFTC states that the objective of these requirements is to "ensure that any competitive resting bids or offers be taken into account and communicated to the requester."¹⁵ Our experience shows that participants want the ability to choose what services and information is provided as they feel is needed. Rather than create an affirmative obligation on the SEF to inform the requester, FXall believes that in this case both the order book and the RFQ responses would be available to the participant requesting the RFQ to determine how much information the requester wishes to "take into account".

As the Proposed Rules do not define "take into account," the rule could be interpreted to obligate the SEF to inform the resting bidder or offeror of the RFQ made, thus making the RFQ available beyond the minimum five market participants. This interpretation would insert a resting bidder or offeror into the negotiations between the requester and the recipient market participants, and would also allow any market participant to see what RFQs had been made by other market participants by making a token bid or offer for that

¹⁵ See Proposing Release, 76 Fed. Reg. at 1220.



particular instrument. This rule could undermine the RFQ system to form a default multiple-to-multiple facility where certain market participants, such as high frequency traders, could game the system to front run RFQ users. As a result, the majority of current users of RFQ systems would abandon the SEF platform for less restrictive jurisdictions. FXall believes the rule should be clarified so that, if the final rule does impose an affirmative obligation on the SEF, it does not require that the resting bidder or offeror be informed of the RFQ, but rather only that the requestor be informed of the resting order.

In addition, the CFTC requested comment on a requirement to obligate the requester to execute against an executable bid or offer of another market participant, if it is competitive, in executing its RFQ, effectively creating a trade-through rule which the SEF would have to enforce. FXall believes the requester should have the choice to ignore these quotes for execution if that is his decision. We do not believe that the RFQ trading method is compatible with such a requirement because users of RFQ consider a variety of elements, such as information leakage, liquidity, and processing costs, besides price that are important to them for an execution. Mandating a trade-through rule would force the requesting customer to disclose market information to the resting order that may disadvantage the requesting customer. In addition, forcing multiple executions of the trade raises processing and "ticket" costs for the requesting customer. It would also be a disincentive to dealers to provide liquidity by forcing them to expose market information that can be used to their detriment.

VI. Fifteen-Second Requirement for Certain Brokered Transactions

Proposed Rule 37.9(b)(3) requires that brokers who are executing transactions against a customer's order or entering a trade for two customers on opposite sides of the transaction pause for fifteen seconds between the entry of the buy and the sell orders to allow other market participants to participate in the trade.¹⁶ FXall believes that fifteen seconds is too long for swaps markets. Such a delay will render the market risk to be too high for brokers who wish to facilitate their customers' trades in an electronic, fast-moving market. This proposal takes away the incentive for brokers to facilitate customer orders. FXall believes the CFTC should reduce the duration of the pause to a point which balances the ability for other market participants to compete with the market risk placed on the broker. FXall believes that this requirement is based upon similar requirements in the listed options markets. The listed options markets have lowered their delays from 30 seconds a decade ago to just one second currently. FXall believes that each market should be able to decide the appropriate delay, taking into account the particular characteristics of that market.

Also, FXall believes that the rule should not apply to the matching of customer orders if the broker has not solicited one of the orders. This is a permitted exception in the listed options markets. A broker's unsolicited customer matches should be permitted to be immediately executed when entered on the SEF.

¹⁶ Proposing Release, 76 Fed. Reg. at 1241.



VII. Core Principle 2 – Compliance with Rules

As stated above, the requirements in the Proposed Rules prescribe a full surveillance, investigation and enforcement program for SEFs that is almost indistinguishable from that which is required of DCMs and essentially obligate SEFs to become SROs. In essence the CFTC would be creating dozens of regulators with overlapping jurisdiction over the same group of participants. In the current regulated markets a common theme of both registered entities and the regulators is finding efficient ways to oversight the same participants and lessen the burden on firms of constant responses to a myriad of regulators with basically the same objective. The Proposed Rules would be undoing all of the progress made in that area. In addition, Proposed Rule 37.207 states that a SEF must provide in its rules that when a swap dealer or a major swap participant enters into or facilitates a swap transaction that is subject to the mandatory clearing requirement of Section 2(h) of the CEA, the swap dealer or major swap participant shall be responsible for compliance with the mandatory trading requirement for that swap under Section 2(h)(8) of the CEA. It appears from this language that the SEF will be responsible for policing the conduct of swap dealers and major swap participants generally, not only with respect to their trading on such SEF.

It is not clear how the SEF would be able to detect the violation of this provision by swap dealers and major swap participants unless the SEF reviews and audits every swap entered by swap dealers and major swap participants. However, under the several proposals for implementation of the DFA, SEFs will not be the entities to have the requisite market-wide data that would be necessary to form a coherent picture of participants' market activities to conduct meaningful compliance oversight. SEFs will be providing data to swap data repositories, not collecting data. Imposing this requirement on a SEF would be impractical and should not be included in the Proposed Rules. Therefore, FXall believes that SEFs are not the proper regulated entities to perform all of the surveillance, investigation and enforcement tasks the CFTC has proposed. FXall believes a centralized regulator with access to all of the market data that will be required under the market reforms is the logical choice for carrying out these functions. Further, this will relieve the regulated firms of the burden of responding to dozens of overlapping SEF regulators.

A. Rule Enforcement Program – Proposed Rule §37.203

Under the CEA as amended by the DFA, SEFs must have the capacity to detect and investigate trading abuses, and must have the means to capture information that may be used in establishing whether rule violations have occurred.¹⁷ In implementing this statutory mandate, Proposed Rule §37.203 provides that a SEF must have the authority to collect information and documents on both a routine and non-routine basis, including the authority to examine books and records kept by the SEF's members and by market participants. FXall is concerned that this may be read to require SEFs to conduct a full regulatory examination program with regard to their members and market participants, which is not necessary to accomplish the goals of detecting, and having the ability to investigate, trading abuses. FXall recommends that the Commission modify Proposed Rule §37.203 to make it clear that a SEF will have the authority to examine the books and

¹⁷ CEA Section 5h(f)(2)(B).



records kept by the SEF's members and by market participants, either on a routine or non-routine basis, but shall not have an obligation to do so except as may be necessary to investigate a specific potential rule violation that the SEF has detected in the ordinary course of its trade practice surveillance routine or has otherwise been brought to its attention.

B. Disciplinary Procedures and Sanctions - Proposed Rule §37.206

The Commission's Proposed Rules addressing disciplinary procedures for SEFs¹⁸ are essentially identical to those applicable to DCMs.¹⁹ There is no statutory basis for this parallel treatment of SEFs and DCMs. Although there is a specific statutory core principle in the DFA that DCMs must "establish and enforce disciplinary procedures that authorize the [DCM] to discipline, suspend, or expel members or market participants that violate the rules,"²⁰ there is no parallel statutory core principle applicable to SEFs requiring SEFs to do the same. SEFs are only required under the statutory core principle to "establish and enforce trading, trade processing, and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules."²¹ This statutory requirement does not contemplate or require implementation of the same disciplinary procedures for SEFs as are required for DCMs. Furthermore, the mandate set forth in the DFA for SEFs to deter trading abuses is fully satisfied by the procedure set forth in Proposed Rule §37.203, which prescribes a separate procedure for detecting and investigating abusive trading practices.²²

FXall notes that Congress clearly intended to differentiate between SEFs and DCMs when it declined to include a core principle applicable to SEFs in the DFA explicitly requiring SEFs to establish procedures to discipline, suspend or expel member of a SEF. Much of a DCM's trade practice enforcement program is tailored to protect the interests of retail customers. Members of a SEF are required to be ECPs, and thus, retail customers will not be market participants on SEFs. ECPs do not require the same level of protection as is afforded to retail customers of a DCM. This additional level of unnecessary protection will come at a price, which will be passed on to the participants, who do not require the protection. Accordingly, FXall believes that requiring SEFs to maintain extensive disciplinary procedures, as if they are DCMs, is contrary to the Congressional intent to distinguish between SEFs and DCMs in this respect. In addition, FXall believes that the ability to suspend or expel member of a SEF is of limited deterrent when the participant can continue trading on a competing SEF. It is a greater deterrent on a DCM, where the participant would be unable to trade the product because it only exists on that DCM. FXall believes this is another reason that a central regulator with market wide authority should conduct the enforcement program for swap market oversight. FXall recommends that SEFs be afforded the flexibility to establish a more streamlined disciplinary process that permits, for example, SEFs to enforce trading, trade processing, and participation rules through summary proceedings and sanctions (including warning letters, fines, and restrictions or suspensions of access) administered by SEF staff rather than through formal disciplinary hearings.

¹⁸ Proposing Release, 76 Fed. Reg. at 1244, Section 37.206.

¹⁹ Proposing Release, 75 Fed. Reg. at 80619-80622, Sections 38.700-38.716.

²⁰ DFA Section 735(d)(13).

²¹ DFA Section 733(5)(h)(f)(2)(B).

²² Proposing Release, 76 Fed. Reg. at 1242, Section 37.203.



C. General Financial Integrity - Proposed Rule §37.702

The DFA requires a SEF to "establish and enforce rules and procedures for ensuring the financial integrity of swaps entered on or through the facilities of the swap execution facility, including the clearance and settlement of the swaps pursuant to section 2(h)(1)."²³ Under Proposed Rule §37.702(a), a SEF must establish financial standards for its members by requiring, at a minimum, that members qualify as ECPs. Under Proposed Rule §37.703, a SEF must monitor members' compliance with the SEF's minimum financial standards and must routinely receive and promptly review members' financial information.

For purposes of comparison, under the core principles applicable to DCMs, DCMs must also establish and maintain minimum financial standards for their members and must have additional rules regarding the segregation of customer and proprietary funds, custody, investment standards, intermediary default procedures and related recordkeeping.²⁴ In addition, DCMs must monitor their members' compliance with the minimum financial standards and must continuously monitor member positions.²⁵

Thus, both SEFs and DCMs are obligated to monitor their respective members' compliance with financial standards. However, under Commission Regulation 1.52 and the procedures established by the Joint Audit Committee ("JAC"),²⁶ DCMs are permitted to delegate their responsibilities for monitoring and auditing financial information for compliance with minimum financial standards by coordinating with other DCMs and the National Futures Association (the "NFA") for the efficient financial surveillance of their members. The Commission does not appear to have provided SEFs with a similar ability to delegate their responsibilities for purposes of monitoring the financial soundness of their members. In order to provide SEFs with the same resource efficiencies as are available to DCMs, to the extent that a SEF member is required to be registered with the NFA, either as a futures commission merchant ("FCM"), swap dealer or major swap participant, SEFs should be permitted to join the JAC and delegate their financial surveillance functions with respect to such members to the JAC. For the financial surveillance of non-NFA members, SEFs should be permitted to either delegate this function to the members' primary financial regulator or outsource this function by contracting with third party service providers as described under Proposed Rule §37.204.

²³ See DFA Section 733(5)(h)(f)(7).

²⁴ Proposing Release, 75 Fed. Reg. at 80618, Sections 38.602 and 38.603.

²⁵ *Id.*, Section 38.604.

²⁶ The Joint Audit Committee is a representative committee of U.S. DCMs and regulatory organizations which participate in a joint audit and financial surveillance program that has been approved and is overseen by the Commission. The purpose of the joint program is to coordinate amongst the participants numerous audit and financial surveillance procedures over registered futures industry entities. Each registered futures entity is thus allocated a "Designated" Self-Regulatory Organization, known as the DSRO, which is responsible for, among other things, conducting periodic audits of that entity and sharing any and all information with the other regulatory bodies of which the firm is a member. The JAC attempts to provide a coordinated audit and surveillance effort in an effective and efficient regulatory forum. By standardizing the audit function and avoiding duplication, the JAC attempts to streamline the financial surveillance oversight function.



VII. Core Principle 15 – Designation of Chief Compliance Officer

A. "Senior officer"

The DFA and the Proposed Rules require each SEF to designate an individual to serve as a chief compliance officer ("CCO"), and for the CCO to "report directly to the board or to the senior officer of the facility."²⁷ The term "senior officer" is not defined in the DFA and the Commission has requested comment with respect to whether "senior officer" should be a defined term. FXall believes that it should. If the term "senior officer" is left undefined, it may be read to mean any department head, and may include officers who, due to the nature of their business roles, have responsibilities that are too far removed from the compliance activities of the SEF to justify their oversight of the CCO's duties. It is also possible that an officer's goals with respect to his or her position may create a conflict of interest with respect to such person's oversight of the CCO's responsibilities. It is the CCO's duty to resolve any conflicts of interest that may arise between the compliance requirements and business considerations; thus, any officer in a role that may be in conflict with the SEF's compliance requirements should not have responsibility for the resolution of any such conflicts. The senior officer should be a person whose position within the SEF has clear authority to supervise the SEF's business units or personnel and whose goals with respect to his or her position coordinate with such person's oversight of the CCO's responsibilities. Therefore, FXall proposes defining the term "senior officer" to include the SEF's president, chief executive officer, chief legal officer or other officer with ultimate supervisory authority for the SEF entity.

B. CCO Lacks Supervisory Power

Unless revised, the Proposed Rules will cause the CCO to be deemed a business-line supervisor. The Proposed Rules inappropriately burden the CCO with supervisory responsibilities within the SEF without providing adequate supervisory authority for such a role. In other financial services industry contexts, the CCO traditionally acts as an independent advisor to the firm's business-line supervisors, who have the authority to supervise the firm's business activities and are ultimately responsible for making sure that the firm's employees act in compliance with applicable law. By eliminating the traditional separation between supervision and compliance, the Proposed Rules would put an end to the independence necessary to perform the CCO function effectively, and would undermine the long-standing regulatory principle that it is the business managers who have the ultimate supervisory responsibility in the firm, not the CCO.

As is the case with the many regulated firms providing OTC derivative markets today, the CCO and the compliance function will provide unique and critical services to the SEF, supporting management's performance of its supervisory responsibilities and the SEF's efforts to comply with applicable law. The SEF's compliance personnel will monitor management responses to indications of improper activity, conflicts of interest or failures to supervise, escalating matters to senior levels (up to and including the senior officer and/or the Board) if the response appears to be inadequate. In performing each of these functions, compliance personnel and the CCO act as advisors to, not as supervisors of, the SEF's business units or personnel. The CCO cannot enforce compliance with policies

²⁷ CEA Section 5h(15)(B)(1).



and procedures by the firm's employees and cannot hire or fire employees or set their compensation. The CCO can only escalate compliance issues to the SEF's senior business management or the Board. In comparison, supervisors run the business, with the power to hire, fire, compensate, and discipline employees who do not comply with firm procedures or applicable law.

In interpreting CFTC Rule 166.3 as applicable to the supervisory duties of FCMs, the Commission stated that, "to establish that an individual supervisor violated regulation 166.3 . . . it is necessary to show either that respondent had knowledge of wrongdoing and failed to take reasonable steps to correct the problem, or that respondent failed to discharge specific responsibilities of supervision,"²⁸ and it must first be proven that they "occupied positions that triggered a duty to supervise."²⁹ The CCO does not have these powers outside of the compliance department. Supervisory control over the business resides with those who run the business, from the CEO to business unit managers. The CCO advises and assists them in carrying out their roles and complying with the core principles and the Commission's rules (including escalation), but supervisors decide whether, and if so how, to implement and enforce them. Imposing supervisory responsibilities on CCOs without bestowing the requisite business-line authority would make them a police officer without a badge. This is the reason that the broker-dealer compliance model contains numerous provisions making clear that the firm's CEO, not the CCO, is the person ultimately responsible for the firm's compliance with applicable law.

C. The Annual Compliance Report

The Proposed Rules require the CCO to prepare a written report annually ("Annual Report") that covers the SEF's most recently completed fiscal year, and provide it to the Board or the senior officer.³⁰ While FXall agrees that a CCO's annual report to the Commission should thoroughly address the DFA's requirements in order to enhance the transparency of the SEF's operations and its adherence to the provisions of Section 733 of the DFA, there are several critical issues with respect to the annual compliance report requirements that FXall asks the Commission to address in its rulemaking.

1. The CEO, Not the CCO, Should Certify the Required Annual Report.

The Proposed Rules – but not the DFA – require the Annual Report to include a certification by the CCO that, "to the best of his or her knowledge and reasonable belief, and under penalty of law, the information contained in the annual report is accurate and complete." While it is clear from the DFA that the CCO must complete and sign the Annual Report, the DFA does not specifically state or mandate that the required certification must itself be made by the CCO, but only that a certification be included in the report. Consistent with the financial services industry model and, as stated above, the fact that it is the SEF's CEO that has the ultimate authority to supervise the activities of the firm and its employees, the Proposed Rules should specify that the required certification should be made by the CEO, not the CCO.

²⁸ *Bunch v. First Commodity Corp. of Boston*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶25352 at 39,168-39,169 (CFTC Aug. 5, 1992).

²⁹ *Smith v. Betty*, [2007-2009 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶30,605 (CFTC Aug. 15, 2007).

³⁰ Proposing Release, 76 Fed. Reg. at 1252, Section 37.1501.



2. Content Requirements of the Annual Compliance Report

The Proposed Rules' content requirements for the annual compliance report go well beyond those set forth in the Section 733 of the DFA, which, in addition to a certification requirement, specifies only that the report contain a description of the firm's compliance with respect to the CEA and a description of each SEF policy and procedure (including its code of ethics and conflict of interest policies).³¹ In contrast, the Proposed Rules specify seven far more detailed items to be included in the report.³² The degree of detail required by the Proposed Rule to be included in the report is extensive and greatly exceeds the scope of the requirements set forth in the DFA. For instance, the second of the Commission's seven proposed requirements sets forth that the report must contain a review of the Commission's regulations that are applicable to SEFs, each subsection thereof, and each of the 15 core principles, including each of the six duties of the CCO, and then (i) identify each of the SEF's policies and procedures that ensure compliance with each of those enumerated items, (ii) provide a self-assessment as to the effectiveness of the SEF's policies and procedures, and (iii) discuss areas for improvement and recommend potential or prospective changes or improvements to its compliance program and resources. The DFA's requirement that SEFs must provide a description of their policies and procedures does not necessarily contemplate such a detailed treatment of the SEF's compliance program and does not require a self-assessment and discussion of areas for improvement. These requirements go well beyond the DFA's requirements.

Compiling the information required to be included and preparing the annual compliance report in a timely manner annually will prove to be a herculean task for SEFs to undertake and will consume considerable resources. Likewise, it will likely prove to be a massive task for the Commission's staff to thoroughly review each report it receives annually and to actively use those reports to verify whether each SEF is in compliance with the DFA and the Commission's regulations. The requirements are burdensome, overly detailed and will consume a disproportionately large amount of a SEF's resources.

³¹ DFA Section 733(5)(h)(f)(15)(D).

³² The report is required to contain: 1) a description of the SEF's policies and procedures, including the code of ethics and conflict of interest policies; 2) a review of applicable Commission regulations and each subsection and core principle of Section 5h of the CEA, and with respect to each, (i) identifies the policies and procedures that ensure compliance with each subsection, core principle and each duty of the CCO, (ii) a self-assessment of the effectiveness of these policies and procedures and (iii) a discussion of areas for improvement and recommendations as to possible changes or improvements to the compliance program and resources; 3) a list of any material changes to policies and procedures since the last annual compliance report; 4) a description of the financial, managerial and operational resources set aside for compliance with the CEA and the Commission's regulations, including a description of the SEFs self-regulatory program's staffing and structure, a catalogue of investigations and disciplinary actions taken, and a review of the performance of the disciplinary committees and panels; 5) a description of any material compliance matters and how they were resolved; 6) any objections to the report by persons with oversight responsibility for the CCO; and 7) a certification by the CCO that, to the best of his or her knowledge and reasonable belief, and under penalty of law, the annual compliance report is accurate and complete. See Proposing Release, 76 Fed. Reg. at 1252, Section 37.1501.



As an alternative, FXall proposes that, in accordance with the DFA, annual compliance reports be required to contain: (1) a description of the SEF's policies and procedures, including the code of ethics and conflict of interest policies; (2) a list of any material changes to policies and procedures since the last annual compliance report; 3) a description of how the policies and procedures address the DFA's requirements for SEFs; 4) a description of any material compliance matters that have arisen since the last report and how they were resolved; and 5) a certification by the CEO of the SEF.

3. Policies and Procedures Must "Ensure" Compliance

Under Proposed Rule §37.1501(e)(2), the annual compliance report is required to contain, among other things, a review of applicable Commission regulations and each subsection and core principle of Section 5h of the CEA, and with respect to each, identify the policies and procedures that *ensure* (emphasis added) compliance with each subsection, core principle and each duty of the CCO.

FXall does not believe that the Proposed Rules should (or can) require a firm to identify policies and procedures that "ensure" or guarantee compliance with "each subsection, core principle and each duty of the CCO". Because it is impossible to actually ensure compliance, a point made clear by the Proposed Rules' requirement to describe non-compliance issues identified by the SEF, FXall believes that in using the phrase "ensure compliance" in DFA Section 733(5)(h)(f)(15)(B)(v), Congress was referring to the implementation of compliance policies, procedures and programs that are *reasonably designed to result in compliance* with the CEA and Commission rules, and FXall suggests that the requirement be amended to reflect this. In other words, "ensure" should be understood to mean verify and facilitate, as opposed to assure or guaranty.

4. Prohibition Against Changes to the Annual Compliance Report

Under the Proposed Rules, prior to submitting the annual compliance report to the Commission, the CCO must provide the annual compliance report to the SEF's board, or to the senior officer if the SEF does not have a board, for review, but not for approval.³³ The Proposed Rule explicitly provides that members of the board and the senior officer may not require the CCO to make any changes to the report, but that they may provide the Commission with any objections they may have to the report.

The CCO will report directly to either the board or to a senior officer of the SEF. The board or a senior officer must oversee the CCO's duties, approve the CCO's compensation, and may remove and replace the CCO. Given this authority, it is incongruous that the board or senior officer, as the case may be, is barred from making changes to the annual compliance report submitted to the Commission by the CCO. This puts the CCO in the no-win situation of being the stalwart regulatory enforcer with, as stated above, no real business authority within the SEF. It's untenable to make the CCO the supervisor of his superiors. While FXall understands that the Commission's intent is to allow the CCO to make a complete and accurate assessment of the SEF's compliance program, FXall believes, given the compliance oversight responsibilities of the board, that the board or senior officer should be permitted to make changes to the annual compliance

³³ Proposing Release, 76 Fed. Reg. at 1252.



report without submitting an objection to the Commission. This stance accords with our belief stated above that the senior officer as head of the SEF make the annual certification rather than the CCO.

VIII Proposed Alternative Regulatory Program

In the interest of creating a regulatory program that fully complies with the statutory requirements and the intent of the DFA while maximizing value and efficiency, FXall suggests that the Commission propose rules for the surveillance, investigation, enforcement and CCO requirements that are more flexible, providing SEFs with the level of discretion contemplated by the DFA.³⁴ Maximizing flexibility in the structure of the CFTC's regulatory framework applicable to SEFs will also promote the harmonization and compatibility of that framework with the Securities and Exchange Commission's ("SEC") proposed rules for trading security-based SEFs ("SB SEFs"). This more flexible approach also would allow the CFTC to monitor the market for swaps and make any needed adjustments to interpretations that it may adopt as this market continues to evolve.

Generally, the SEC's surveillance, investigation, enforcement and CCO requirements for SB SEFs are more flexible than those proposed by the CFTC. The SEC's financial surveillance requirements for SB SEFs are more general than the CFTC's corresponding rules and do not include requirements to monitor member credit arrangements and collateral for non-cleared transactions or to routinely review member financial information, as SEFs are required to do under the CFTC proposal. The rules for SB SEFs regarding surveillance and investigation of rule violations is much less prescriptive than the corresponding CFTC rule, which requires, for example, ongoing monitoring and formal annual evaluations of the SEF's compliance staff resources and their workloads, and specific procedures for conducting and reporting investigations. The enforcement and disciplinary procedures under the CFTC's proposed rules are also more prescriptive and less flexible than the SEC rule, which is more flexible and allows the SB SEF to authorize its staff to establish the enforcement procedures so long as they are fair and non-arbitrary. The SEC's proposed CCO requirements for SB SEFs are less prescriptive than those of the CFTC and more closely follow the Dodd-Frank parameters without going much beyond them.

The SEC's approach to regulating SB SEFs is generally less prescriptive and more flexible than the CFTC's Proposed Rules. The SEC's approach will provide greater regulatory flexibility to an evolving SEF market structure. Comparing the SEC's approach to the CFTC's approach is instructive. For example, although the same core principle regarding the financial integrity of transactions is applicable to both SEFs regulated by the CFTC and SB SEFs regulated by the SEC, the SEC's proposed rule for SB SEFs is more general than that proposed by the CFTC. For security-based swaps that will not be cleared, an SB SEF "may permit a participant to take into account counterparty credit risk."³⁵ In contrast, the CFTC's Proposed Rule for non-cleared swaps requires that SEFs must require their members to demonstrate that they have entered into a credit arrangement for the transaction, have the ability to exchange collateral, meet any credit

³⁴ See DFA Section 733(5)(h)(f)(1)(B), providing that SEF's "shall have reasonable discretion in establishing the manner in which the swap execution facility complies with the core principles described in this subsection."

³⁵ *Id.* at p. 431-432.



filters adopted by the SEF, and comply with any additional safeguards required by the CFTC, going far beyond the requirements of the DFA and the SEC's approach.

FXall encourages the CFTC to harmonize its regulatory approach to SEFs with the SEC's more flexible approach. FXall believes that the CFTC's Proposed Rules should be modified so that they are less prescriptive to accommodate evolving market structures and promote consistency with the SEC's proposed rules for SB SEFs.

IX Conclusion

As discussed above, while FXall endorses the Commission's efforts to create a comprehensive set of regulations to implement the statutory requirements applicable to SEFs, FXall believes that the Proposed Rules establish requirements for SEFs that, in several instances, go well beyond the mandates set forth in the DFA. The Proposed Rules will result in unintended consequences, with a negative impact on the competitiveness and efficiency of SEFs and the swap markets.

FXall appreciates the opportunity to provide the Commission with its perspective on the Proposed Rulemakings. If you have any questions regarding our comments, please contact the undersigned at 202-261-6538.

Thank you for the opportunity to comment on the SEF rulemaking.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wayne Pestone'.

Wayne Pestone
Chief Regulatory Officer

§ 37.9 Permitted execution methods.

(a) Definitions.

(1) As used in this part 37:

(i) *Order Book* means:

(A) An electronic trading facility, as that term is defined in section 1a(16) of the Act;

(B) A trading facility, as that term is defined in section 1a(51) of the Act;

(C) A trading system or platform in which all market participants in the trading system or platform can enter multiple bids and offers, observe bids and offers entered by other market participants, and choose to transact on such bids and offers; or

(D) Any such other trading system or platform as may be determined by the Commission.

(ii) *Request for Quote System* means:

(A) A trading system or platform in which a market participant ~~may~~ must transmit a request for a quote to buy or sell a specific instrument to at least one and up to a maximum number of market participants no less than five market participants in the trading system or platform, to which all such market participants may respond; provided that that maximum number of market participants shall be determined by the trading system or platform in its discretion, so long as such maximum number is no less than five; ~~Any bids or offers resting on the trading system or platform pertaining to the same instrument must be taken into account and communicated to the requester along with the responsive quotes;~~ or

(B) A trading system or platform in which multiple market participants can both:

(1) View real-time electronic streaming quotes, ~~both firm and indicative,~~ from multiple potential counterparties on a centralized electronic screen; and

(2) Have the option to complete a transaction by:

(i) Accepting a firm streaming quote, or

(ii) Transmitting an offer to deal to a market participant ~~a request for quote to no less than five market participants,~~ based upon an indicative streaming quote, ~~taking into account any resting bids or offers that have been communicated to the requester along with any responsive quotes;~~ or

(C) Any such other trading system or platform as may be determined by the Commission.

(iii) *Voice-Based System* means a trading system or platform in which a market participant executes or trades a Permitted Transaction using a telephonic line or other voice-based service.

(iv) *Required Transactions* means transactions that are subject to the execution requirements under this Act and are made available for trading pursuant to § 37.10, and are not block trades.

(v) *Permitted Transactions* means transactions that meet any of these requirements:

- (A) Are block trades;
- (B) Are not swaps subject to the Act's clearing and execution requirements, or
- (C) Are illiquid or bespoke swaps.

(b) *Required Transactions.*

(1) Required Transactions may be executed on a swap execution facility through (A) an Order Book System or (B) a Request for Quote System or (C) both an Order Book System and a Request for Quote System, as determined in the discretion of the swap execution facility ~~Order Book or a Request for Quote System.~~

(2) ~~An applicant seeking registration as a swap execution facility must, at a minimum, offer trading services to facilitate Required Transactions by providing market participants with the ability to post both firm and indicative quotes on a centralized electronic screen accessible to all market participants who have access to the swap execution facility.~~

(23) Swap execution facilities must require that traders who have the ability to execute against a customer's order or to execute two customers against each other through an Order Book System be subject to a 15-second timing delay between the entry of those two orders, determined by the swap execution facility such that one side of the potential transaction is disclosed and made available to other market participants before the second side of the potential transaction (whether for the trader's own account or for a second customer), is submitted for execution.

(34) The Commission may, in its discretion, determine to ~~require~~ permit the swap execution facility to provide its participants a different trading method for a particular swap.

(c) *Permitted Transactions.*

(1) Permitted Transactions may be executed by an Order Book, Request for Quote System, a Voice-Based System, or any such other system for trading or executing of swaps as may be offered by a swap execution facility unless such system is expressly prohibited ~~permitted~~ by the Commission.

(2) ~~If a~~ registered swap execution facility ~~may submit a request to the Commission~~ intends to offer trading services to facilitate Permitted Transactions. ~~When submitting such request,~~ the swap execution facility must certify to the Commission its compliance with § 37.11.

Subpart P--Designation of Chief Compliance Officer

Sec. 37.1500 Core Principle 15--Designation of Chief Compliance Officer.

(a) *In general.* Each swap execution facility shall designate an individual to serve as a chief compliance officer.

(b) *Duties.* The chief compliance officer shall:

(1) Report directly to the board or to the senior officer of the facility;

(2) Review compliance with the core principles in this subsection;

(3) In consultation with the board of the facility, a body performing a function similar to that of a board, or the senior officer of the facility, establish reasonable procedures for the resolution of conflicts of interest and facilitate the board or senior officer's responsibility to resolve any conflicts of interest that may arise;

(4) Be responsible for establishing and administering the policies and procedures required to be established pursuant to this section;

(5) Ensure Monitor compliance through the establishment, maintenance and review of compliance policies and procedures reasonably designed to achieve compliance with the Act and the rules and regulations issued under the Act, including rules prescribed by the Commission pursuant to this section; and

(6) Establish procedures for the remediation of noncompliance issues found during compliance office reviews, look backs, internal or external audit findings, self-reported errors, or through validated complaints.

(c) *Requirements for procedures.* In establishing procedures under paragraph (b)(6) of this section, the chief compliance officer shall design the procedures to establish the handling, management response, remediation, retesting, and closing of noncompliance issues.

(d) *Annual reports.* (1) In general. In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of:

(i) The compliance of the swap execution facility with the Act; and (ii) The policies and procedures, including the code of ethics and conflict of interest policies, of the swap execution facility.

(2) Requirements. The chief compliance officer shall:

(i) Submit each report described in clause (1) with the appropriate financial report of the swap execution facility that is required to be submitted to the Commission pursuant to this section; and

(ii) Include in the report a certification by the senior officer that, under penalty of law, the report is accurate and complete.

Sec. 37.1501 Chief Compliance Officer.

(a) Definitions

(1) ~~of~~ Board of Directors. For purposes of this part 37, the term “board of directors” means the board of directors of a registered swap execution facility, or for those swap execution facilities whose organizational structure does not include a board of directors, a body performing a function similar to a board of directors.

(2) Senior Officer. For purposes of this ~~subpart P to~~ part 37, the term “senior officer” shall include the president, chief executive officer, chief legal officer, and other officer with ultimate supervisory authority. The senior officer shall be a person whose position within the swap execution facility has clear authority to supervise the swap execution facility’s business units or personnel and has oversight of the chief compliance officer’s responsibilities. The senior officer shall have supervisory authority over all staff acting in furtherance of the swap execution facility’s statutory, regulatory, and self-regulatory obligations. The senior office is responsible for the enforcement of the policies and procedures established and administered by the chief compliance officer as required to be established pursuant to this section.

(b) Designation and qualifications of chief compliance officer.

(1) Chief Compliance Officer Required. Each registered swap execution facility shall establish the position of chief compliance officer, and designate an individual to serve in that capacity.

(i) The position of chief compliance officer shall carry with it the authority and resources to ~~develop and enforce~~ establish, maintain, modify, review and test the effectiveness of, in consultation with the board of directors or the senior officer, appropriate compliance policies and procedures necessary ~~reasonably designed to fulfill~~ the duties set forth for chief compliance officers in the Act and Commission regulations.

(ii) The chief compliance officer shall have supervisory authority only over all staff in the chief compliance officer’s office acting in furtherance of the chief compliance officer’s statutory, regulatory, and self-regulatory obligations. The designation of the chief compliance officer shall not result in the chief compliance officer being deemed a business line supervisor or otherwise having supervisory authority over business line personnel.

(2) Qualifications of Chief Compliance Officer. The individual designated to serve as chief compliance officer shall have the background and skills appropriate for fulfilling the responsibilities of the position.

(~~3~~) No individual disqualified from registration pursuant to Sections 8a(2) or 8a(3) of the Act may serve as a chief compliance officer.

~~(ii) The chief compliance officer may not be a member of the swap execution facility's legal department and may not serve as its general counsel.~~

(c) Appointment, Supervision, and Removal of Chief Compliance Officer. (1) Appointment and Compensation of Chief Compliance Officer Determined by Board of Directors. A registered swap execution facility's chief compliance officer shall be appointed by its board of directors or senior officer if the swap execution facility does not have a board of directors. The board of directors or senior officer, as applicable, must also approve the compensation of the chief compliance officer and shall meet with the chief compliance officer at least annually. The chief compliance officer shall also meet with the regulatory oversight committee, as defined in Sec. 37.19(b), at least quarterly. The chief compliance officer shall provide any information regarding the swap execution facility's regulatory program that is requested by the board of directors or the regulatory oversight committee. If the swap execution facility has a board of directors, ~~the~~ appointment of the chief compliance officer and approval of the chief compliance officer's compensation shall require the approval of a majority of the board of directors. ~~The senior officer of the swap execution facility may fulfill these responsibilities.~~ A swap execution facility shall notify the Commission of the appointment of a new chief compliance officer within two business days of such appointment.

(2) Supervision of Chief Compliance Officer. A swap execution facility's chief compliance officer shall report directly to the board of directors or to the senior officer of the swap execution facility, at the swap execution facility's discretion.

(3) Removal of Chief Compliance Officer by Board of Directors. Removal of a registered swap execution facility's chief compliance officer shall require the approval of a majority of the swap execution facility's board of directors. If the swap execution facility does not have a board of directors, then the chief compliance officer may be removed by the senior officer of the swap execution facility. The swap execution facility shall notify the Commission and explain the reasons for the departure within two business days. The swap execution facility shall immediately appoint an interim chief compliance officer, and shall appoint a permanent chief compliance officer as soon as reasonably practicable. The swap execution facility shall notify the Commission within two business days of appointing any new chief compliance officer, whether interim or permanent.

(d) Duties of Chief Compliance Officer. The chief compliance officer's duties shall include, but are not limited to, the following:

~~(1) Overseeing and r~~ Reviewing the swap execution facility's compliance with Section 5h of the Act and any related rules adopted by the Commission;

(2) In consultation with the board of directors, a body performing a function similar to the board, or the senior officer of the swap execution facility, establish reasonable procedures for the resolution of conflicts of interest and facilitate the board or senior officer's responsibility in resolving any conflicts of interest that may arise:

~~(i) Conflicts between business considerations and compliance requirements;~~

~~(ii) Conflicts between business considerations and the requirement that the registered swap execution facility provide fair, open, and impartial access as set forth in Sec. 37.202 of this part; and;~~

~~(iii) Conflicts between a registered swap execution facility's management and members of the board of directors;~~

(3) Establishing and administering written policies and procedures reasonably designed to prevent violation of the Act and any rules adopted by the Commission under Section 5h of the Act;

(4) Ensuring compliance with the Act and Commission regulations relating to agreements, contracts, or transactions, and with Commission regulations under Section 5h of the Act. For purposes of the Act and this Sec. 37.1500, "ensuring compliance" shall mean taking reasonable steps to establish, maintain, review, modify, monitor and test the effectiveness of compliance policies required pursuant to this Sec. 37.1500.

(5) Establishing procedures for the remediation of noncompliance issues identified by the chief compliance officer through a compliance office review, look-back, internal or external audit finding, self-reported error, or validated complaint;

~~(6) Establishing and following and monitoring implementation of appropriate reasonably designed procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues;~~

(7) Establishing a compliance manual reasonably designed to promote compliance with the applicable laws, rules, and regulations and administering a written code of ethics reasonably designed to prevent ethical violations and to promote honesty and ethical conduct;

~~(8) Supervising-Monitoring~~ the swap execution facility's self-regulatory program with respect to trade practice surveillance; market surveillance; real-time market monitoring; compliance with audit trail requirements; enforcement and disciplinary proceedings; audits, examinations, and other regulatory responsibilities with respect to members and market participants (including ensuring compliance with, if applicable, financial integrity, financial reporting, sales practice, recordkeeping, and other requirements); and

~~(9) Supervising-Monitoring~~ the effectiveness and sufficiency of any regulatory services provided to the swap execution facility by a registered futures association or other registered entity in accordance with Sec. 37.204.

(e) *Annual Compliance Report Prepared by Chief Compliance Officer.* The chief compliance officer shall, not less than annually, prepare an annual compliance report, that at a minimum, contains the following information covering the time period since the date on which the swap execution facility became registered with the Commission or since the end of the period covered by a previously filed annual compliance report, as applicable:

(1) A description of the registered swap execution facility's written policies and procedures, including the code of ethics and conflict of interest policies;

~~(2) A review of applicable Commission regulations and each subsection and core principle of Section 5h of the Act, that, with respect to each:~~

~~(i) Identifies the policies and procedures that ensure compliance with each subsection and the core principle, including each duty specified in Section 5h(f)(15)(B);~~

~~(ii) Provides a self-assessment as to the effectiveness of these policies and procedures; and~~

~~(iii) Discusses areas for improvement, and recommends potential or prospective changes or improvements to its compliance program and resources;~~

~~(32) A list of any material changes to compliance policies and procedures since the last annual compliance report;~~

~~(43) A description of how the policies and procedures address the applicable requirements for swap execution facilities contained in the Act and the applicable Commission regulations the financial, managerial, and operational resources set aside for compliance with respect to the Act and Commission regulations, including a description of the registered swap execution facility's self-regulatory program's staffing and structure, a catalogue of investigations and disciplinary actions taken since the last annual compliance report, and a review of the performance of disciplinary committees and panels;~~

~~(54) A description of any material compliance matters, including material noncompliance issues, with respect to applicable provisions of the Act and related Commission regulations identified through a compliance office review, look-back, internal or external audit finding, self-reported error, or validated complaint, and explains how they were resolved; and~~

~~(56) Any objections to the annual compliance report by those persons who have oversight responsibility for the chief compliance officer; and~~

~~(67) A certification by the chief compliance senior officer that, to the best of his or her knowledge and reasonable belief, and under penalty of law, the annual compliance report is accurate and complete.~~

(f) Submission of Annual Compliance Report by Chief Compliance Officer to the Commission.

(1) Prior to submission of the annual compliance report to the Commission, the chief compliance officer shall provide the annual compliance report to the board of the registered swap execution facility for its review. If the swap execution facility does not have a board, then the annual compliance report shall be provided to the senior officer for their review. ~~Members of the board and the senior officer may not require the chief compliance officer to make any changes to the report.~~ Submission of the report to the board or the senior officer, and any subsequent discussion of the report, shall be recorded in board minutes or similar written record, as evidence of compliance with this requirement.

(2) The annual compliance report shall be provided electronically to the Commission not more than 60 days after the end of the registered swap execution facility's fiscal year.

(3) Promptly upon discovery of any material error or omission made in a previously filed compliance report, the chief compliance officer shall file an amendment with the Commission to correct any material error or omission. An amendment shall contain the oath or certification required under paragraph (e)(75) of this section.

(4) A registered swap execution facility may request the Commission for an extension of time to file its compliance report based on substantial, undue hardship. Extensions for the filing deadline may be granted at the discretion of the Commission.

(5) Annual compliance reports filed pursuant to this section will be treated as exempt from mandatory public disclosure for purposes of the Freedom of Information Act and the Government in the Sunshine Act and parts 145 and 147 of this chapter, but will be available for official use by any official or employee of the United States and any State, by any self-regulatory organization of which the person filing the report is a member, and by any other person to whom the Commission believes disclosure is in the public interest.

(g) *Recordkeeping.* (1) The registered swap execution facility must maintain:

(i) A copy of the written policies and procedures, including the code of ethics and conflicts of interest policies adopted in furtherance of compliance with the Act and Commission regulations;
(ii) Copies of all materials created in furtherance of the chief compliance officer's duties listed in paragraphs (d)(6) and (d)(7) of this section, including records of any investigations or disciplinary actions taken by the swap execution facility;

(iii) Copies of all materials, including written reports provided to the board of directors or senior officer in connection with the review of the annual compliance report under paragraph (f)(1) of this section and the board minutes or similar written record of such review, that record the submission of the annual compliance report to the board of directors or senior officer; and

(iv) Any records relevant to the registered swap execution facility's annual compliance report, including, but not limited to, work papers and other documents that form the basis of the report, and memoranda, correspondence, other documents, and records that are (A) created, sent or received in connection with the annual compliance report and (B) contain conclusions, opinions, analyses, or financial data related to the annual compliance report.

(2) The registered swap execution facility shall maintain records in accordance with Sec. 1.31 and part 45 of this chapter.

Subpart B--Compliance With Core Principles

§. 37.100 Core Principle 1--Compliance with Core Principles.

(a) *In general.* To be registered, and maintain registration, as a swap execution facility, the swap execution facility shall comply with--

- (1) All core principles described in Section 5h of the Act; and
- (2) Any requirement that the Commission may impose by rule or regulation pursuant to Section 8a(5) of the Act.

(b) *Reasonable Discretion of a Swap Execution Facility.* Unless otherwise determined by the Commission by rule or regulation, a swap execution facility described in paragraph (a) of this section shall have reasonable discretion in establishing the manner in which the swap execution facility complies with the core principles described in Section 5h of the Act, including as provided for in § 37.101.

§ 37.101 Delegation and Contracting of Compliance with Core Principles

(a) Delegation or contracting to third-parties permitted. (1) A swap execution facility may choose to either delegate to or contract with a registered futures association or another registered entity, as such terms are defined under the Act, (collectively, “regulatory service provider”) the provision of regulatory services to assist in complying with the core principles. Any swap execution facility that chooses to delegate to or contract with a regulatory service provider must verify that its regulatory service provider has the capacity and resources necessary to provide timely and effective regulatory services, including adequate staff and automated surveillance systems.

(1) A swap execution facility may delegate or contract for the provision of responsibilities associated with, but not limited to, § 37.203(b) (rule enforcement program), § 37.203(d) (trade practice surveillance), § 37.203(e) (market surveillance and real-time market monitoring), § 37.203(f) (investigations of possible rule violations), § 37.205 (disciplinary procedures and actions), and 37.703 (monitoring for financial soundness).

(2) A swap execution facility that contracts the provision of services will at all times remain responsible for the performance of any regulatory services received, for compliance with the swap execution facility’s obligations under the Act and Commission regulations, and for the regulatory service provider’s performance on its behalf.

(b) Duty to supervise third party. A swap execution facility that elects to contract the provision of services with a regulatory service provider must retain sufficient compliance staff to supervise the quality and effectiveness of the services provided on its behalf. Compliance staff of the swap execution facility must hold regular meetings with the regulatory service provider to discuss ongoing investigations, trading patterns, market participants, and any other matters of regulatory concern. A swap execution facility must also conduct periodic reviews of the adequacy and effectiveness of services provided on its behalf. Such reviews must be documented and made available to the Commission upon request.

(c) Regulatory decisions required from the swap execution facility. A swap execution facility that chooses to delegate any specific responsibilities associated with compliance with the core principles to a regulatory service provider cedes exclusive authority in the substantive decisions made by its regulatory service provider related to those enumerated delegated responsibilities, including but not limited to decisions involving the cancellation of trades, the decision to open an investigation into a possible rule violation, the issuance of disciplinary charges against members or market participants, and denials of access to the trading platform for disciplinary reasons.

A swap execution facility that elects to contract the provision of services with a regulatory service provider must retain exclusive authority in all substantive decisions made by its regulatory service provider, including but not limited to decisions involving the cancellation of trades, the issuance of disciplinary charges against members or market participants, and denials of access to the trading platform for disciplinary reasons. A swap execution facility must document any instances where its actions differ from those recommended by its regulatory service provider.

Subpart C--Compliance With Rules

§ 37.200 Core Principle 2--Compliance with rules.

A swap execution facility shall:

- (a) Establish and enforce compliance with any rule of the swap execution facility, including the terms and conditions of the swaps traded or processed on or through the swap execution facility and any limitation on access to the swap execution facility;
- (b) Establish and enforce trading, trade processing, and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means to provide market participants with impartial access to the market and to capture information that may be used in establishing whether rule violations have occurred;
- (c) Establish rules governing the operation of the facility, including rules specifying trading procedures to be used in entering and executing orders traded or posted on the facility, including block trades; and
- (d) Provide by its rules that, when a swap dealer or major swap participant enters into or facilitates a swap that is subject to the mandatory clearing requirement of Section 2(h), the swap dealer or major swap participant shall be responsible for compliance with the mandatory trading requirement under Section 2(h)(8) of the Act; provided, however, that a swap execution facility shall not be obligated to monitor for a swap dealer or major swap participant's compliance with the clearing requirement of Section 2(h) of the Act unless the swap execution facility has detected a violation or potential violation of Section 2(h) of the Act in the ordinary course of its audit trail reviews, trade practice surveillance, market surveillance, or real-time market monitoring activities, or a violation or potential violation has otherwise been brought to the attention of the swap execution facility.

§ 37.201 Operation of swap execution facility and compliance with rules.

(a) A swap execution facility must establish rules governing the operation of the swap execution facility, including, but not limited to, rules specifying trading procedures to be followed by members and market participants when entering and executing orders traded or posted on the swap execution facility, including block trades, as defined in part 45 of this chapter, if offered.

(b) A swap execution facility must establish and impartially enforce compliance with the rules of the swap execution facility, including, but not limited to--

(1) The terms and conditions of any swaps traded or processed on or through the swap execution facility;

(2) Access to the swap execution facility;

(3) Trade practice rules;

(4) Audit trail requirements; and

(5) Disciplinary rules; and

(6) ~~Mandatory clearing requirements.~~

§ 37.202 Access requirements.

(a) *Impartial access by members and market participants.* A swap execution facility shall provide any eligible contract participant and any independent software vendor with impartial access to its market(s) and market services (including any indicative quote screens or any similar pricing data displays), providing--

(1) Criteria that are impartial, transparent, and applied in a fair and nondiscriminatory manner;

(2) A process by which participants provide the swap execution facility with written or electronic confirmation of their status as eligible contract participants, as defined by the Act and Commission regulations, prior to being granted access to the swap execution facility; and

(3) Comparable fees for participants receiving comparable access to, or services from, a swap execution facility.

(b) *Jurisdiction.* Prior to granting any eligible contract participant access to its facilities, a swap execution facility must require that the eligible contract participant consents to its jurisdiction.

(c) *Limitations on access.* (1) A swap execution facility must establish and impartially enforce rules governing any decision to allow, deny, suspend, or permanently bar participants' access to the swap execution facility, including such decisions when made as part of a disciplinary or emergency action taken by the swap execution facility.

(2) A swap execution facility may require a participant to:

(i) Agree to comply with the rules, policies, and procedures of the swap execution facility; and/or

(ii) Submit to the jurisdiction of any regulatory service provider exclusively for the purpose of the regulatory service provider's ability to perform the relevant responsibilities or services.

§ 37.203 Rule enforcement program.

A swap execution facility must establish and enforce trading, trade processing, and participation rules that will deter abuses and it must have the capacity to detect, investigate and enforce those rules unless otherwise delegated or contracted to a regulatory service provider pursuant to § 37.101.

(a) *Abusive Trading Practices Prohibited.* A swap execution facility must prohibit abusive trading practices on its markets by members and market participants. ~~Specific trading practices that must be prohibited by all swap execution facilities include front running, wash trading, pre-arranged trading, fraudulent trading, money passes and any other trading practices that a swap execution facility may deem to be abusive.~~ In addition, a swap execution facility also must prohibit any other manipulative or disruptive trading practices prohibited by the Act or by the Commission pursuant to Commission regulation. Swap execution facilities that permit intermediation must prohibit customer-related abuses including, but not limited to, trading ahead of customer orders, trading against customer orders, accommodation trading, and improper cross trading.

(b) *Capacity to Detect and Investigate Rule Violations:* A swap execution facility must have arrangements and resources for effective enforcement of its rules. Such arrangements may include rules requiring its participants to furnish to the swap execution facility or a regulatory service provider pursuant to § 37.101, upon the request of and in the sole discretion of the swap execution facility or regulatory service provider, and in the form and manner prescribed by the swap execution facility or regulatory service provider, any information necessary to permit the swap execution facility or regulatory service provider to perform its responsibilities under this section, including, without limitation, surveillance, investigations, examinations and discipline of participants.

(c) *Compliance Staff and Resources.* (1) *Sufficient compliance staff.* A swap execution facility must establish and maintain sufficient compliance department resources and staff to ensure that it can conduct effective audit trail reviews, trade practice surveillance, market surveillance and real-time market monitoring unless otherwise delegated or contracted to a regulatory service provider pursuant to § 37.101. The swap execution facility's compliance staff must also be sufficient to address unusual market or trading events as they arise, and to conduct and complete investigations in a timely manner, as set forth in § 37.203(af).

(2) *Ongoing monitoring of compliance staff resources.* A swap execution facility must monitor the size and workload of its compliance staff on a continuous basis and, on at least an annual

basis, formally evaluate the need to increase its compliance resources and staff. In determining the appropriate level of compliance resources and staff, the swap execution facility should consider trading volume increases, the number of new products or swaps listed for trading, any new responsibilities assigned to compliance staff, the results of any internal review demonstrating that work is not completed in an effective or timely manner, the recommendation of any Commission rule enforcement review or evaluation of the swap execution facility and any other factors suggesting the need for increased resources and staff.

(d) *Automated Trade Surveillance System.* A swap execution facility must maintain an automated trade surveillance system capable of detecting and investigating potential trade practice violations, unless otherwise delegated or contracted to a regulatory service provider pursuant to § 37.101. Such system must maintain all data reflecting the details of each order entered into the trading system or platform, including all order modifications and cancellations, and maintain all data reflecting transactions executed on the swap execution facility. The automated system must load and process daily orders and trades no later than 24 hours after the completion of the trading day. In addition, the automated trade surveillance system must have the capability to detect and flag specific trade execution patterns and trade anomalies; compute, retain, and compare trading statistics; compute trade gains, losses, and futures-equivalent positions; reconstruct the sequence of market activity; perform market analyses; and enable system users to perform in-depth analyses and ad hoc queries of trade-related data.

(e) *Real-time Market Monitoring.* A swap execution facility must conduct real-time market monitoring of all trading activity on its electronic trading platform(s) to ensure orderly trading and identify any market or system anomalies. A swap execution facility must have the authority to adjust trade prices or cancel trades when necessary to mitigate market disrupting events caused by malfunctions in its electronic trading platform(s) or errors in orders submitted by members and market participants. Any trade price adjustments or trade cancellations must be transparent to the market and subject to standards that are clear, fair, and publicly available.

(f) *Investigations and Investigation Reports.* (1) *Procedures.* A swap execution facility must establish and maintain procedures that require its compliance staff to conduct investigations of possible rule violations, unless otherwise delegated or contracted to a regulatory service provider pursuant to § 37.101. An investigation must be commenced upon the receipt of a request from Commission staff or upon the discovery or receipt of information (such as data produced by automated surveillance systems) by the swap execution facility that, in the judgment of its compliance staff, indicates a possible basis for finding that a violation has occurred or will occur.

(2) *Timeliness.* Each compliance staff investigation must be completed in a timely manner. Absent mitigating factors, a timely manner is no later than 12 months after the date that an investigation is opened. Mitigating factors that may reasonably justify an investigation taking longer than 12 months to complete include but are not limited to the complexity of the investigation, the number of firms or individuals involved as potential wrongdoers, the number of potential violations to be investigated, and the volume of documents and data to be examined and analyzed by compliance staff.

(3) *Investigation reports when a reasonable basis exists for finding a violation.* Compliance staff must submit a written investigation report for disciplinary action in every instance in

which compliance staff determines from surveillance or from an investigation that a reasonable basis exists for finding a rule violation. The investigation report must include the reason the investigation was initiated; a summary of the complaint, if any; the relevant facts; compliance staff's analysis and conclusions; and a recommendation as to whether disciplinary action should be pursued. The report must also include the member or market participant's disciplinary history at the swap execution facility, including copies of warning letters.

(4) *Investigation reports when no reasonable basis exists for finding a violation.* If after conducting an investigation compliance staff determines that no reasonable basis exists for finding a violation, it must prepare a written report including the reason the investigation was initiated; a summary of the complaint, if any; the relevant facts; compliance staff's analysis and conclusions; and if applicable, any recommendation that a disciplinary committee issue a warning letter be issued in accordance with § 37.203(f)(5). If compliance staff recommends that a warning letter be issued to a member or market participant pursuant to § 37.203(f)(5), the investigation report must include a copy of the letter as well as the member or market participant's disciplinary history at the swap execution facility, including copies of warning letters.

(5) *Warning letters.* In addition to the action required to be taken under § § 37.203(f)(3) and 37.203(f)(4), the rules of a swap execution facility may authorize compliance staff to issue a warning letter to a person or entity under investigation or to recommend that a disciplinary committee take such an action. A warning letter issued in accordance with this section is not a penalty or an indication that a finding of a violation has been made. A copy of any warning letters issued by compliance staff must be included in the investigation report required by § § 37.203(f)(3) and 37.203(f)(4). No more than one warning letter for the same potential violation may be issued to the same person or entity during a rolling 12-month period.

(g) *Additional Rules Required.* A swap execution facility must~~may~~ adopt and enforce any additional rules that it believes are necessary to comply with the requirements of § 37.203.

(h) Delegation or Contracting of Rule Enforcement Program. The rule enforcement program described in this § 37.203 may be implemented by the swap execution facility itself or through delegation to or contracting with a regulatory service provider as provided in § 37.101. If the swap execution delegates or contracts for the rule enforcement responsibility with a regulatory service provider, such regulatory service provider should have the capacity and authority to carry out such program, and the swap execution facility should retain appropriate supervisory authority over the regulatory service provider.

~~§ 37.204 Regulatory services provided by a third party.~~

~~(a) Use of third party provider permitted.~~ A swap execution facility may choose to contract with a registered futures association or another registered entity, as such terms are defined under the Act, (collectively, "regulatory service provider"), for the provision of services to assist in complying with the core principles, as approved by the Commission. Any swap execution facility that chooses to contract with a regulatory service provider must ensure that its regulatory service provider has the capacity and resources necessary to provide timely and effective regulatory services, including adequate staff and automated surveillance systems. A swap

execution facility will at all times remain responsible for the performance of any regulatory services received, for compliance with the swap execution facility's obligations under the Act and Commission regulations, and for the regulatory service provider's performance on its behalf.

(b) Duty to supervise third party. A swap execution facility that elects to use the service of a regulatory service provider must retain sufficient compliance staff to supervise the quality and effectiveness of the regulatory services provided on its behalf. Compliance staff of the swap execution facility must hold regular meetings with the regulatory service provider to discuss ongoing investigations, trading patterns, market participants, and any other matters of regulatory concern. A swap execution facility must also conduct periodic reviews of the adequacy and effectiveness of services provided on its behalf. Such reviews must be documented carefully and made available to the Commission upon request.

(c) Regulatory decisions required from the swap execution facility. A swap execution facility that elects to use the service of a regulatory service provider must retain exclusive authority in all substantive decisions made by its regulatory service provider, including but not limited to decisions involving the cancellation of trades, the issuance of disciplinary charges against members or market participants, denials of access to the trading platform for disciplinary reasons, and any decision to open an investigation into a possible rule violation. A swap execution facility must document any instances where its actions differ from those recommended by its regulatory service provider.

§ 37.2054 Audit trail.

A swap execution facility must establish procedures to capture and retain information that may be used in establishing whether rule violations have occurred.

(a) Audit Trail Required. A swap execution facility must capture and retain all audit trail data necessary to detect, investigate and prevent customer and market abuses. Such data must be sufficient to reconstruct all transactions within a reasonable period of time and to provide evidence of any violations of the rules of the swap execution facility. An acceptable audit trail must also permit the swap execution facility to track a customer order from the time of receipt through fill, allocation, or other disposition, and must include both order and trade data.

(b) Elements of an Acceptable Audit Trail Program. (1) Original source documents. A swap execution facility's audit trail must include original source documents. Original source documents include unalterable, sequentially-identified records on which trade execution information is originally recorded, whether recorded manually or electronically. Records for customer orders (whether filled, unfilled or cancelled, each of which shall be retained or electronically captured) must reflect the terms of the order, a unique account identifier that relates back to the account(s) owner(s) and the time of order entry. Swap execution facilities that permit intermediation must require that all orders or requests for quotes received by phone that are executable be immediately entered into the trading system or platform. If an order or request for quote cannot be immediately entered into the trading system or platform, an electronic record that includes the account identifier that relates to the account owner, time of receipt, and terms of

the order or request for quote must immediately be created, and the order or request for quote must be entered into the trading system or platform as soon as practicable.

(2) *Transaction history database.* A swap execution facility's audit trail program must include an electronic transaction history database. An adequate transaction history database includes a history of all orders and trades, and also includes:

(i) All data that are input into the trade entry or matching system for the transaction to match and clear;

(ii) The categories of participant for which each trade is executed, including whether the person executing a trade was executing it for his/her own account or an account for which he/she has discretion, his/her clearing member's house account, the account of another member or the account of any other customer;

(iii) Timing and sequencing data adequate to reconstruct trading; and

(iv) Identification of each account to which fills are allocated.

(3) *Electronic analysis capability.* A swap execution facility's audit trail program must include electronic analysis capability with respect to all audit trail data in the transaction history database. An adequate electronic analysis capability must permit the sorting and presentation of data in the transaction history database so as to reconstruct trading and identify possible trading violations with respect to both customer and market abuse.

(4) *Safe storage capability.* A swap execution facility's audit trail program must include the capability to safely store all audit trail data retained in its transaction history database. Such safe storage capability must include the capability to store all data in the database in a manner that protects it from unauthorized alteration, as well as from accidental erasure or other loss. Data must be retained in accordance with the recordkeeping requirements of Core Principle 10 for swap execution facilities and the associated regulations in subpart K of this part 37.

(c) *Enforcement of Audit Trail Requirements.* (1) *Annual audit trail and recordkeeping reviews.* A swap execution facility must enforce its audit trail and recordkeeping requirements through ~~at least annual~~ reviews of all members and market participants to verify their compliance with the swap execution facility's audit trail and recordkeeping requirements unless otherwise delegated or contracted to a regulatory service provider pursuant to § 37.101. ~~Such reviews must include, but are not limited to, reviews of randomly selected samples of front-end audit trail data for order routing systems; a review of the process by which user identifications are assigned and user identification records are maintained; a review of usage patterns associated with user identifications to monitor for violations of user identification rules; and reviews of account numbers and customer type indicator codes in trade records to test for accuracy and improper use.~~

(2) *Enforcement program required.* A swap execution facility must establish a program for effective enforcement of its audit trail and recordkeeping requirements, unless otherwise delegated or contracted to a regulatory service provider pursuant to § 37.101. An effective program must identify members and market participants that have failed to maintain high

levels of compliance with such requirements, and levy meaningful sanctions when deficiencies are found. Sanctions must be sufficient to deter recidivist behavior, and may not include more than one warning letter for the same violation within a rolling twelve month period.

§ 37.2056 Disciplinary procedures and sanctions.

(a) In General. (1) The swap execution facility shall establish and enforce disciplinary rules and procedures that authorize the swap execution facility staff to recommend and discipline members or market participants that violate the rules of the swap execution facility, or similar methods for performing the same functions, including delegation or contracting of the functions with a regulatory service provider as provided in § 37.101.

(2) The swap execution facility or regulatory service provider to whom such responsibilities are delegated or contracted shall specify the sanctions that may be imposed upon participants for violations of the rules of the swap execution facility such that each sanction is commensurate with the corresponding violation. The sanctions may include the issuance of warning letters or fines, or of suspending or expelling members or market participants.

(3) The swap execution facility or regulatory service provider to whom such responsibilities are delegated or contracted shall establish fair and non-arbitrary procedures for any disciplinary process and appeal thereof.

~~A swap execution facility must establish trading, trade processing, and participation rules that will deter abuses and have the capacity to enforce such rules through prompt and effective disciplinary action.~~

~~(a) Enforcement staff. A swap execution facility must establish and maintain sufficient enforcement staff and resources to effectively and promptly prosecute possible rule violations within the disciplinary jurisdiction of the swap execution facility. A swap execution facility must also monitor the size and workload of its enforcement staff annually, and increase its enforcement resources and staff as appropriate. The enforcement staff may not include either members of the swap execution facility or persons whose interests conflict with their enforcement duties. A member of the enforcement staff may not operate under the direction or control of any person or persons with trading privileges at the swap execution facility. A swap execution facility's enforcement staff may operate as part of the swap execution facility's compliance department.~~

~~(b) Disciplinary panels. (1) Disciplinary panels required. A swap execution facility must establish one or more Review Panels and one or more Hearing Panels (collectively, "disciplinary panels") that are authorized to fulfill their obligations under the rules of this Subpart. Disciplinary panels must meet the composition requirements of § 40.9(c)(3)(ii), and must not include any members of the swap execution facility's compliance staff, or any person involved in adjudicating any other stage of the same proceeding.~~

(2) *Review panels.* A swap execution facility's Review Panel(s) must be responsible for determining whether a reasonable basis exists for finding a violation of swap execution facility rules, and for authorizing the issuance of notices of charges against persons alleged to have committed violations if the Review Panel believes that the matter should be adjudicated.

(3) *Hearing Panels.* A swap execution facility's Hearing Panel(s) must be responsible for adjudicating disciplinary cases pursuant to a notice of charges authorized by a Review Panel, and must also be responsible for such other duties as are specified in this Subpart.

(c) *Review of investigation report.* Promptly after receiving a completed investigation report pursuant to § 37.203(f)(3), a Review Panel must promptly review the report and, within 30 days of such receipt, must take one of the following actions:

(1) If the Review Panel determines that additional investigation or evidence is needed, it must promptly direct the compliance staff to conduct further investigation.

(2) If the Review Panel determines that no reasonable basis exists for finding a violation or that prosecution is otherwise unwarranted, it may direct that no further action be taken. Such determination must be in writing, and must include a written statement setting forth the facts and analysis supporting the decision.

(3) If the Review Panel determines that a reasonable basis exists for finding a violation and adjudication is warranted, it must direct that the person or entity alleged to have committed the violation be served with a notice of charges and must proceed in accordance with the rules of this section.

(d) *Notice of charges.* A notice of charges must adequately state the acts, conduct, or practices in which the respondent is alleged to have engaged; state the rule, or rules, alleged to have been violated (or about to be violated); and prescribe the period within which a hearing on the charges may be requested. The notice must also advise the respondent charged that he is entitled, upon request, to a hearing on the charges; and if the rules of the swap execution facility so provide:

(1) The failure to request a hearing within the period prescribed in the notice, except for good cause, may be deemed a waiver of the right to a hearing; and

(2) The failure to answer or to deny expressly a charge may be deemed to be an admission of such charge.

(e) *Right to representation.* Upon being served with a notice of charges, a respondent must have the right to be represented by legal counsel or any other representative of its choosing in all succeeding stages of the disciplinary process.

(f) *Answer to charges.* A respondent must be given a reasonable period of time to file an answer to a notice of charges. The rules of a swap execution facility may require that:

(1) The answer must be in writing and include a statement that the respondent admits, denies, or does not have and is unable to obtain sufficient information to admit or deny each allegation. A statement of a lack of sufficient information shall have the effect of a denial of an allegation;

(2) Failure to file an answer on a timely basis shall be deemed an admission of all allegations contained in the notice of charges; and

(3) Failure in an answer to deny expressly a charge shall be deemed to be an admission of such charge.

(g) *Admission or failure to deny charges.* The rules of a swap execution facility may provide that if a respondent admits or fails to deny any of the charges, a Hearing Panel may find that the violations alleged in the notice of charges for which the respondent admitted or failed to deny any of the charges have been committed. If the swap execution facility's rules so provide, then:

(1) The Hearing Panel must impose a sanction for each violation found to have been committed;

(2) The Hearing Panel must promptly notify the respondent in writing of any sanction to be imposed pursuant to § 37.206(g)(1) and advise the respondent that it may request a hearing on such sanction within a specified period of time;

(3) The rules of a swap execution facility may provide that if a respondent fails to request a hearing within the period of time specified in the notice, the respondent will be deemed to have accepted the sanction.

(h) *Denial of charges and right to hearing.* In every instance where a respondent has requested a hearing on a charge that is denied, or on a sanction set by the Hearing Panel pursuant to Section 37.206(g), the respondent must be given an opportunity for a hearing in accordance with the requirements of § 37.206(j). The swap execution facility's rules may provide that, except for good cause, the hearing must be concerned only with those charges denied and/or sanctions set by the Hearing Panel under § 37.206(g) for which a hearing has been requested.

(i) *Settlement offers.* (1) The rules of a swap execution facility may permit a respondent to submit a written offer of settlement at any time after the investigation report is completed. The disciplinary panel presiding over the matter may accept the offer of settlement, but may not alter the terms of a settlement offer unless the respondent agrees.

(2) The rules of a swap execution facility may provide that, in its discretion, a disciplinary panel may permit the respondent to accept a sanction without either admitting or denying the rule violations upon which the sanction is based.

(3) If an offer of settlement is accepted, the panel accepting the offer must issue a written decision specifying the rule violations it has reason to believe were committed, including the basis or reasons for the panel's conclusions, and any sanction to be imposed, which must include full customer restitution where customer harm is demonstrated. If an offer of settlement is accepted without the agreement of the enforcement staff, the decision must adequately support the Hearing Panel's acceptance of the settlement. Where applicable, the decision must also

include a statement that the respondent has accepted the sanctions imposed without either admitting or denying the rule violations.

(4) The respondent may withdraw his or her offer of settlement at any time before final acceptance by a panel. If an offer is withdrawn after submission, or is rejected by a disciplinary panel, the respondent must not be deemed to have made any admissions by reason of the offer of settlement and must not be otherwise prejudiced by having submitted the offer of settlement.

(j) *Hearings.* (1) A swap execution facility must adopt rules that provide for the following minimum requirements for any hearing conducted pursuant to a notice of charges:

(i) The hearing must be fair, must be conducted before members of the Hearing Panel, and must be promptly convened after reasonable notice to the respondent. The formal rules of evidence need not apply; nevertheless, the procedures for the hearing may not be so informal as to deny a fair hearing. No member of the Hearing Panel for the matter may have a financial, personal, or other direct interest in the matter under consideration.

(ii) In advance of the hearing, the respondent must be entitled to examine all books, documents, or other evidence in the possession or under the control of the swap execution facility that are to be relied upon by the enforcement staff in presenting the charges contained in the notice of charges or that are relevant to those charges.

(iii) The swap execution facility's enforcement and compliance staffs must be parties to the hearing, and the enforcement staff must present their case on those charges and sanctions that are the subject of the hearing.

(iv) The respondent must be entitled to appear personally at the hearing, must be entitled to cross-examine any persons appearing as witnesses at the hearing, and must be entitled to call witnesses and to present such evidence as may be relevant to the charges.

(v) The swap execution facility must require that persons within its jurisdiction who are called as witnesses participate in the hearing and produce evidence. It must make reasonable efforts to secure the presence of all other persons called as witnesses whose testimony would be relevant.

(vi) If the respondent has requested a hearing, a copy of the hearing must be made and must become a part of the record of the proceeding. The record must be one that is capable of being accurately transcribed; however, it need not be transcribed unless the transcript is requested by Commission staff or the respondent, the decision is appealed pursuant to § 37.206(1), or is reviewed by the Commission pursuant to Section 8e of the Act or part 9 of this chapter. In all other instances, a summary record of a hearing is permitted.

(vii) The rules of a swap execution facility may provide that the cost of transcribing the record of the hearing must be borne by a respondent who requests the transcript, appeals the decision pursuant to § 37.206(1), or whose application for Commission review of the disciplinary action has been granted. In all other instances, the cost of transcribing the record must be borne by the swap execution facility.

(2) The rules of a swap execution facility may provide that a sanction may be summarily imposed upon any person within its jurisdiction whose actions impede the progress of a hearing.

(k) *Decisions.* Promptly following a hearing conducted in accordance with § 37.206(j), the Hearing Panel must render a written decision based upon the weight of the evidence contained in the record of the proceeding and must provide a copy to the respondent. The decision must include:

- (1) The notice of charges or a summary of the charges;
- (2) The answer, if any, or a summary of the answer;
- (3) A summary of the evidence produced at the hearing or, where appropriate, incorporation by reference of the investigation report;
- (4) A statement of findings and conclusions with respect to each charge, and a complete explanation of the evidentiary and other basis for such findings and conclusions with respect to each charge;
- (5) An indication of each specific rule that the respondent was found to have violated;
- (6) A declaration of all sanctions imposed against the respondent, including the basis for such sanctions and the effective date of such sanctions.

(l) *Right to appeal.* The rules of a swap execution facility may permit the parties to a proceeding to appeal promptly an adverse decision of the Hearing Panel in all or in certain classes of cases. Such rules may require a party's notice of appeal to be in writing and to specify the findings, conclusions, or sanctions to which objection are taken. If the rules of a swap execution facility permit appeals, then both the respondent and the enforcement staff must have the opportunity to appeal and the swap execution facility must provide for the following:

- (1) The swap execution facility must establish an appellate panel that must be authorized to hear appeals of respondents. In addition, the rules of a swap execution facility may provide that the appellate panel may, on its own initiative, order review of a decision by the Hearing Panel within a reasonable period of time after the decision has been rendered.
- (2) The composition of the appellate panel must be consistent with § 40.9(e)(iv), and must not include any members of the swap execution facility's compliance staff, or any person involved in adjudicating any other stage of the same proceeding. The rules of a swap execution facility must provide for the appeal proceeding to be conducted before all of the members of the board of appeals or a panel thereof.
- (3) Except for good cause shown, the appeal or review must be conducted solely on the record before the Hearing Panel, the written exceptions filed by the parties, and the oral or written arguments of the parties.
- (4) Promptly following the appeal or review proceeding, the board of appeals must issue a written decision and must provide a copy to the respondent. The decision issued by the board

of appeals must adhere to all the requirements of § 37.206(k), to the extent that a different conclusion is reached from that issued by the Hearing Panel.

~~(m) *Final decisions.* Each swap execution facility must establish rules setting forth when a decision rendered pursuant to this section will become the final decision of such swap execution facility.~~

~~(n) *Disciplinary sanctions.* All disciplinary sanctions imposed by a swap execution facility or its disciplinary panels must be commensurate with the violations committed and must be clearly sufficient to deter recidivism or similar violations by other market participants. All disciplinary sanctions must take into account the respondent's disciplinary history. In the event of demonstrated customer harm, any disciplinary sanction must also include full customer restitution.~~

~~(o) *Summary fines for violations of rules regarding timely submission of records.* A swap execution facility may adopt a summary fine schedule for violations of rules relating to the timely submission of accurate records required for clearing or verifying each day's transactions. A swap execution facility may permit its compliance staff, or a designated panel of swap execution facility officials, to summarily impose minor sanctions against persons within the swap execution facility's jurisdiction for violating such rules, unless otherwise delegated or contracted to a regulatory service provider pursuant to § 37.101. A swap execution facility's summary fine schedule may allow for warning letters to be issued for first-time violations or violators, provided that no more than one warning letter may be issued per rolling 12-month period for the same violation. If adopted, a summary fine schedule must provide for progressively larger fines for recurring violations.~~

~~(p) *Emergency disciplinary actions.* (1) A swap execution facility may impose a sanction, including suspension, or take other summary action against a person or entity subject to its jurisdiction upon a reasonable belief that such immediate action is necessary to protect the best interest of the marketplace.~~

(2) Any emergency disciplinary action must be taken in accordance with a swap execution facility's procedures that provide for the following:

(i) If practicable, a respondent must be served with a notice before the action is taken, or otherwise at the earliest possible opportunity. The notice must state the action, briefly state the reasons for the action, and state the effective time and date, and the duration of the action.

(ii) The respondent must have the right to be represented by legal counsel or any other representative of its choosing in all proceedings subsequent to the emergency action taken. The respondent must be given the opportunity for a hearing as soon as reasonably practicable pursuant to the rules of the swap execution facility or any regulatory service provider to whom the swap execution facility has delegated or contracted its compliance and disciplinary responsibilities in accordance with § 37.101 and the hearing must be conducted before the Hearing Panel pursuant to the requirements of ~~§ 37.206(j).~~

(iii) Promptly following the hearing provided for in this rule § 37.205(c), the swap execution facility must render a written decision based upon the weight of the evidence contained in the

~~record of the proceeding and must provide a copy to the respondent. The decision must include a description of the summary action taken; the reasons for the summary action; a summary of the evidence produced at the hearing; a statement of findings and conclusions; a determination that the summary action should be affirmed, modified, or reversed; and a declaration of any action to be taken pursuant to the determination, and the effective date and duration of such action.~~

~~§ 37.207 Swaps subject to mandatory clearing.~~

~~A swap execution facility shall provide by its rules that when a swap dealer or major swap participant enters into or facilitates a swap transaction that is subject to the mandatory clearing requirement of Section 2(h) of the Act, the swap dealer or major swap participant shall be responsible for compliance with the mandatory trading requirement under Section 2(h)(8).~~

Subpart E--Monitoring of Trading and Trade Processing

§ 37.400 Core Principle 4--Monitoring of trading and trade processing.

The swap execution facility shall:

(a) Establish and enforce rules or terms and conditions defining, or specifications detailing:

(1) Trading procedures to be used in entering and executing orders traded on or through the facilities of the swap execution facility; and

(2) Procedures for trade processing of swaps on or through the facilities of the swap execution facility; and

(b) Monitor trading in swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions, unless otherwise delegated or contracted to a regulatory service provider pursuant to § 37.101.

§ 37.401 General requirements.

A swap execution facility must:

(a) Monitor and evaluate general market data in order to detect and prevent manipulative activity that would result in the failure of the market price to reflect the normal forces of supply and demand;

(ab) Collect and evaluate data on individual traders' market activity on an ongoing basis in order to detect and prevent whenever actual or potential instances of manipulation, price distortions, or

and, where possible, disruptions of the delivery or cash settlement process are brought to the swap execution facility's attention through its audit trail reviews, trade practice surveillance, market surveillance, or real-time market monitoring activities, unless otherwise delegated or contracted to a regulatory service provider pursuant to § 37.101;

~~(b) Monitor and evaluate general market data in order to detect and prevent manipulative activity that would result in the failure of the market price to reflect the normal forces of supply and demand;~~

(c) Have the capacity to conduct real-time monitoring of trading and comprehensive and accurate trade reconstruction. The monitoring of intraday trading must include the capacity to detect abnormal price movements, unusual trading volumes, impairments to market liquidity, and position-limit violations; and

(d) Have either manual processes or automated alerts that are effective in detecting and preventing trading abuses.

§ 37.402 Additional requirements for physical-delivery swaps.

(a) For physical-delivery swaps, the swap execution facility must:

(1) Monitor a swap's terms and conditions;

(2) Monitor that the deliverable supply is adequate so that the swap will not be conducive to price manipulation or distortion; and

~~(3) Assess whether the deliverable commodity reasonably can be expected to be available to traders responsible for making the delivery and salable or usable by traders receiving delivery at its market value in normal cash marketing channels; and~~

~~(4) When available, monitor data related to the size and ownership of deliverable supplies.~~

(b) The swap execution facility must continually monitor the appropriateness of the swap's terms and conditions, including the delivery instrument, the delivery locations and location differentials, and the commodity characteristics and related differentials. The swap execution facility must act promptly to address the conditions that are causing price distortions or market disruptions, including, when appropriate, changes to contract terms.

§ 37.403 Additional requirements for cash-settled swaps.

(a) For cash-settled swaps, the swap execution facility must monitor:

(1) The availability and pricing of the commodity making up the index, if applicable, to which the swap will be settled; and

(2) The continued appropriateness of the methodology for deriving the index, if applicable. For those swap execution facilities that compute their own indices, they must promptly amend any methodologies that result, or are likely to result, in manipulation, price distortions, or market

disruptions, or must impose new methodologies to resolve the threat of disruptions or distortions.

(b) If a swap listed on a swap execution facility is settled by reference to the price of a swap traded in another venue, including a price or index derived from prices on another swap execution facility or a designated contract market, the swap execution facility must have an information sharing agreement with the other venue or swap execution facility or a designated contract market. In lieu of an information sharing agreement, the swap execution facility must have the capacity to internally and reasonably assess whether positions or trading in the swap or commodity to which its swap is cash-settled are being manipulated in order to affect prices on its market.

§ 37.404 Ability to obtain information.

(a) The swap execution facility must have rules that require traders in its swaps to keep records of their trading on the swap execution facility. ~~including records of their activity in the underlying commodity and related derivatives markets and make such records available, upon request, to the swap execution facility and the Commission.~~

(b) A swap execution facility with customers trading through intermediaries must either use a comprehensive large-trader reporting system (LTRS) or be able to demonstrate that it can obtain position data from other sources in order to conduct an effective surveillance program.

§ 37.405 Risk controls for trading.

The swap execution facility must establish and maintain risk control mechanisms to reduce the potential risk of market disruptions, including but not limited to market restrictions that pause or halt trading in market conditions prescribed by the swap execution facility. If a swap is linked to, or a substitute for, other swaps on the swap execution facility or on other trading venues, such risk controls must, to the extent practicable, be coordinated with any similar controls placed on those other swaps. If a swap is based on the level of an equity index, such risk controls must, to the extent practicable, be coordinated with any similar controls placed on national security exchanges.

§ 37.406 Trade reconstruction.

The swap execution facility must have the ability to comprehensively and accurately reconstruct all trading on its trading facility. All audit-trail data and reconstructions must be made available to the Commission in a form, manner, and time as determined by the Commission.

§ 37.407 Additional rules required.

A swap execution facility must adopt and enforce any additional rules that it believes are necessary to comply with the requirements of subpart E of this part.

Subpart F--Ability To Obtain Information

§ 37.500 Core Principle 5--Ability To Obtain Information.

The swap execution facility shall:

- (a) Establish and enforce rules that will allow the facility or any regulatory service provider pursuant to § 37.101 to obtain any necessary information to perform any of the functions described in this section;
- (b) Provide the information to the Commission on request; and
- (c) Have the capacity to carry out such international information-sharing agreements as the Commission may require.

§ 37.501 Establish and enforce rules.

A swap execution facility must establish and enforce rules that will allow the swap execution facility to have the ability and authority to obtain sufficient information to allow it or a regulatory service provider to fully perform its operational, risk management, governance, and regulatory functions and any requirements under this part 37, including the capacity to carry out international information-sharing agreements as the Commission may require.

§ 37.502 Collection of information.

A swap execution facility must have rules granting the swap execution facility or a regulatory service provider the authority to collect any information necessary to permit the swap execution facility or regulatory service provider to perform its responsibilities under this section ~~on both a routine and non-routine basis~~ the swap execution facility or regulatory service provider may deem necessary, in the sole discretion of the swap execution facility or regulatory service provider, including the authority to examine books and records kept by the swap execution facility's members and by market participants.

§ 37.503 Provide information to the Commission.

A swap execution facility or regulatory service provider shall provide information in its possession to the Commission upon request, in a form and manner that the Commission approves.

§ 37.504 Information-sharing agreements.

A swap execution facility or regulatory service provider shall share information with other regulatory organizations, data repositories, and reporting services as required by the Commission or as otherwise necessary and appropriate to fulfill its ~~self-regulatory and reporting~~ responsibilities under this part 37. Appropriate information-sharing agreements can be established with such entities or the Commission can act in conjunction with the swap execution facility to carry out such Information Sharing.

Subpart H—Financial Integrity of Transactions

§ 37.700 Core Principle 7—Financial integrity of transactions.

The swap execution facility shall establish and enforce rules and procedures for ensuring the financial integrity of swaps entered on or through the facilities of the swap execution facility, including the clearance and settlement of the swaps pursuant to Section 2(h)(1) of the Act.

§ 37.701 ~~Mandatory clearing.~~

~~Transactions executed on or through the swap execution facility must be cleared through a Commission-registered derivatives clearing organization unless:~~

- ~~(a) The transaction is exempted from clearing under Section 2(h)(7) of the Act; or~~
- ~~(b) The Commission has not determined that the clearing requirement under Section 2(h)(1) is applicable.~~

§ 37.702 General financial integrity.

A swap execution facility must provide for the financial integrity of its transactions:

- ~~(a) By establishing a process by which participants provide the swap execution facility with written or electronic confirmation of their status as eligible contract participants, as defined by the Section 1a(18) Act and Commission regulations; minimum financial standards for its members, which shall, at a minimum, require that members qualify as an eligible contract participant as defined in Section 1a(18) of the Act;~~
- ~~(b) For transactions cleared by a derivatives clearing organization, by ensuring that the swap execution facility has the capacity to route transactions to the derivative clearing organization in a manner acceptable to the derivatives clearing organization for purposes of ongoing risk management;~~
- ~~(c) For transactions not cleared by a derivatives clearing organization, by requiring members to demonstrate that they:
 - ~~(1) Have entered into credit arrangement documentation for the transaction;~~
 - ~~(2) Have the ability to exchange collateral; and~~
 - ~~(3) Meet any credit filters that may be adopted by the swap execution facility; and~~~~
- ~~(d) By implementing any additional safeguards as may be required by Commission regulations.~~

§ 37.703 Monitoring for financial soundness.

A swap execution facility or regulatory service provider to whom such responsibilities are delegated or contracted must monitor members' compliance with the swap execution facility's minimum financial standards and, therefore, must routinely receive and promptly review

financial and related information from its members as the swap execution facility or regulatory service provider believes is necessary to ensure each members' compliance with the swap execution facility's minimum financial standards.



CFTC SEF Showcase
Phil Weisberg, CEO, FXall
Transcript of Remarks
March 31, 2011

Introduction

Thank you Commissioner O'Malia, we are delighted to have been invited to participate and would like to thank you and your staff for putting this together. My name is Phil Weisberg and I am CEO of FXall and I am sharing the podium with my colleague Jane Krenistky, who will demonstrate our product. FXall is the leading, broker-neutral provider of institutional foreign exchange execution and trade workflow services.

I'm going to talk about three topics today:

- 1) Background about us and what our clients ask us to do to help them.
- 2) Our view on how regulators can implement workable solutions to best fulfill the spirit of the Dodd Frank Act (DFA).
- 3) Examples using our platform to illustrate real customer requirements.

FXall operates an electronic trading system for FX spot, forwards and other instruments, that serves over 1,000 institutions globally ranging from industrial companies, asset managers, governments, international agencies and other financial institutions. We provide a complete end-to-end trading solution for customers that facilitates transparency, best execution, trading controls and operational risk management. FXall is headquartered in NY but does more than half of our business overseas as Foreign Exchange is by definition an international market

Our views on SEFs

FX SEFs have a unique challenge. There is an exemption for some FX instruments if Treasury seeks it... and Congress wrote the Act that way for valid reasons. FXall believes Treasury should determine that foreign exchange forwards, and swaps, which enable participants to tailor the delivery date of FX trades to meet specific commercial requirements, be excluded. Other instruments our clients trade will certainly be included so while we await Treasury's decision, we are preparing to deliver what customers want - a single solution to meet their needs.

Our clients are happy with the way they transact, but see opportunities for systemic risk reduction as a result of DFA. That benefit can only be realized if the regulation is implementable and participants can continue to conduct their business. Regulators should take advantage of the infrastructure that has been created over decades to serve the OTC Markets and enable those platforms to continue to do so while accomplishing some of the important goals of the regulation. That means maintaining the flexibility to innovate, invest, and let clients drive which execution models work best to transfer risk across the vast OTC Landscape where one size doesn't fit all. If a particular mechanism does not meet clients' needs, mandating implementation serves no purpose. As long as the SEF bar is set at a reasonable level that likely SEF participants can meet - the industry will compete to meet client needs.

Examples

I am going to walk through several examples of how our clients use our trading platform to meet their business needs. Through the demonstrations I will show that diverse client segments within the FX market have unique needs as a result of their strategic objectives and priorities.

FXall provides clients with many different methods for executing FX, including request-for-quote or RFQ, which should be allowed to continue under new regulations. Our RFQ allows clients to reach out to whatever number of market makers the customer wants – be that one or many - to transfer risk.

- 1) **Example one relates to Non Deliverable Forwards.** These are forward contracts generally used to hedge exposure to emerging markets where there are currency restrictions or operational risk associated with physical settlement. Let's assume the head office of a US corporate is hedging a specific receivable they expect to collect in a month's time from a Brazilian subsidiary.
 - Before they execute they know where the market is from our indicative quote panel at the left of the screen. In this example you see the trading blotter where a client has imported their trading requirements from a treasury management system. In this case, the client asks 5 market makers for a price in a 1 Month NDF in a market amount. Although they do not disclose the direction of their interest to the market, we protect them from trading the wrong way. As you can see here, we highlight the best price for them and calculate the differences between the others so they can understand the cost if they choose to trade on another price. This is important as there may be other factors influencing their decision which outweigh those costs.
 - One simple click and they have hedged the exposure.

- 2) **In example two, let's discuss a different market scenario where NDF's are used.** Assume there is an Asset Manager who suddenly is concerned that Brazil's currency will weaken. Although that may be good for Brazilian shares, they wish to increase their existing hedge, which covers 50% of the exposure, to 100%. To be efficient they would like to execute a single trade on behalf of all of the accounts they manage with Brazil exposure, which results in a large multi-allocation equity trade to the specific date of the outstanding hedge – 44 days.
 - They choose to send this trade to the single provider who they think is best able to manage the risk. The customer discloses their side and lets them know they are the only one getting the request. This entices the market maker to quote a better price because the risk in warehousing the exposure temporality until it can be defeased is reduced. Ultimately this facilitates a rapid risk transfer for the client at a better price than could otherwise be obtained, meeting their objective.
 - Once the trade is done, we time-stamp it and benchmark it to the indicative quote that was available pre-trade so the customer can assess the execution quality.

- 3) **In the third example, a multinational corporation is hedging their anticipated quarterly revenues** from multiple European subsidiaries to they can lock in the rate which they will then repatriate to the United States.
- There are a lot of moving pieces because there are multiple value dates and subsidiaries to keep track of, and the client prefers to direct them to a single bank so they have a better chance of staying on top of the details.
 - Pre-trade they can see our indicative prices, but once they hit go, they see the actual prices across a spectrum of value dates. If they do not like the prices from this provider, it is very easy for them to slot in a new one and repeat the process.
- 4) **In the fourth and final example, an insurance company realizes it needs to move the value date out of an existing hedge** by a month from 11 months to one year to better match their exposure.
- To effect the change, the client is buying Euros for value in 11 months and selling them for value in 12 months, trading the differential between the two FX forwards.
 - As you can see, they are able to evaluate prices between 5 providers instantaneously and pick the one they think is best even though they are really evaluating the price of a spread which isn't continuously traded and therefore wouldn't available from an order book.

Summary and Conclusion

We hope these examples illustrate some of the complexities in writing regulation for SEF's in a single asset class, let alone all asset classes. It is important that regulators afford the flexibility that is required to the SEFs to meet the diverse needs of all the different client segments that they serve for the regulations to be effective.

There are two principal unintended consequences that could result from making the wrong decisions which are important for the US foreign exchange market and its participants.

- 1) One is that people who should be hedging avoid doing so and take on undue financial risk because hedging becomes too inflexible, restrictive or expensive.
- 2) The other is that the US FX market loses its place as the number two market or shuts because sophisticated users find it easier to do business elsewhere - leaving the rest of the participants with no outlet for their activity.

We are counting on the regulators to get it right and accomplish the original goals of DFA – reducing systemic risk and making the US market more robust. Thank you again for this opportunity.

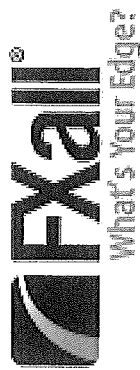


FXall Trading Platform
SEF Showcase

March 31, 2011

partner with the FX

leader



NDF Orders on customer's blotter uploaded from their OMS into FXall Trading Platform

Reference rates show where the market is

FXall - user1@fxall1 - 13:56:36 FXall Support - US +1 646 268 9901 LN +44(0) 20 7173 9601 SG +65 6511 0650

Requirements NDFs EUR-USD

File Edit Views Select Approvals Execute

View	Status	Type	Value	Account	Deal	Amount	Bank(\$)
Ready	Ready	HDF	USD.BRL	ACCT1	USD	25,613,599.99	5 Bal
Ready	Ready	HDF	USD.BRL	3 Accts	USD	82,329,586.20	5 Bal
			USD.BRL	Endowment Fund	USD	1,325,687.22	
			USD.BRL	Investment Fund	USD	21,336,748.00	
			USD.BRL	US Corp Pension Fu...	USD	62,418,525.42	

Orders: 2 Locked Orders: 0 Last Import: 17:23:15
Requirements: 4 Trading Orders: 0 12 Requirement(s)

Deal Log Audit Error Log Chat

Status Type Pair Value Date Account BIS Ccy Amount Rate Pts All-in Provider FXall Order ID Client Order

Ccy Pair	BID	ASK
EUR/USD	1.41120	1.41135
USD/JPY	82.840	82.860
EUR/JPY	117.005	117.032
GBP/USD	1.60622	1.60643
USD/CHF	0.91934	0.91957
USD/CAD	0.97092	0.97112
AUD/USD	1.03248	1.03266
USD/BRL	1.6438	1.6444

Tenor	Days	BID	ASK
TOM	-1	1.87	2.51
SPOT		1.6438	1.6444
SN	3	2.04	2.91
1W	7	22.98	25.40
2W	14	49.71	51.25
1M	31	56.57	57.63
2M	61	125.48	127.51
3M	91	193.85	195.04
6M	185	463.68	475.39
9M	277	541.29	542.17
1Y	367	748.94	749.96
18M			
2Y			
3Y			

Portfolio OMS Indicative Quotes Trade History Execution Locked

Example 1: NDF Standard 1M tenor to 5 providers

FXall - user1@fxall10 - 14:02:04 FXall Support - US +1 646 268 9901 LN +44(0) 20 7173 9601 SG +65 6511 0650

Requirements: USD.BRL NDFs EUR-USD USD.BRL Account: #CCT1 Request: Undisclosed RFO

Pair: USD.BRL Type: NDF ALL NDF settle in USD Buy USD 25.613.599.99 1M 02-May-2011 31 Days - Mon Fixing Date: 28-Apr-2011

Customer Order ID: Buy USD 116 1.648744 BANK1

Pre-trade transparency

SPOT	1M	DIR (USD)	DIR (USD)	SPOT	1M
BANK1 ▶	1.6424	56.79	0	1.648079	57.44
BANK2 ▶	1.6423	56.69	1,715	1.647969	57.54
BANK3 ▶	1.6423	56.82	1,512	1.647982	57.41
BANK4 ▶	1.6424	56.74	78	1.648074	57.49
BANK5 ▶	1.6423	56.76	1,606	1.647976	57.47

2-way Price Request

Prices from 5 Providers

Nothing Done

Deal Log Audit Error Log Chat

CCY Pair Bid Ask

EUR.USD	1.41136	1.41145
USD.JPY	82.825	82.844
EUR.JPY	117.007	117.037
GBP.USD	1.60521	1.60544
USD.CHF	0.91920	0.91942
USD.CAD	0.97073	0.97092
AUD.USD	1.03248	1.03264
USD.BRL	1.64422	1.64432

Execution Enabled

Status: Type Pair Value Date Account BIS Ccy Amount Rate Pts All In Provider FXall Order ID Client O

Example 2: Large NDF for Broken Date to single provider

FXall - user1@fxall1 - 14:07:55 FXall Support - US +1 646 268 9901 LN +44(0) 20 7173 9601 SG +65 6511 0650

Requirements: NDFs Account: Multi Allocation USD,BRL EUR-USD USD,BRL

Pair: USD,BRL Type: NDF Request: One Way RFQ

Fixing Date: 18-May-2011 47 Days - Wed 16-May-2011

82,429,586.20 Buy USD ALL NDF settle in USD

Customer Order ID:

	DIR (USD)	SPOT	18-May-11
BANK1	1.651852	1.6424	94.52

Price from single provider

Nothing Done

Deal Log Audit Error Log Chat

Status Type Pair Value Date Account BIS Ccy Amount Rate Pts All-In Provider FXall Order ID Client ID

CCY Pair BID ASK

EUR,USD	1.41134	1.41147
USD,JPY	82.787	82.814
EUR,JPY	116.842	116.978
GBP,USD	1.60591	1.60614
USD,CHF	0.91509	0.91928
USD,CAD	0.97081	0.97110
AUD,USD	1.03219	1.03239
USD,BRL	1.6416	1.6425

Execution Enabled

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Trade Ticket

FXall Deal ID 12271499

Currency Pair USD.BRL (Quoted BRL per USD)

Provider BANK1

Trade Date 30-Mar-11

Product FWD

Executed By user1

Executed On 30-Mar-11 18:11:11 GMT

Summary

Value Date	Allocations	Side	CCY	Amount	Side	CCY	Amount	Spot	Pts	All in
18-May-11	3	Buy	USD	82,429,586.20	Sell	BRL	136,232,895.99	1.6426	101.16	1.652716

Booking Details

Value Date	Account	Side	CCY	Amount	Spot	Pts	All in	SSI			
18-May-11	Envoirement Fund	Sell	USD	1,325,687.22	Buy	BRL	2,190,984.48	1.6426	101.16	1.652716	Y
16-May-11											
18-May-11	Investment Fund	Buy	USD	21,336,748.00	Sell	BRL	35,263,584.81	1.6426	101.16	1.652716	Y
16-May-11											
18-May-11	US Corp Pension Fund	Buy	USD	62,418,525.42	Sell	BRL	103,160,095.66	1.6426	101.16	1.652716	Y
16-May-11											

Provider Prices

Bank	Value Date	Bid			Ask			Difference (USD)
		Spot	Pts	All-in	Spot	Pts	All-in	
BANK1	18-May-11	1.6420	100.71	1.652071	1.6426	101.16	1.652716	0
FXall IQ	18-May-11	1.6419	100.65	1.651965	1.6427	101.22	1.652822	5,321

Run Date & Time: 30-Mar-11 18:11:28 GMT ; Run By: user1@fxall



Example 3: Corporate hedging a strip of forwards for their anticipated quarterly revenues which they want to repatriate to the US

FXall - user1@fxall11 - 14:25:09 FXall Support - US - +1 646 268 9901 LN +44(0) 20 7173 9601 SG +65 6511 0650

Requirements NDFs EUR/USD USD/BRL

File Edit Views Select Approve Execute

View	Status	Type	CCY Pair	Value	Account	B/S	Deal	Amount	Bank(s)	Spot Rate	Pts	All-in Rate
<input checked="" type="checkbox"/>	Executing	SSP	EUR/USD	4 Dates	3 Accts	S	EUR	168,703,095.96	All	Accept	Nothing Done	
			EUR/USD	01-Jul-11	France Subsidiary	S	EUR	11,327,439.22	BANK1	1.41107	-24.42	1.408628
			EUR/USD	01-Jul-11	Germany Subsidiary	S	EUR	10,957,326.33		1.41107	-24.42	1.408628
			EUR/USD	01-Jul-11	Spain Subsidiary	S	EUR	10,324,872.23		1.41107	-24.42	1.408628
			EUR/USD	03-Oct-11	France Subsidiary	S	EUR	12,999,353.19		1.41107	-57.69	1.405301
			EUR/USD	03-Oct-11	Germany Subsidiary	S	EUR	12,487,366.38		1.41107	-57.69	1.405301
			EUR/USD	03-Oct-11	Spain Subsidiary	S	EUR	11,999,159.22		1.41107	-57.69	1.405301
			EUR/USD	03-Jan-12	France Subsidiary	S	EUR	14,446,294.38		1.41107	-95.51	1.401519
			EUR/USD	03-Jan-12	Germany Subsidiary	S	EUR	14,036,485.26		1.41107	-95.51	1.401519
			EUR/USD	03-Jan-12	Spain Subsidiary	S	EUR	13,539,445.46		1.41107	-95.51	1.401519
			EUR/USD	02-Apr-12	France Subsidiary	S	EUR	16,000,253.57		1.41107	-134.44	1.397626
			EUR/USD	02-Apr-12	Germany Subsidiary	S	EUR	15,596,537.34		1.41107	-134.44	1.397626
			EUR/USD	02-Apr-12	Spain Subsidiary	S	EUR	14,599,326.36		1.41107	-134.44	1.397626
<input checked="" type="checkbox"/>	Ready	Swap	EUR/USD	2 Dates	Target Fund	B	EUR	1,105,266.73	5 Banks			
			EUR/USD	02-Mar-12	Target Fund	B	EUR	15,813,599.99				
			EUR/USD	02-Apr-12	Target Fund	S	EUR	14,428,332.26		1.41118	-132.89	1.397911

Orders: 2 Locked Orders: 1 Last Import: 17:23:15
Requirements: 14 Trading Orders: 1 Requirement(s)

Accept All Nothing Done

Deal Log Audit Error Log Chat

Status Type Pair Value Date Account B/S Ccy Amount Rate Pts All-in Provider FXall Order ID Client Order ID
Done NDF USD/BRL 18-May-11 3 Accts B USD 82,429,566... 1.6426 10116 1.552718 BANK1 12271499

CCY Pair Bid Ask Market
EUR/USD 1.41106 1.41118
USD/JPY 82.885 82.905
EUR/JPY 117.031 117.056
GBP/USD 1.60597 1.60620
USD/CHF 0.91834 0.91855
USD/CAD 0.97088 0.97108
AUD/USD 1.03239 1.03259
USD/BRL 1.6431 1.6437

Execution Enabled



Example 4: Multinational corporate doing a straight value date shift to move the value date on this trade

FXall - user1@fxall11 - 14:27:39 FXall Support - US +1 646 268 9901 IN +44(0) 20 71 73 9601 SG +65 6511 0650

Requirements NDFs EUR-USD USD-BRL EUR-USD

Pair: EUR-USD Account: Target Fund Request: Undisclosed RFQ

Type: Swap Swap Type: Uneven

Near: Buy EUR BROKEN 02-Mar-2012 336 Days - Fri

Far: Sell EUR 1Y 02-Apr-2012 367 Days - Mon

Terms 31 Days

Customer Order ID:

Sell EUR at Far Date Buy EUR at Far Date

	02-Mar-12	1Y	Diff (USD)	PTS	Diff (USD)	PTS	02-Mar-12	1Y	SPOT
BANK1	1.399053	1.397485	320	-15.68	-11.16	320	1.398821	1.397705	1.4110051
BANK2	1.399042	1.397473	321	-15.69	-11.15	321	1.398832	1.397717	1.4110051
BANK3	1.399047	1.397480	298	-15.67	-11.17	298	1.398827	1.397710	1.4110051
BANK4	1.399039	1.397492	0	-15.47	-11.37	0	1.398835	1.397698	1.4110051
BANK5	1.399047	1.397477	341	-15.70	-11.14	341	1.398827	1.397713	1.41101109

Nothing Done

Deal Log Audit Error Log Chat

CCY Pair BID ASK

EUR-USD	1.41051	1.41101
USD-JPY	82.886	82.913
EUR-JPY	117.036	117.064
GBP-USD	1.60608	1.60627
USD-CHF	0.91925	0.91948
USD-CAD	0.97096	0.97113
AUD-USD	1.03240	1.03256
USD-BRL	1.6430	1.6438

Status: Done Type: NDF Pair: USD-BRL Value Date: 18-May-11 3 Accts B BIS Ccy: USD Amount: 82,429,586... Rate: 1.6426 Pts: 101-16 All-in: 1.652716 Provider: BANK1 FXall Order ID: 12271499