

**Via CFTC Public Comment Form**

May 10, 2016

Ms. Petal Walker  
MRAC Designated Federal Officer  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street N.W.  
Washington, D.C. 20581

Re: April 26, 2016 Market Risk Advisory Committee Public Meeting

Dear Ms. Walker:

The Foreign Exchange Professionals Association (“FXPA”)<sup>1</sup> applauds the Commodity Futures Trading Commission (“CFTC”) Market Risk Advisory Committee (“MRAC”) for holding its recent public meeting to discuss how well the derivatives markets are currently functioning, including the impact and implications of the evolving structure of these markets on the movement of risk across market participants.<sup>2</sup>

The FXPA represents the collective interests of professional foreign exchange (“FX”) industry participants, including buy-side, exchanges and clearing houses, trading platforms, technology companies, banks and non-bank market participants, among others, to advance a sound, liquid, transparent and competitive global currency market to policymakers and the marketplace through education, research and advocacy. The FXPA’s activities focus on educating US and international legislators, regulators and central banks, the news media, and the general public, as well as coordinating with multinational organizations and trade bodies.

We appreciate the opportunity to provide brief feedback on how effectively, for FX derivatives, market participants are able to find counterparties for transactions, receive accurate pricing and volume information, and otherwise access the market. The FXPA comments are focused on those swaps subject to comprehensive regulation and oversight by the CFTC, namely non-deliverable forwards (“NDFs”).

The FXPA wishes to associate with statements made at the MRAC meeting by Angela Patel from Putnam Investments regarding the determination by the US Treasury Department to exempt physically-settled FX forward contracts and FX swaps from

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<sup>1</sup> For more information, please see [www.fxpa.org](http://www.fxpa.org). The following comments do not represent the specific individual opinion of any one particular member.

<sup>2</sup> See Notice of Meeting, Market Risk Advisory Committee, 81 Fed. Reg. 17,682 (March 30, 2016).

regulation as swaps under the Commodity Exchange Act (“CEA”).<sup>3</sup> The FXPA believes that the settlement distinction should not justify the different rule sets. Rather, cash-settled NDFs should face a similar regulatory framework and allow US persons to trade both deliverable and non-deliverable forwards on non-SEF multilateral platforms. For the reasons set forth below, the FXPA believes that the regulatory burdens stemming from the Dodd-Frank Wall Street Reform and Consumer Protection Act<sup>4</sup> have, to date, stifled liquidity and increased costs to the detriment of global currency markets.

First, as a result of a footnote in the preamble to the CFTC’s final swap execution facility (“SEF”) rules,<sup>5</sup> NDF market participants find themselves, even without a mandatory SEF trading requirement for NDFs, facing SEF regulatory regime obligations, additional regulatory and compliance costs, and more expensive access to liquidity. Given the choice between those regulatory costs associated with trading on multilateral platforms, and avoiding those constraints by trading on off-facility bilateral platforms, as discussed at the MRAC public meeting, many buy-side firms have chosen to transact on less transparent liquidity pools.

Compared to the goals of the SEF regime in the Dodd-Frank Act, which is to promote pre-trade price transparency and the trading of swaps on SEFs, the practical effect of footnote 88 has been the opposite. With respect to NDFs, footnote 88 has the practical effect of requiring market participants to on-board with SEFs (including detailed comparisons of various technologies and rulebook provisions) if they wish to access multiple-to-multiple liquidity pools and trading venues. Reviewing SEFs can be costly and labor-intensive for a market participant. The preemptive application of the SEF regime on NDF markets through footnote 88 has inhibited the trading of NDFs (including causing some options platforms from not registering as SEFs), promoted bilateral off-SEF activity, and reduced pre-trade price transparency.

Second, the global currency market, including NDFs, operates around the world and at all hours of the day. Because of the global nature of these markets, it is vitally important that regulators coordinate and harmonize their regulatory frameworks. As the Mifid II January 2018 compliance date approaches, any gaps among the principal jurisdictions will become more pronounced. This includes any prospective clearing or trading mandate, post-trade reporting obligations, and regulatory burdens imposed on trading venues and other market infrastructure. The practical impact of disjointed global regulations will be siloed market activity by jurisdiction, fracturing liquidity and impeding competitive price discovery, which will negatively impact the vibrant global FX marketplace. Most SEFs are likely to register as “multilateral trading facilities” in Europe,

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<sup>3</sup> See Determination of Foreign Exchange Swaps and Foreign Exchange Forwards Under the Commodity Exchange Act, 77 Fed. Reg. 69,694 (Nov. 20, 2012). CEA Section 1a only authorizes the Treasury Secretary to exempt FX swaps or FX forwards. The lack of an exemption for other products is the result of a narrowly-tailored statutory authority and not a reflection of any risk-related policy decision.

<sup>4</sup> Pub. L. 111-203, 124 Stat. 1376 (2010).

<sup>5</sup> See 78 Fed. Reg. at 33,481, FN 88 (June 4, 2013) (“a facility would be required to register as a SEF if it operates in a manner that meets the SEF definition even though it only executes or trades swaps that are not subject to the trade execution mandate”).

and without mutual recognition of those platforms by each regulator, liquidity pools that had already been fractured between US and non-US persons will be further split between the US, Europe, and other regions.

The FXPA appreciates the opportunity to share its views with the CFTC MRAC. We would be pleased to discuss these issues further and participate in future discussions about global FX markets.

Sincerely,

A handwritten signature in black ink, appearing to read "Chip Lowry", with a stylized, flowing script.

Chip Lowry  
Chairman  
chairman@fxpa.org