



September 29, 2017

Christopher Kirkpatrick  
Secretary of the Commission  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street NW  
Washington, DC 20581

*Sent via agency's website: [www.cftc.gov/projectkiss](http://www.cftc.gov/projectkiss)*

RE: RIN 3038-AE55

Dear Secretary Kirkpatrick:

The Foreign Exchange Professionals Association (FXPA)<sup>1</sup> appreciates the opportunity to provide feedback to the Commodity Futures Trading Commission (CFTC) on Project KISS as it pertains to the regulations and practices governing the foreign exchange (FX) market.<sup>2</sup> 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, on matters concerning the FX industry.

The following offers suggestions to streamline certain requirements related to disclosure obligations for swap dealers (SDs) and major swap participants (MSPs) under Part 23 and reiterates a broadly discussed concern in connection with the Part 37 regulations.

**I. Swap Dealer/Major Swap Participant Mid-Market Mark Disclosure Requirement**

CFTC Regulation 23.431(a)(3)(i) requires that an SD or MSP disclose certain "material information," including the price of the swap and the mid-market mark of the swap. Following the promulgation of this business conduct standards requirement, the Division of Swap Dealer and Intermediary Oversight (DSIO) issued no-action relief letters for certain types of FX transactions subject to certain conditions, relieving SDs and MSPs from the obligation to

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

<sup>2</sup> 82 Fed. Reg. 23,765, Commodity Futures Trading Commission, *Request for Information: Project KISS* (May 24, 2017).

disclose the pre-trade mid-market mark (PTM) to counterparties, in response to representations that, among other things, “the applicable transactions benefit from a combination of high liquidity, narrow bid and offer spreads, and the existence of a significant amount of publicly available information with respect thereto, arguing therefore that compliance with the PTM requirement does not provide any significant additional informational value . . . .”<sup>3</sup>

For the reasons described in the no-action letters, the FXPA believes that PTM information continues to be perceived by clients as unnecessary and, therefore, appreciates the current no-action relief. While the FXPA appreciates that rule revisions are not the focus of Project KISS, we respectfully request that the Commission consider, at the appropriate time, removing the PTM disclosure provision from the business conduct standards in order to ensure that the disclosures that are required under Part 23 only include those that are meaningful and material to counterparties.

## **II. Swap Dealer Scenario Analysis Requirement**

CFTC Regulation 23.431(b) requires that, before entering into a swap with certain counterparties that is not “made available for trading” on a Designated Contract Market (DCM) or Swap Execution Facility (SEF), an SD must notify such counterparty that it can request and consult on the design of a scenario analysis; upon request, provide a scenario analysis; and disclose material assumptions and explain the calculation methodologies used to perform any requested scenario analysis.

Based on the experience of FXPA members to date, clients generally have not requested scenario analyses, and we have not observed any significant value from the preparation of scenario analyses, particularly with respect to standard FX instruments, such as FX forwards, FX swaps, standard FX options, and standard non-deliverable forwards. Accordingly, the FXPA requests that the requirement be streamlined such that an SD would provide a scenario analysis to its counterparty only if specifically requested by such counterparty, rather than requiring the SD to affirmatively notify the counterparty about its ability to request such scenario analysis.

## **III. Pre-Trade Draft Acknowledgement Requirement**

CFTC Regulation 23.501(a)(3)(iii) requires that an SD or MSP, upon request, “furnish to the prospective counterparty prior to execution a draft acknowledgment specifying all terms of the swap transaction other than the applicable pricing and other relevant terms that are to be expressly agreed at execution.”<sup>4</sup> The FXPA requests that this requirement be removed because our members have found that counterparties have not requested or relied upon such acknowledgement.

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<sup>3</sup> See CFTC Letter No. 12-42 (Dec. 6, 2012); CFTC Letter No. 13-12 (May 1, 2013).

<sup>4</sup> 17 CFR § 23.501.

#### IV. “Footnote 88” Requirements

Footnote 88 in the preamble to the CFTC’s Part 37 release provides that:

*The Commission notes that it is not tying the registration requirement in CEA section 5h(a)(1) to the trade execution requirement in CEA section 2(h)(8), such that only facilities trading swaps subject to the trade execution requirement would be required to register as a SEF. Therefore, 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.*

As has been discussed broadly, the FXPA believes that the impact of Footnote 88 has been to bifurcate liquidity along geographic lines, fracture liquidity pools, and result in a myriad of unintended consequences. As such, the FXPA would request that the Commission either strike Footnote 88 or permit U.S. persons to trade on non-U.S. trading venues which are not registered as SEFs.

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The FXPA stands ready to work with the CFTC on the issues discussed herein, as part of the Project KISS initiative. Should the CFTC wish to discuss these comments further, please contact the undersigned at [chairman@fxpa.org](mailto:chairman@fxpa.org).

Sincerely yours,



Chip Lowry  
Chairman