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TO:

Mr. Christopher J. Kirkpatrick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

September 29, 2017

Re: Commodity Futures Trading Commission Request for Public Input on Simplifying CFTC Rules (Project KISS) – Executing (RIN 3038–AE55)

Dear Mr. Kirkpatrick,

The Global Foreign Exchange Division (“GFXD”) of the Global Financial Markets Association appreciates the opportunity to provide comments to the Commodity Futures Trading Commission (“CFTC”) on its Project KISS initiative. We greatly appreciate the continuing efforts of the CFTC and its staff to review the CFTC’s rules, regulations and practices to identify those areas that can be simplified and made less burdensome and costly to apply.

The GFXD was formed in co-operation with the Association for Financial Markets in Europe (AFME), the Securities Industry and Financial Markets Association (SIFMA) and the Asia Securities Industry and Financial Markets Association (ASIFMA). Our members comprise 25¹ global foreign exchange (FX) market participants collectively representing over 80%² of the FX inter-dealer market. Many of the current legislative and regulatory reforms have had, and will continue to have, a significant impact upon the operation of the global FX market. We and our members are committed to ensuring a robust, open and fair marketplace and welcome the opportunity for continued dialogue with global regulators.

¹ Bank of America Merrill Lynch, Bank of New York Mellon, Bank of Tokyo Mitsubishi UFJ, Barclays, BNP Paribas, Citigroup, Crédit Agricole, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, JP Morgan, Lloyds Bank, Mizuho, Morgan Stanley, Nomura, Royal Bank of Canada, Royal Bank of Scotland, Scotiabank, Société Générale, Standard Chartered Bank, State Street, UBS, Wells Fargo and Westpac.

² According to Euromoney league tables.

We are broadly supportive of the points made by Commissioner Giancarlo in his January 2015 White Paper³ and appreciate the CFTC taking the initiative to identify opportunities to simplify, harmonize and streamline the application of the regulatory framework for SEF execution. We advocate a principles-based approach to the regulation that would allow the CFTC to establish underlying standards and desired outcomes and put forward guidelines for how to achieve a suitable and appropriate outcome.

In this regard, we make the following comments:

TRADE EXECUTION⁴

1. The CFTC should review the required execution methods for swaps subject to a trade execution mandate.

Swaps, including FX swaps, trade through a variety of execution methods. As the White Paper notes, a MAT determination effectively limits the permitted modes of trade, something that is not required by the Dodd Frank Act. We favour more flexibility: liquidity necessitates flexible execution methods and swaps trading liquidity should, in our view, drive execution methods.

2. The CFTC should revisit the process for mandating products for execution.

We recommend that the process for mandating products for execution be revised so the CFTC plays a more active role. The CFTC, taking into account the relevant market dynamics, should assess the benefits and risks of a possible trading mandate prior to implementing it.

We agree that, as highlighted in the White Paper, the CFTC's limited execution method approach and MAT process have created "unnecessary tension" between the mandatory clearing mandate and trading requirement, and that the analysis of whether there is sufficient liquidity to support a mandatory clearing determination should differ from the trading liquidity evaluation required to support a mandatory execution requirement.

Furthermore, we agree with the White Paper that the CFTC's regulations do not provide an appropriate avenue for a MAT determination. A single trading platform should not be permitted to unilaterally force a MAT determination, particularly through the self-certification rule submission process.

³ "Pro-Reform Reconsideration of the CFTC Swaps Trading Rules: Return to Dodd-Frank" <http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/sefwhitepaper012915.pdf> (the "White Paper").

⁴ The application of SEF Rules to FX prime brokerage has also raised some issues. We plan to address this in a separate submission.

3. The CFTC should not require multiple-to-multiple trading platforms to register as SEFs if the products they offer are not subject to a trade execution mandate.

We urge the CFTC not to require multiple-to-multiple trading platforms to register as SEFs if the products they offer are not subject to a trade execution mandate.

Footnote 88 in the current SEF Rules, which states that, “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,” has been interpreted to mean that the SEF rules apply to any platform, on a global basis, whether or not the platform executes trades that are subject to the mandatory trading obligation, provided that it has a single U.S. customer. A consequence of this is that foreign trading venues deny access to U.S. traders for fear of being required to be registered as SEFs, leading to the creation of separate liquidity pools and prices for similar transactions. This has resulted in market fragmentation and liquidity concerns.⁵

We believe that Footnote 88 should be removed and that facilities that offer only non-MAT products should not have to comply with full SEF registration requirements.

4. Substituted compliance/equivalence

Given so much of FX is traded cross-border, we are in favour of the CFTC’s prioritization of substituted compliance discussions and determinations and are very supportive of the CFTC’s efforts with the European Commission on equivalence and comparability determinations for the regulation of trading venues, to avoid unnecessary disruption of cross-border swaps trading activity.

We are also encouraged by the Chairman’s recent statement about efforts being made with other overseas regulatory counterparts on how to regulate swaps execution in a harmonious manner across jurisdictions.

TRADE CONFIRMATIONS:

5. The CFTC should eliminate Footnote 195 from the SEF Rules.

The SEF rules require SEF-executed swap confirmations to contain all the terms of the counterparties’ swap transaction, including incorporating by reference terms in previously negotiated arrangements

⁵ See ISDA’s December 2013 “Footnote 88 and Market Fragmentation: An ISDA Survey, at <http://www2.isda.org/search?headerSearch=1&keyword=footnote+88>, showing that market participants reported that liquidity had fragmented. The ISDA Survey also showed that trading between US persons and non-US persons was disrupted.

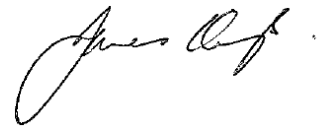
and agreements (per Footnote 195, provided that such agreements had been submitted to the SEF ahead of execution).

Requiring counterparties to submit previously negotiated terms to a SEF is unnecessary and burdensome to market participants. Our view is that SEF confirmations should only include the key economic terms of a transaction. We appreciate the Commission's efforts to alleviate the regulatory burdens and costs imposed by Footnote 195 through no-action relief; however, we believe that Footnote 195 should be eliminated from the SEF rules in its entirety.

The FX market is the world's largest financial market, and effective and efficient exchange of currencies underpins the world's financial system. The members of the Global FX Division have a strong interest in ensuring that the FX market continues to operate effectively, efficiently and safely at all times.

We are very grateful for the opportunity to share our views on the concerns we have raised in this letter. Please do not hesitate to contact Victoria Cumings on 212-313-1141, email vcumings@gfma.org should you wish to discuss any of the above.

Yours sincerely,

A handwritten signature in black ink, appearing to read "James Kemp". The signature is fluid and cursive, with a large loop at the end.

James Kemp
Managing Director
Global Foreign Exchange Division, GFMA