Global Foreign Exchange Division
St Michael's House
1 George Yard
London
EC3V 9DH

TO:
Commissioner O'Malia
US Commodity Futures Trading Commission
3 Lafayette Centre
1155 21st Street, NW
Washington
DC 20581

14 September 2011

Re: Review of Swaps for Mandatory Clearing under Section 723 of the Dodd-Frank Act (the"Act")

Dear Mr. O'Malia

The Global Foreign Exchange Division ("**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**"). Its members comprise 22 global FX market participants[1], collectively representing more than 90% of the FX market[2].

The GFXD is committed to ensuring a robust, open and fair market place and we welcome the goal of the Commodity Futures Trading Commission (the "Commission") to safeguard systemic stability and promote regulatory oversight transparency. We welcome the opportunity to comment on the review of swaps for mandatory clearing with respect to the foreign exchange ("FX") market. DCOs in the FX market are at present focusing on providing offerings for FX non deliverable forwards ("NDFs"). We therefore expect these to be the initial focus of clearing although note that FX options will also fall under this rule as may FX forwards and swaps depending upon the outcome of the US Treasury determination on FX forwards and swaps.

Criteria for evaluating the categorisation of "group, category, type, or class of swaps"

We support the recognition that 'grouping' of swaps needs careful consideration and believe that a one size fits all approach is inappropriate for determining whether swaps should be

[1] Bank of America Merrill Lynch, Bank of New York Mellon, Bank of Tokyo Mitsubishi, Barclays Capital, BNP Paribas, Citi, Credit Agricole, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, JP Morgan, Lloyds, Morgan Stanley, Nomura, RBC, RBS, Société Générale, Standard Chartered Bank, State St., UBS, and Westpac
[2] According to Euromoney league tables

mandatorily cleared. Accordingly we welcome the Commission's ability to subdivide DCO's submission for review.

We firmly believe that appropriateness for mandatory clearing is likely to depend on the characteristics of each of the different underlying products. FX products are not homogenous, and the possibility of different trade features requires that each currency pair should be reviewed and separately approved. In particular, liquidity by currency pair varies significantly. We believe that clearing is only warranted for the most liquid currencies that offer a material reduction in replacement risk across the market. As DCOs launch additional products, we believe that the Commission should give each new product due and careful consideration to ensure that any mandatory clearing is warranted. Approving FX swaps by currency will also enable consideration of the pace of development at competing DCOs to ensure market participants have a choice of venues to ameliorate systemic risk and encourage competition.

Documentation / additional information provided by DCO to assist Commission

To assist in the Commission's consideration of the five factors that shall be taken into account in its review for mandatory clearing, we urge the Commission to require specific information from the DCO on the end-to-end testing conducted with its clearing members. For FX Products specifically, specific information should be required on:

(1) the scenario analyses / stress testing performed by the DCO, the default management processes for the DCO and resulting impact on the underlying liquidity in the FX Product(s) that the DCO clears or plans to clear, and the arrangements in place to address management of sovereign risk events (e.g., suspension of trading, sovereign default, unexpected bank holiday or other significant disruption to valuation, payment or settlement processes; and

(2) a description of the manner in which the DCO has provided information to the central banks of the relevant currencies on its clearing of FX Products, including but not limited to (1) above, and a summary of any views expressed by the central banks to this information.

Because the FX market is a central component of the global payment system, central banks have expressed a need to understand and evaluate the impact of clearing by DCOs, individually and collectively, on the FX market from a broad policy perspective.

Timing mechanics of determining mandatory clearing

We understand that swaps listed for clearing by a DCO as of the enactment of the Act will be considered submitted to the Commission as of September 26th. The Commission must issue a determination within 90 days of a swap being submitted and, pursuant to the newly proposed rule on phasing in compliance with any such mandatory clearing determination ("Implementation Phasing"), swap participants will have a further 90 days to comply after the determination. Therefore, those swaps may be subject to mandatory clearing by mid-March 2012, subject to the granting of any stay.

As identified in the proposed rule on Implementation Phasing, the finalisation of certain 'trigger' rules remain outstanding, including end-user exception, segregation model for cleared swaps, clarification of extraterritorial boundaries and the identification and regulation of DCOs. From a market infrastructure perspective, there also remains to be implemented an appropriate client clearing solution for these products. Work is underway under the auspices of the Federal Reserve Bank of New York's Foreign Exchange Committee to establish best practice for client clearing. An early implementation of mandatory clearing could therefore mean that whilst global clearers can trade with each other, their clients, including most of the world's second tier banks, would not be able to do so.

Notwithstanding the proposed rule on Implementation Phasing, we urge the Commission to consider the interaction of the rules process with the infrastructure arrangements needed to allow markets to continue to function in an orderly manner.

In determining an appropriate timeframe for applying any mandatory clearing determination, the Commission should also consider how to minimise the operational risks involved in moving to cleared markets:

- We believe that DCOs must develop a track record of safe and sound clearing processes for any given swap, group, category, type or class of swaps during the voluntary clearing phase before clearing is made mandatory. DCOs are presently rolling out NDF currencies in phases. This suggests that each currency requires substantial development and end-to-end testing with the DCO's clearing firms and, thereafter, that sufficient experience with market participants with respect to each individual currency pair must be gained during a voluntary clearing phase to identify and address any operational issues.

- Market participants will also be required to set up new cleared currencies in their internal risk management processes and must be given sufficient time between a DCO formally launching a new currency pair and a mandatory determination.

End-user exception and integration of mandatory clearing with SDR implementation

In reference to the interaction with other Commission rulemaking, we note that elsewhere under the Proposed Rule for End-User Exception to Mandatory Clearing of Swaps, "[t]he Commission is proposing in § 39.6(b) to require non-financial entities to **notify the Commission each time the end-user clearing exception is elected by delivering specified information to an SDR** in the manner required by proposed rules for swaps data recordkeeping and reporting specified information would be delivered to the SDR by the reporting counterparty defined in the swap data recordkeeping and reporting rules together with other information regarding the swap that is subject to the end-user clearing exception to form the central record of the swap held by the SDR."

If the timeline provided that mandatory clearing could be required prior to SDRs being implemented (noting that the final data reporting rules have yet to be finalised), we query whether there is a risk that the end user exceptions from clearing may not apply and therefore end-user swaps would need to be cleared.

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We appreciate the opportunity to share our views on the review of swaps for mandatory clearing. Please do not hesitate to contact me at +44 (0) 207 743 9319 or at jkemp@gfma.org should you wish to discuss any of the above.

Yours sincerely,

James Kemp
Managing Director
Global Foreign Exchange Division