November 29, 2010

Department of the Treasury
1300 Pennsylvania Avenue, NW
Washington, DC 20220

Re: Notice of Request for Comments - Determination of Foreign Exchange Swaps and Futures

Ladies and Gentlemen:

Better Markets, Inc.[1] appreciates the opportunity to comment on the above-captioned Department of the Treasury's ("Treasury") Notice and Request for Comments (the "Request for Comments") regarding the potential exemption of foreign exchange swaps, foreign exchange futures or both from certain provisions of the Dodd-Frank Financial Services Reform Act (the "Dodd-Frank Act").

Introduction

The financial services industry claims to meet all of the exacting statutory requirements for an "exemption" are just another way for market participants to say – again -- "trust us, little transparency and less regulation is all that is needed to protect the public, taxpayers, our financial system and our economy" -- in the largest traded market in the world where worldwide foreign exchange trading has reached a record $4 trillion a day on average.

The industry arguments being made in connection with this possible exemption echo remarkably similar anti-transparency and anti-regulatory claims that were made in the decade-plus leading up to the crisis of 2008. As was the case then, the arguments claimed to support an exemption turn out to have little basis, as set forth below.

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1 Better Markets, Inc. is a nonprofit organization that promotes the public interest in the capital and commodity markets, including in particular the rulemaking process associated with the Dodd-Frank Act.

The real question presented by the possibility of this exemption from transparency and regulation is "Have we learned nothing from the financial crisis of 2008?" Accepting the industry's self-serving claims and "analysis" would be little different than what happened before the financial crisis and was one of its key causes.[2]

An unbiased analysis of foreign exchange swaps/forwards demonstrates that they are not qualitatively different from other classes of swaps in a way that would make them ill-suited for regulation as swaps. Moreover, there are no objective differences between foreign exchange swaps/forwards and other categories of swaps that would warrant exempted status.

In addition, exempting such swaps would eliminate the applicability of two of the Dodd-Frank Act's structural underpinnings: a transparent and systemically sound marketplace. The requirement of clearing is based on the need to properly manage counterparty risk in derivatives markets. Trading via exchanges and swap execution facilities, together with the dissemination of market data, moves derivatives trading out of the shadows and into venues that mitigate systemic risk and, indeed, make the mitigation of systemic risk possible.

The over-the-counter-market is the perfect environment for asymmetrical information and market power. This asymmetry encourages risk taking by those who maintain trading advantages. Transparent trading facilities and clearing, assuming that there is fair and free access, equalize information and risk management so that distortions and excessive risk are less likely. These structures offer the only feasible way to facilitate a marketplace which is relatively free from the asymmetry which can convert inevitable market disturbances into catastrophes. An exemption of the large and diverse foreign exchange market undercuts that essential goal.

Comparability of Foreign Exchange Derivatives to Other Markets. Foreign exchange swaps and forwards have all of the relevant characteristics of the other categories of derivatives that are subject to clearing and trade-matching requirements of the Dodd-Frank Act.

- Counterparties are exposed to the credit risk of each other, which can be measured by the same processes that are used for other derivatives. These credit risks can be managed by the clearing process. In fact, the Chicago Mercantile Exchange has a significant foreign exchange derivative clearing business.[3]

- Most foreign exchange transactions are matched over-the-counter, although electronic systems are widely used.[4] However, many of these matching systems are single dealer based. There is no doubt that moving the trading activities to Swap Execution Facilities and exchanges, matching multiple buyers with multiple sellers, would increase transparency and competitiveness in the marketplace.

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[2] See, e.g., Jarsulic, Marc, Anatomy of a Financial Crisis.

[3] CME Group Annual Report, 2009, Product List.

[4] Comment Letter dated November 15, 2010 to United States Department of the Treasury from the self-described Global FX Division (herein referred to as "Global Industry Letter").

Importantly, many commentators, including the Global Industry Letter, have asserted that the foreign exchange market did not play a role in the financial crisis of 2008. But, that simply is not accurate. In September of 2008, the foreign exchange swaps market virtually shut down. The Federal Reserve intervened by opening enormous, and ultimately unlimited, transatlantic swap lines with foreign central banks and reinforced the foreign exchange swap markets and defused the crisis.[5]

However, even if such a claim were true, it would be irrelevant to the consideration of an exemption. The Dodd-Frank Act addresses many markets that functioned adequately during the crisis. That is because their structures are considered to give rise to risks that are unacceptable even if they did not actually fail in 2008.

Moreover, as contagion from the crisis spread from one sector to the next in the financial industry, the government massively intervened to stop the spread of the crisis. So, if the foreign exchange markets were fortunate enough to have not yet been completely shut down, that says nothing about what would have happened had that intervention not have occurred and had Citigroup, AIG, Bank of America, Merrill Lynch, Goldman Sachs, Morgan Stanley, Wachovia, Fannie Mae, Freddie Mac and other financial institutions failed. The foreign exchange market would also have collapsed.

Foreign exchange derivatives constitute a highly leveraged funding market that is a major factor in the interconnectedness of financial institutions. As a result, they are a source of systemic risk.[6] Therefore, this type of derivative, at least as much as any other, should be subject to the requirements of the Dodd-Frank Act.

Embedded Foreign Exchange Derivatives. There has been concern that an exemption for foreign exchange swaps or futures could open the door to foreign exchange transactions structured to avoid regulation of other classes of derivatives. The inescapable fact is that foreign exchange transactions are based on currency, not physical products or securities. This makes them particularly susceptible to manipulation for purposes of regulatory avoidance. This was graphically demonstrated by the reported currency trades entered into by the Greek government and U.S. banks which were in reality an extension of debt.[7] The lesson from this widely reported story was the ease with which foreign currency structures can be converted to other purposes.

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[5] Naohiko Baba and Frank Packer, *From turmoil to crisis: dislocations in the FX swap market before and after the failure of Lehman Brothers*, BIS Working Papers, No. 285, July 2009, available at http://www.bis.org/publ/work285.pdf?frames=0.

[6] Even the Global Industry Letter confirms this: "In addition to being the world's largest financial market, the foreign exchange market underpins other financial markets and the global economy generally." Page 7. And, the Foreign Exchange and Currency Derivatives Dealers are a who's who of the very large, complex and interconnected banks. See, Id., page 14, n. 27.

[7] The New York Times, "Wall Street Helped to Mask Debt Fueling European Crisis," Louise Story, Landon Thomas and Nelson Schwartz, February 13, 2010.

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Proponents of exemption have argued both that foreign exchange swaps and forwards are largely simple and straightforward and that a great many of them are complex and bespoke. Sometimes these arguments are made in the same document.[8]

The fact is that foreign exchange transactions are often excessively complex because they are transacted in the over-the-counter market. A simple swap or forward has a relatively low profit margin, which can be, and often is, multiplied many times over in the process of negotiating a transaction. Like an automobile salesman, a trader makes much more from the add-ons than from the underlying transaction (although the additional profit is in the millions of dollars, not hundreds).[9]

An exemption for foreign exchange transactions opens the door to widespread abuse and unnecessarily opaque markets. Virtually all transactions can be accomplished in transparent markets and cleared. Requiring this does not inhibit the ability to hedge real risks; it simply compels market participants to use reliable and understandable methods, visible to all and transacted in a way that would eliminate needless risks.

In reality, Treasury must examine two very different marketplaces when considering the exemption. Most of the discussion has centered on the high volume, straightforward foreign exchange markets. The other one consists of highly structured transactions. On a transaction-by-transaction basis, structured transactions create even greater market opacity and risk.

Both the complex and simple segments of the markets are the subject of the Dodd-Frank Act. Any consideration of an exemption must address both the complex risks of the complicated transactions and the sheer size of the risk of the simple transactions. ***Neither segment of the market should be exempted, but each must be considered independently***

Forward Foreign Exchange Transactions. Foreign exchange forwards are often the focus of discussion because they are characterized as physical contracts in an effort to distinguish them from derivatives. The subject of the forward is currency, not bushels of corn, barrels of oil or stock certificates. Certainly forward delivery is a concern, which has been addressed successfully by the CLS Bank system. However, this distinction is simply not relevant.

The exchange of currencies at the conclusion of the transaction has no pertinence to the counterparty credit risk from the inception of the transaction to its conclusion; and it is equally irrelevant to transparency (or opaqueness) of the market structure used to match

[8] See, e.g., Global Industry Letter.

[9] With a unique lack of imagination that the financial industry has not suffered from, the Global Industry Letter claims "[i]t is difficult to foresee ... how other swaps could be financially reengineered to become FX forwards and FX swaps." Page 6. Of course, history demonstrates repeatedly how market particpants quickly move into any unregulated crevice in the regulatory structure with "innovative" products. See, e.g., Gillian Tett, Fool's Gold.

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the counterparties. (It should be noted that for many other types of contracts, physical delivery is an immaterial issue with respect to matching and clearing. However, if permitted, it can be used as a device to avoid regulation. But delivery of currencies is among the least relevant subjects of delivery.)

The participants in the foreign exchange markets do not want to change the way it works. One reason, no doubt, is that it is immensely profitable. It has been reported that the foreign exchange market was the single largest source of revenue for bank derivatives and cash trading businesses in the second quarter of 2010.[10] According to the Comptroller of the Currency, U.S. commercial banks recorded $4.3 billion in revenue from foreign exchange derivatives during this period.[11] These facts suggest a motive for industry participants who oppose transparent trade-matching and clearing since profitability always suffers from greater transparency.

There have been numerous articles published on the subject of exemption of foreign exchange derivatives from the relevant Dodd-Frank Act provisions. They have been remarkably consistent in the ostensible reasons favoring exemption that they have cited. The initial comments filed with Treasury have reiterated these reasons, with greater detail provided, of course. Some of the reasons are simply based on incorrect analysis. Some of them are irrelevant to the issues posed by the Dodd-Frank Act to the Treasury. But, taken together, these reasons do not provide a basis for the Treasury to exempt foreign exchange swaps or forwards from the trade-matching and clearing requirements of the Dodd-Frank Act.

Dodd-Frank Act Requirements for Exemption Are Very Stringent

Section 721 of the Dodd-Frank Act provides that foreign exchange swaps and forwards will be considered "swaps" unless the Secretary of the Treasury makes a determination that either or both

(I) should be not be regulated as swaps under the Dodd-Frank Act; and

(II) are not structured to evade the Dodd-Frank Act in violation of any rule promulgated by the CFTC related to the scope of the term "swap" and other matters.

[10] Bloomberg, "Banks Push U.S. Treasury to Exempt Foreign Exchange Swaps from Dodd-Frank," Robert Schmidt and Silla Brush, November 24, 2010.

[11] Report available at www.occ..treas.gov/topics/capital-markets/financial-markets/trading/derivatives/derivatives-quarterly-report.html.

In deciding whether to grant the exemption, the Treasury Secretary must consider

1) "whether the required trading and clearing of foreign exchange swaps and foreign exchange forwards would create systemic risk, lower transparency, or threaten the financial stability of the United States;
2) whether foreign exchange swaps and foreign exchange forwards are already subject to a regulatory scheme that is materially comparable to that established by this Act for other classes of swaps;
3) the extent to which bank regulators of participants in the foreign exchange market provide adequate supervision, including capital and margin requirements;
4) the extent of adequate payment and settlement systems; and
5) the use of a potential exemption of foreign exchange swaps and foreign exchange forwards to evade otherwise applicable regulatory requirements."

If the Secretary decides to grant the exemption, he is required to submit specific information to the relevant congressional committees:

1) "an explanation regarding why foreign exchange swaps and foreign exchange forwards are qualitatively different from other classes of swaps in a way that would make the foreign exchange swaps and foreign exchange forwards ill-suited for regulation as swaps; and
2) an identification of the objective differences of foreign exchange swaps and foreign exchange forwards with respect to standard swaps that warrant an exempted status."

Response to Questions Posed by Treasury

Below, we will respond to certain of the questions posed by Treasury.

What are the primary risks in the foreign exchange swaps and forwards market, how significant are these risks, and how are these risks currently managed by market participants?

To what extent is counterparty credit risk a significant concern in the foreign exchange swaps and forwards markets?

If so, to what extent do current market practices (including netting and bilateral collateral support arrangements) mitigate these risks?
Would centralized clearing and exchange trading address these risks?

Counterparty credit risk is a significant concern in the foreign exchange markets. There is simply no distinction between the risk of a counterparty default, measured by the market value of a replacement position, in these markets as compared with other derivatives markets which are the subject of the Dodd-Frank Act. This is a large market, representing $817 billion of turnover per day in the US, according to the Federal Reserve Bank of New York.[12] Worldwide turnover is

[12] Federal Reserve Bank of New York, "The Foreign Exchange and Interest Rate Derivatives Markets: Turnover in the United States," April 2010.

estimated at $4 trillion[13] per day. Counterparty default risk among financial institutions is a significant feature of inter-connected risk that is a systemic threat.

The Global Industry Letter refers to the prevalent use of Credit Support Annexes in documenting bi-lateral foreign exchange trading arrangements. This is, of course, not unique at all in derivatives markets. It is also irrelevant. The relevant points are:

- The existence of a CSA does not mean that collateral to cover counterparty risk is actually posted. It merely provides a mechanism for posting if and only if conditions warrant it (e.g., rating downgrades; exceeded credit limits).

- Posting of collateral under a CSA does not equate with clearing. Difficult questions, such as re-hypothecation of posted collateral and the adequacy of management systems, are raised by bilateral arrangements using CSAs.

- Congress could have focused on bi-lateral collateral arrangements as a preferred mechanism for addressing counterparty credit risk in the Dodd-Frank Act. CSAs can be used for virtually all derivatives, after all. Instead, Congress selected clearing as the primary mechanism for counterparty risk management.

- Market participants know that a default and/or credit concern in one area of a financial institution's business (i.e., foreign exchange) can lead to forced liquidation of other positions. In many cases this results in a spiraling down of the perceived creditworthiness of that institution, leading to a self-fulfilling failure. This was graphically illustrated in 2008 as weakness in mortgage credit businesses led to the downfall of some institutions. This effect does not necessarily stop at the directly affected institution. As in 2008, when institutions were linked by derivatives, a domino effect is likely, if not certain.

The Global Industry Letter relies heavily on a quantitative comparison of settlement risk and mark-to-market risk indicating that the settlement risk is larger. This comparison is designed to demonstrate that the *primary* risk in the foreign exchange markets is settlement at maturity. It is clearly generated by industry sources and should be given no weight unless it is verified, an impossible task since only the conclusions are provided.

Of course, the size of the settlement risk is irrelevant. The subject under consideration is the counterparty risk of default and management of it through clearing. If the settlement risk is, in fact, much larger than pre-settlement counterparty risk, it is a separate concern.

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[13] Bank for International Settlements, "Triennial Central Bank Survey – Foreign Exchange and Derivatives Market Activity – Preliminary Results," September 2010.

Nevertheless, the Global Industry Letter "analysis" uses a methodology comparing the two types of risk which is questionable, at best. This "analysis" either uses a rationale which is not apparent, is incorrect or is speciously comparing values to achieve an effect. It compares two values for durations of 0 to 2 years:

- Credit risk is measured as the potential loss experienced from replacing a contract lost as a result of default based on market prices. While the assumptions and data are not made available, the approach is reasonable. The estimated losses calculated, ranging up to 11% of notional value, are not on their face unreasonable if they are based on data largely representing non-stressed markets. It should be noted that the methodology for calculating estimated loss is not provided, even though the use of measures such as "value-at-risk" has been the subject of much controversy in recent years.[14] The estimate may well be understated.

- The settlement risk is measured uniformly at 100% of notional value for all durations. There is no explanation of the rationale for this measurement. It begs the question how a counterparty could experience a loss of 100% notional value in a forward exchange swap or forward when market prices suggest no more than an 11% variance in the expected economic outcome. That is certainly not how CLS Bank works: if one party does not fund, the payment made by the counterparty is refunded. If foreign exchange markets are structured so that 100% notional value loss is the expected result of failed performance, then they are desperately in need of immediate re-structuring.

Given its suspect value, such "analysis" should be accorded no weight at all. If, however, Treasury decides to gives weight to this "analysis", explanation by its author made available to the public and full disclosure of its assumptions and inputs must be required. Treasury should then submit an independent analysis.

To what extent do current payment-versus-payment settlement arrangements address settlement risk?

Much has been made in the press and in the Global Industry Letter of the use of CLS Bank to effect settlements at maturity. To the extent that the CLS systems mitigate this risk, it reduces systemic risk. It is also irrelevant to the issues under consideration.

Forward settlement risk in foreign exchange markets may well be a qualitatively different risk from other derivatives instruments, but it is incremental. Its existence does not mean that the counterparty credit risks addressed by clearing do not also exist.

Are foreign exchange swaps and/ or foreign exchange forwards qualitatively different from other classes of swaps in a way that makes them ill-suited for regulation as ''swaps'' under the CEA?

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[14] Nassim Taleb. "Report on the Risks of Financial Modeling: VaR and the Economic Breakdown. September 11, 2009. See also, e.g.' Jasulic, "Anatomy of a Crisis", pg. 8.

Are there objective differences between swaps and foreign exchange swaps and/or foreign exchange forwards that warrant an exemption for either or both of these instruments?

The focus of these questions – regulation as swaps under the CEA – must be on the clearing and transaction-matching provisions of the Dodd-Frank Act, which are the significant considerations in the exemption decision.

Fundamentally, foreign exchange transactions involve counterparty risk measured by market price moves, the same as other swaps which are covered by the CEA. This is the risk which the Dodd-Frank Act addresses through requirements for clearing.

Foreign exchange swaps are currently cleared by the Chicago Mercantile Exchange.[15] They constitute contracts for an exchange of cashflows measured by the strike price and reference to the value of the subject product, i.e., a quantity of currency. There is no qualitative difference.

Foreign exchange forwards are somewhat different. However, because they involve an exchange of quantities of currencies, these differences are not material. Clearing will involve periodic marks-to-market and the resulting payment of maintenance margin. Therefore, when the contract matures, the value of market movements will have passed from one of the counterparties to another. From a funding perspective, the result is the same as if the parties had posted collateral to secure counterparty risk based on marks. The simple adjustment of the final settlement to account for the prior transfer of value would leave the parties in the same economic position, without having experienced counterparty default risk prior to maturity.

There are also a number of techniques which could be used by the clearinghouses to address the passing of value to secure counterparty default risk. A clearinghouse could facilitate a reversal of prior margin payments, allowing the forward to settle without adjustment. However, these techniques are unlikely to be necessary and the practice described in the prior paragraph will almost certainly be used.

In terms of matching, there are no issues in the over-the-counter foreign exchange markets which are qualitatively different from other over-the-counter markets subject to the Dodd-Frank Act requirements. It is obvious that many market participants would prefer to maintain the OTC option, avoiding the transparency and symmetrical information of the SEF/DCM model. But, this preference is not relevant to the decision to exempt.

Are there objective differences between long-dated and short-dated foreign exchange forwards and swaps such that one class may be less suited to regulation as ''swaps'' under the CEA than the other?

There is no doubt that a large portion of the foreign exchange market transactions have short durations when compared with other classes of derivatives. This has been frequently cited, in the press and in the Global Industry Letter, as a reason to exempt foreign exchange swaps and forwards from the clearing and trade matching requirements of the Dodd-Frank Act.

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[15] CME Group Annual Report, 2009, Product List.

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Longer durations are, in reality, on the increase. The percentage of over-the-counter foreign exchange transactions with durations exceeding 1 year increased consistently between 2000 and 2009. In 2009, 20% of foreign exchange transactions were of durations between one and five years and 18% were of durations greater than 5 years.[16]

Just because a larger percentage of the market is of short duration does not mean that the longer-duration market is unimportant. It is a large portion of the derivatives market taken as a whole. The Federal Reserve Bank of New York estimates that 62% of forwards and 28% of swaps have durations in excess of seven days.[17] This is in the context of a market with *$817 billion of daily turnover in the U.S.* alone.[18]

Credit risk in these markets is only indirectly related to duration. If a default occurs, counterparty losses will be a function of the loss experienced in replacing the contracts measured by price changes. The loss will be a function price volatility and notional quantity. Volatility varies across different durations, but it is by no means certain that longer durations will have greater volatility. In fact, the opposite is likely to be true. Factors which influence volatility in currency values and in relationships between currency prices can have far more extreme effects on short duration prices as the dates for physical settlement approach. This phenomenon is completely logical, since events affecting prices are often sorted out over time. Treasury can look to the methodologies employed by clearinghouses and the historic data behind these methodologies to better understand duration and volatility. Therefore, short duration does not imply a lower risk to the system; it might actually mean that the risk is greater, particularly if the market is under extreme stress and dysfunction.[19]

It is undoubtedly true that the management mechanisms used by clearinghouses, focused on future price moves, are unusable for extremely short forward periods. But the limitation is at the next day duration level. Short durations can easily be accommodated. We have learned that the movement of large quantities of data and the measurement of risk associated with the positions represented by that data do not pose a significant challenge. The task is to create systems which are reliable and do not require manpower to accomplish the tasks. If high frequency traders can manage the volumes of data and enter and exit markets based on complex statistical algorithms, dealing with short duration foreign exchange derivatives is a job that can get done.

There is no doubt that broader clearing of foreign exchange derivatives will reduce credit exposures by increasing funded margin for collateral to offset risk. This is often characterized as an unnecessary burden.[20] However, ignoring risk is a dangerous path, even if it seems more

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[16] Bank for International Settlements, "Triennial Central Bank Survey – Foreign Exchange and Derivatives Market Activity – Preliminary Results," September 2010.

[17] Federal Reserve Bank of New York, "The Foreign Exchange and Interest Rate Derivatives Markets: Turnover in the United States," April 2010.

[18] Id.

[19] A case in point is the Federal Reserve intervention to preserve the foreign exchange market in 2008, described above.

[20] It is also a disputed point. Analysis has suggested that margin is de facto included within the cost structure of swaps. Expressly requiring margin only makes it transparent; it does not necessarily increase it and there are good arguments that the transparency will actually reduce it.

convenient. Shortcuts in risk management created, in part, the disaster which still plagues the American and world economies. If the Dodd-Frank Act means anything, it compels the regulators and the financial services industry to use the capabilities which are available to restore order to the derivatives markets by recognizing and prudently managing risks.

Matching systems are also not problematic for short durations. There are a number of commodities which can be bought and sold on a next day basis using anonymous electronic systems such as the Intercontinental Exchange.

What would be the likely effects of mandatory U.S. clearing of foreign exchange swaps and/or forwards on foreign exchange market liquidity on the dollar?

Much has been made of the effect of clearing on market liquidity without definitive study to back it up. We emphasize, however, that clearing is fundamentally an alternative system for credit default risk management which replaces bilateral systems. It can be used flexibly to fit with market requirements. There is no reason to conclude that it will materially affect markets without credible proof. Experience in other markets has been that clearing actually increases liquidity in the marketplace.

Other Issues

There have been a number of other issues raised in the press and in the Global Industry Letter which appear to be designed to create controversy, but are not relevant to the exemption issue. These include the following:

- Foreign exchange markets are critical to central banks' ability to carry out policy and the Federal Reserve must monitor the markets. Of course, clearing and transparent trade matching would not adversely affect central banks' roles in the markets.

- Clearing foreign exchange transactions would concentrate risk in the clearinghouses. This is true of all derivatives. The policy of the Dodd-Frank Act is that the superior management techniques of central counterparty clearing are to be maximized.

Independent Verification of Industry's Self-Serving Claims

One key lesson that must be learned from the financial crisis is that regulators cannot base policy on the self-serving statements (too often masquerading as "analysis") from highly incentivized market participants seeking to protect profit margins inflated by opaque, unregulated markets. Self-serving statements are not necessarily wrong, but they must be considered with great skepticism. Thus, the only reasonable action is to ***independently verify*** any material claim by a self-interested entity.

As demonstrated above, the exemption is not warranted and fails the statutory requirements. However, if the Secretary considers granting such an exemption, we submit

that it would be inappropriate to grant the exemption unless truly independent experts have verified the industry's claims. Specifically, we suggest that the Secretary, through a public RFP process, retain independent experts to opine on the advisability of the exemption and the merits (or lack of merit) of the industry's claims.

Given that another key lesson of the crisis is that regulators often failed to do their job,[21] such action is particularly appropriate in this instance for several reasons. First, as made starkly clear by the first page of the Global Industry Letter, the Secretary appears to have pre-judged this specific issue. Second, the public is already highly suspicious of government action favoring the financial industry and granting the requested exemption will only reinforce that suspicion.

Third, this decision is likely to set the global standard for the foreign exchange markets[22] and, as such, should only be done after a deliberative, public process. Fourth, this decision will have the likely distinction of being the first highly consequential post-Dodd-Frank Act regulatory action by the Secretary (who also happens to be the new Chairman of the Financial Stability Oversight Counsel) and, as such, it will be taken as a signal of things to come. If that decision is ***against*** transparency and ***against*** regulation, it must be done in a way that makes clear that it is independently based, very narrow and limited, and that it is the exception to the rule of more transparency and tighter regulation.

Anything less than a public independent verification process that conclusively confirms industry's self-serving statements will further erode public confidence and raise questions, here and abroad, about our commitment to meaningful financial reform.

Conclusion

The exemption of foreign exchange swaps and forwards should not be granted.

As set forth above, an unbiased analysis of foreign exchange swaps/forwards demonstrates that they are not qualitatively different from other classes of swaps in a way that would make them ill-suited for regulation as swaps. Moreover, there are no objective differences between foreign exchange swaps/forwards and standard swaps that would warrant exempted status.

The straightforward foreign exchange market must not be exempted. Careful analysis demonstrates that the particular characteristics of this market simply do not justify exemption. Some of these characteristics are merely distinctions without meaning. Some are actually illusory. The intensity of those who favor exemption, fueled by a desire to preserve this profitable marketplace in its current form, regardless of the risk, must not be allowed to frustrate the prudent goals of the Dodd-Frank Act.

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21 See, e.g., Jarsulic, Anatomy of a Financial Crisis.

22 Financial Times, "Traders Angered by Swaps Legislation," David Wigan, October 3, 2010.

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We hope these comments are helpful in your consideration of the Proposed Rules.

Sincerely,

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