



UNIVERSITY OF MARYLAND
SCHOOL OF LAW

November 29, 2010

Mary J. Miller
Assistant Secretary for Financial Markets
Office of Financial Institutions Policy
Department of the Treasury
1500 Pennsylvania Avenue, NW.
Washington, DC 20220

Re: Determination of Foreign Exchange Swaps and Forwards.

Dear Ms. Miller:

These comments are submitted in response to the Notice of Request for Comments¹ issued by the Department of the Treasury (“Treasury”).

I. General Comment

On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act² (“Dodd-Frank Act”). Title VII of the Dodd-Frank Act amended the Commodity Exchange Act³ (“CEA”) to establish a comprehensive new regulatory framework for swaps and security-based swaps in order to reduce risk, increase transparency, and promote market integrity within the financial system.

The central tenet of the Dodd-Frank Act is to provide free and open access to *clearing and exchange trading* by financial institutions.⁴ Simply put, clearing and exchange trading are

¹ 75 Fed. Reg. 66426 (October 28, 2010) (hereinafter “Notice”).

² Pub. L. No. 111-203, 124 Stat. 1376 (2010) (hereinafter the “Dodd-Frank Act”).

³ 7 U.S.C. 1 *et seq.*

⁴ *See, e.g.,* S. REP. 111-176, at 32–35 (2010) (noting that draft provisions concerning OTC derivatives were designed to minimize non-cleared, off-exchange trades) (emphasis added); *Public Roundtable on Governance and Conflicts of Interest in the Clearing and Listing of Swaps: Commodity Futures Trading Commission and Securities and Exchange Commission*, at 33 (Aug. 20, 2010) (statement of Randy Kroszner, University of Chicago, Booth School of Business) (“And the law is clear: Open access is the fundamental principle.”).

designed to reduce risk by providing price transparency, requiring that investors set aside adequate capital in case of default, and producing public information on who is involved in trading and to what extent.⁵ Particularly, Section 721 of the Act amends section 1a of the CEA, which broadly defines the term “swap,” to bring the vast previously unregulated swaps market under the clearing and exchange trading tenets. To achieve this goal, the Dodd-Frank Act defines “swaps” to include, *inter alia*, “any agreement, contract, or transaction commonly known as [...] a *foreign exchange swap*.”⁶

However, the Dodd-Frank Act also provides that foreign exchange swaps and foreign exchange forwards (collectively “FX derivatives”) shall be considered swaps *unless* the Secretary makes a written determination that FX derivatives (I) should not be regulated as swaps under this Act and (II) are not structured to evade the Dodd-Frank Act in violation of any rule promulgated by the CFTC.⁷ Because one of the principles of the Dodd-Frank Act is to shed light on the opaque and systemically dangerous over-the-counter swaps markets through clearing and exchange trading, the legislative intent must be carefully examined to understand the limits on the Secretary’s discretion to exclude FX swaps from the definition of “swaps.”

II. Legislative History and Intent

The Dodd-Frank Act did not exempt FX derivatives from regulation, and as such, close examination of the legislative intent shows that Congress unambiguously questioned the idea that FX would be excluded from the regulatory norms applied to all derivatives. As explained in this comment letter, the potential implication of excluding FX derivatives from the definition of “swap” is far too systemically dangerous to leave unexamined.

The Chairman of the CFTC, the primary regulator of swaps markets, has said on numerous occasions that one of the three critical reforms of the derivatives markets included in the Dodd-Frank Act is that the Act “requires clearing of standardized swaps by regulated clearinghouses to lower risk in the marketplace.”⁸ If FX derivatives are excluded from the definition of “swap,” those derivatives transactions would not have to be cleared; nor would they be transparent to the market participants, thereby increasing costs for swap participants, which would then be passed on to the costs to consumers.⁹ If the present financial crisis taught us

⁵ S. REP. 111-176, *supra* note 24, at 29–35 (“The combination of these new regulatory tools will provide market participants and investors with more confidence during times of crisis, taxpayers with protection against the need to pay for mistakes made by companies, derivatives users with more price transparency and liquidity, and regulators with more information about the risks in the system.”).

⁶ See § 721 (emphasis added).

⁷ See § 721.

⁸ See Gary Gensler, Chairman, CFTC, *Remarks before the Practising Law Institute’s 42nd Annual Institute on Securities Regulation*, New York (Nov. 11, 2010), available at <http://www.cftc.gov/PressRoom/SpeechesTestimony/ChairmanGaryGensler/opagensler-59.html>.

⁹ See Shahien Nasiripour and Ryan Grim, *EXCLUSIVE: Two Leading House Dems Will Close \$50 Trillion Loophole In Derivatives Reform Bills*, THE HUFFINGTON POST, June 17, 2010, available at

anything, it is that market transactions must be properly capitalized and that there must be a market pricing mechanism, i.e., clearing and exchange trading, that sets firm and readily accessible prices for what would otherwise be wholly opaque transactions priced by illusory mathematics, rather than the market itself.

i. Treasury's Proposed Legislation

On August 11, 2009, the Treasury Department sent to Congress proposed legislation titled the "Over-the-Counter Derivatives Markets Act of 2009."¹⁰ Under this proposed legislation, the Treasury explicitly excluded "any foreign exchange swap" and "any foreign exchange forward" from the definition of "swap."¹¹ In doing so, the Treasury sought to allow the \$40 billion foreign exchange market to be continued under the deregulatory opaqueness that brought about the very financial crisis that Dodd-Frank sought to remedy. At this point in time, the Treasury offered no justification or explanation for this exclusion from transparency and capital adequacy.

ii. Concerns about FX Exclusion Raised by the CFTC and SEC

On August 17, 2009, in response to the Treasury proposed legislation, CFTC Chairman Gary Gensler, in a letter to Congress, critiqued the FX derivatives exclusion suggested by the Treasury. Chairman Gensler correctly explained: "[t]he Proposed OTC Act would exclude foreign exchange swaps and foreign exchange forwards from the definition of a 'swap' regulated by the CFTC. The concern is that these broad exclusions could enable swap dealers and participants to structure swap transactions to come within these foreign exchange exclusions *and thereby avoid regulation*. . . . In short, these exceptions could *swallow up the regulation* that the Proposed OTC Act otherwise provides for currency and interest rate swaps."¹²

Shortly thereafter, during the September 22, 2009 hearing before the House Committee on Agriculture, Chairman Peterson posed the following question to Chairman Gensler and

http://www.huffingtonpost.com/2009/11/18/exclusive-two-leading-hou_n_362154.html ("For one thing, the experts say, the increased transparency that would result from moving this market away from the shadows would result in better pricing of these contracts, which would have the effect of lowering costs for businesses, which would then pass on the savings to consumers.") (quoting Walter Dolde, a finance professor at the University of Connecticut and an expert on derivatives, "Firms that are hedging [like a Coca-Cola] don't know if they're getting the best price. More transparency would lead to better pricing and more competition. It's good for consumers.").

¹⁰ Department of the Treasury, Proposed Legislation, TITLE VII—IMPROVEMENTS TO REGULATION OF OVER-THE-COUNTER DERIVATIVES MARKETS, Over-the-Counter Derivatives Markets Act of 2009 (August 11, 2009), available at <http://www.financialstability.gov/docs/regulatoryreform/titleVII.pdf> (hereinafter "Treasury Proposed Legislation").

¹¹ See § 711, Treasury Proposed Legislation, *supra* note 10.

¹² Analysis of Proposed Over-the-Counter Derivatives Markets Act of 2009, Commodity Futures Trading Commission, August 17, 2009 2, available at <http://tradeobservatory.org/library.cfm?refid=106665>.

Chairwoman Schapiro of the Securities and Exchange Commission: “Treasury argues that [the foreign exchange swaps] exclusion is necessary to preserve the dollar's position as a world-leading currency. Can you explain Treasury's argument of why you believe this class of derivatives should be regulated?”¹³ Chairman Gensler correctly responded, “[w]hat we'd want to assure is that any exceptions from this are clearly targeted and can't be used somehow to avoid that oversight of interest rate swaps and currency swaps and the like. [...] Our concern [...] is that we would not want [...] market participants [to] evade the oversight of these currency swaps and interest rate swaps and also that retail foreign exchange transactions are fully covered.”¹⁴ Chairwoman Schapiro echoed the same concern, “the concern about retail forex transactions existed then, it exists today, and -- and that was the reason we felt very strongly that Chairman Gensler has taken the right approach in trying to narrow this exception.”¹⁵

iii. Concerns about FX Exclusion Raised by Key Members of Congress

In November 2009, Chairmen Frank and Peterson, leaders of the two committees of jurisdiction on this legislation in the House of Representatives, challenged the Treasury's proposed exclusion of FX derivatives, claiming that it would eliminate from the exchange trading and clearing requirements over \$50 trillion in swaps.¹⁶ Furthermore, Senator Maria Cantwell, an active legislative participant in the crafting of Dodd-Frank, publicly said: “The Treasury Department should be ashamed of themselves,” referring to, *inter alia*, the exclusion of foreign currency swaps.¹⁷ She added, “What is moving through on the House side is a bill that supposedly has a new rule but it has so many loopholes that the loophole actually eats the rule. [...] Current law with its loopholes would actually be better than these loopholes.”¹⁸ These views of key members of Congress clearly lend support to the legislative intent that any FX exclusion from transparency and capital adequacy protections carries with it the highest burden on the

¹³ Transcript, *The Over-The-Counter Derivatives Market: Hearing Before the House Committee on Agriculture*, 111th Cong. (2009) (statement of Rep. Peterson, Chairman).

¹⁴ Transcript, *supra* note 13 (statement of Chairman Gensler, CFTC).

¹⁵ Transcript, *supra* note 13 (statement of Chairwoman Schapiro, SEC).

¹⁶ Shahien Nasiripour & Ryan Grim, *Two Leading House Dems Will Close \$50 Trillion Loophole in Derivatives Reform Bills*, HUFFINGTON POST, (Nov. 18, 2009) available at http://www.huffingtonpost.com/2009/11/18/exclusive-two-leading-hou_n_362154.html.

¹⁷ Jason Linkins, *Sen. Maria Cantwell Savages Derivative Reform Legislation: "The Treasury Department Should Be Ashamed Of Themselves,"* HUFFINGTON POST, October 16, 2009 (updated on March 18, 2010), available at http://www.huffingtonpost.com/2009/10/16/sen-maria-cantwell-savage_n_323868.html (quoting from MSNBC interview with Sen. Cantwell, on Morning Meeting (Oct. 16, 2009)).

¹⁸ *Id.*

Secretary to choose to disregard clearing, exchange trading and capital/collateral requirements for such a huge part of the derivatives market.

iv. Department of Treasury's Justification for Exemption

The Department of Treasury's explanation why FX derivatives should be excluded from the definition of swaps has to date been very unclear. As one market observer has recently stated: "Several knowledgeable individuals who were involved in the discussions of this provision during the drafting of Dodd-Frank report that Treasury never articulated a coherent rationale."¹⁹ Indeed, during the December 22, 2009 hearing before the Senate Committee on Agriculture, Nutrition and Forestry, Secretary Geithner stated, "FX markets are different from [other derivatives instruments], and they're not really derivatives in this sense, and they don't present the same set of risks. And there is an elaborate framework in place already, put in place starting 20 years ago, to limit settlement risk and the other sets of risks that occur. And these markets have actually worked quite well."²⁰ However, he failed to mention what those "differences" are or what those protections outside of Dodd-Frank would be. He merely stated, "because of the protections that already exist in these foreign exchange markets and because they are *different* from derivatives, have *different* risks, require *different* solutions, we'll have to have a slightly *different* approach."²¹

Notably, Vanguard, a large market participant, has submitted a comment letter stating that "foreign exchange swaps and forwards present many of the same concerns that are posed by other types of Swaps, including the possibility that large outstanding positions could create significant risk if adequate collateral has not been posted and/or the trading entity has not adequately covered its potential exposure on the position."²² By including FX derivatives in the regulatory scheme applicable to all derivatives, Congress rejected for its own part the idea that those derivatives are "different." In the absence of a coherent and understandable administrative explanation to support any supposed difference between FX and all other derivative products, as well as a similarly coherent and understandable explanation of what regulatory protections from systemic risk exist in the absence of clearing and exchange trading, any regulatory exclusion

¹⁹ Wallace C. Turbeville, *Guest Post: The Foreign Exchange Mystery*, NAKED CAPITALISM, October 14, 2010, available at <http://www.nakedcapitalism.com/2010/10/the-foreign-exchange-mystery.html>.

²⁰ Transcript, *Over-The-Counter Derivatives: Hearing Before the Senate Committee on Agriculture, Nutrition and Forestry*, 111th Cong. (December 22, 2009) (statement of Secretary Geithner).

²¹ *Id.*

²² Comment Letter from Vanguard to the SEC and the CFTC, *File Number S7-16-10 – Request for Comments: definitions Contained in Title VII of Dodd-Frank Wall Street Reform and Consumer Protection Act (75 Fed. Reg. 51529)*, at 10, Sept. 20, 2010.

would be arbitrary and capricious and would therefore be a candidate for a judicial stay and ultimately reversal upon judicial review.

III. FX Markets Have Presented Serious Systemic Problems Worldwide

i. Recent European Sovereign Debt Crisis

Recently, it has been discovered that Greece and Italy have used, *inter alia*, foreign currency swaps sold by U.S. swaps dealers to mask short term sovereign debt in order to, *inter alia*, gain entrance to the European Union in exchange for, *e.g.*, paying swaps dealers hundreds of millions of dollars in Greece revenue streams extending to the year 2019.²³ As one leading derivatives expert has noted, in these kinds of transactions, “the participant receives a payment today that is repaid by the higher-than-market payments in the future. [...] Such arrangements provide funding for the sovereign borrower at significantly higher cost than traditional debt. The true cost to the borrower and profit to the [swaps dealer] is also not known, because of the absence of any requirement for detailed disclosure.”²⁴ Furthermore, in the case of Greece, the swaps dealers “devised a special kind of swap with fictional exchange rates [t]hat enabled Greece to receive a far higher sum than the actual euro market value of 10 billion dollars or yen.”²⁵ These FX swaps transactions were basically examples of unfair-unjustifiable-predatory lending practices that have played a major role in the present Euro and European Union crisis, which threatens worldwide systemic risk that could drown the hoped for recovery from the present worldwide recession.

ii. South Korea “Surgical Response” to Foreign Exchange Manipulation

The problems with FX swaps and forwards plague Asian countries as well. In fact, in order to minimize disruption in currency markets, the South Korean government recently decided to “set limits on the build-up of foreign-exchange derivatives that it believes makes [its currency,] the won, one of the most volatile currencies in the rich world.”²⁶ The government

²³ Charles Forelle, *Debt Deals Haunt Europe*, WALL ST. J., Feb. 22, 2010, at A1; Kate Kelly, et al., *The Woman Behind Greece’s Debt Deal*, WALL ST. J., Feb. 22, 2010, at C1 (Goldman received \$300 million in fees for Greek deal); Michael Hirsh, *Wall Street’s Euro Scams: Lobbyists are Quietly Working to Ensure Secret Derivatives Deals Behind Euros Stay Secret*, NEWSWEEK, Feb. 16, 2010, available at <http://www.newsweek.com/id/233645>.

²⁴ Satyajit Das, *Stripping Away the Disguise of Derivatives*, FINANCIAL TIMES, Feb. 17, 2010, available at <http://www.ft.com/cms/s/0/270fb2b6-1bcd-11df-b073-00144feab49a.html>.

²⁵ Beat Balzli, *How Goldman Sachs Helped Greece to Mask its True Debt*, SPIEGEL ONLINE INTERNATIONAL, Feb. 8, 2010, available at <http://www.spiegel.de/international/europe/0,1518,676634,00.html>.

²⁶ *Capital controls in South Korea: The won that got away; A surgical strike in a volatile market*, Finance and Economics, THE ECONOMIST (June 17, 2010), available at <http://www.economist.com/node/16381310/print> (last visited on November 28, 2010).

found that the speculation in its currency by foreign market players contributed to the unreasonable level of volatility. As such, local banks will be only allowed to have foreign-exchange derivatives no higher than half their capital base.²⁷ Furthermore, foreign branches, which have greater access to hard currency, have a higher ceiling of 2.5 times their capital.²⁸ The government hopes that these limits will help minimizing disruption in currency markets by curbing speculations of the South Korea currency. These kinds of controls make clear that FX is not a candidate for exclusion from the capital adequacy and transparency requirements of Dodd-Frank.

IV. Banks Generated Significant Revenues From FX Derivative Transactions

While the swaps dealers can offer no explanation about why clearing and exchange trading would interfere with effective use of FX, it is clear that the huge fees from unregulated FX motivate the desire to evade regulation. Goldman Sachs' trading revenue from foreign exchange positions from the second quarter of 2010 alone was \$2.2 billion.²⁹ According to the Office of the Comptroller of the Currency, JPMorgan Chase generated \$420 million dollars, Citibank with \$500 million dollars, and Bank of America with \$227 million dollars from their foreign exchange positions from the second quarter of 2010. Moreover, these large banks make about 70 percent of their profits in derivatives in FX.

There is absolutely no doubt that the desire to preserve massive profits (that serve no underlying policy purpose) underpins Wall Street's arguments that they should operate their business *status quo ante*. In fact, a coalition of 20 Wall Street firms "is pushing [Secretary] Geithner to give currency derivatives a pass from oversight. They argue that foreign exchange is less complex than other derivatives and played no role in the financial crisis, unlike the credit default swaps that brought down American International Group."³⁰ However, as shown above, while not playing any role in the AIG downfall, they have played a role in the present Euro crisis.

Moreover, the Wall Street argument overlooks the fact that a critical part of their Too Big To Fail protection comes from the interconnectedness of undercapitalized and opaquely priced

²⁷ *Id.*

²⁸ *Id.*

²⁹ Comptroller of the Currency, OCC'S QUARTERLY REPORT ON BANK TRADING AND DERIVATIVES ACTIVITIES SECOND QUARTER 2010, available at <http://www.occ.treas.gov/topics/capital-markets/financial-markets/trading/derivatives/dq210.pdf>.

³⁰ Robert Schmidt and Silla Brush, *Will Currency Derivatives Get a Pass on Oversight? Banks want them exempted. Treasury Secretary Geithner seems to concur*, BUSINESSWEEK (Nov. 24, 2010), available at http://www.businessweek.com/magazine/content/10_49/b4206036158552.htm (last visited on November 28, 2010).

derivatives have in an unregulated market. One has to look no further than the Lehman bankruptcy to see that any derivative that is not capitalized and priced by market functions (rather than by theoretical pricing algorithms) has a highly destabilizing systemic effect running from a bankrupt institution to its counterparties. As now can be seen from the Lehman bankruptcy proceedings, Lehman was a counterparty or guarantor of over 930,000 OTC derivatives, including CDS, interest rate, currency, foreign exchange, and energy swaps.³¹ The Lehman liquidators are now embarked in a huge battle with Lehman's OTC derivative counterparties, claiming that those counterparties have greatly exaggerated the value of amounts owed by Lehman pursuant to those derivatives. The liquidators have just filed a law suit against Nomura, which has filed \$1 billion in counterparty claims against the Lehman estate. Lehman asserts that Nomura's claims would "wrongfully extract hundreds of millions of dollars" and that "Nomura filed egregious derivative claims against the estate that grossly overstate actual damages." [...] About 6,000 derivatives claims – totaling \$60 bn in losses – were filed against Lehman's US estate..., including claims from about 40 of the largest US banks."³² Clearly, there was no transparency in the market; as a result, those counterparties are to date disputing about the opaquely priced derivatives. As we show below, the multi-trillion FX market is sufficiently big that failed banks FX counterparties will also be candidates for failure in the absence of front end capital and transparency requirements.

V. Credit and Default Risks in \$ 4 Trillion Dollars-Per-Day Foreign Exchange Markets

It is imperative to properly and effectively regulate foreign exchange swaps and foreign exchange forwards given the size of the markets. In fact, the foreign exchange market is one of the largest financial markets in the world. The Bank for International Settlement ("BIS") conducted a survey of turnover in the over-the-counter foreign exchange and interest rate derivatives markets for April 2010.³³ This survey estimated that "daily foreign exchange turnover in the United States *increased 23 percent from 2007 to \$817 billion.*"³⁴ As of April

³¹ GuyLaine Charles, *OTC Derivative Contracts in Bankruptcy: The Lehman Experience*, N.Y. BUS. L. J. §1:14 (Spring 2009), available at <http://www.nysba.org/AM/Template.cfm?Section=Home&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=30052>.

³² Megan Murphy & Anousha Sakoui, *Lehman sues Nomura over derivatives' claims*, FINANCIAL TIMES, April 23, 2010, available at <http://lehmanlotto.blogspot.com/2010/04/nomura-sued-over-lehman-claims.html>.

³³ See Bank for International Settlements, Triennial Central Bank Survey, Foreign exchange and derivatives market activity in April 2010, Monetary and Economic Department, (September 2010), available at <http://www.bis.org/publ/rpfx10.pdf> [hereinafter "BIS"]; See also The Foreign Exchange and Interest Rate Derivatives Markets: Turnover in the United States, April 2010, available at http://www.newyorkfed.org/markets/triennial/fx_survey.pdf.

³⁴ *Id.*

2010, it is estimated worldwide that the daily turnover in the foreign exchange market is \$4 trillion.³⁵

Given the size of the FX markets, even if there is any risk of defaulting on a contract, it would be destabilizing to exclude the \$ 4 trillion-a-day FX markets from the mandatory clearing and exchange trading requirements. Professor Duffie, a Stanford University finance professor, recently stated that “There’s quite a substantial amount of risk involved. [FX markets are] not quite at the level of CDSs, but [they’re] still big.”³⁶

Furthermore, some market participants argue that because FX derivatives tend to have shorter terms than derivatives tied to other types of securities, “[they] do not have the kind of ongoing credit-risk concerns [as] with a CDS or an interest-rate swap in the more traditional derivatives world.”³⁷ Indeed, according to BIS, 74 percent of FX swaps mature in seven days or less.³⁸ However, shorter terms do not necessarily decrease credit risk. For example, it is well known that even in the repurchase agreement (“repo”) market, which is a form of short-term borrowing, usually on an overnight basis, of government securities,³⁹ credit risk, as well as systemic risk, is present. One market observer recently stated that “Participants in the repo markets know that there are risks there, but they ignore them, because ignoring the risks creates a smooth funding mechanism and allows credit to flow much more easily. Then, when there’s a credit panic and everybody becomes alive to the risks, everything grinds to a chaotic halt.”⁴⁰ If an overnight borrowing poses credit and systemic risk, then it logically follows that those FX derivatives that are longer than those repos must have higher risks.

Notably, the currently existing settlement system in the FX markets, Continuously Liked Settlement (“CLS”), only addresses the settlement risk. In other words, CLS merely settles transactions between two parties by collecting payments from each party and distributing payments once all parties meet their obligations. This CLS system, however, does not protect the parties against a credit or default risk. On the other hand, under the Dodd-Frank Act’s clearing system, a clearinghouse stands between the buyer and seller of a contract to *guarantee* each

³⁵ *Id.*

³⁶ Jon Asmundsson, *Dodd-Frank and FX*, Strategies Law, BLOOMBERG MARKETS (November 2010) (quoting Professor Darrell Duffie).

³⁷ Jon Asmundsson, *Dodd-Frank and FX*, Strategies Law, BLOOMBERG MARKETS (November 2010).

³⁸ *See* BIS, *supra* note 33.

³⁹ *See* Definition of Repurchase Agreement – Repo, Investopedia.com (November 29, 2010), *available at* <http://www.investopedia.com/terms/r/repurchaseagreement.asp>.

⁴⁰ Felix Salmon, *The Systemic Risk of the Repo System*, SEEKING ALPHA (Feb. 23, 2010), *available at* <http://seekingalpha.com/article/190135-the-systemic-risk-of-the-repo-system> (last visited on November 29, 2010).

against failure of the other party. Therefore, in order to protect the parties in a FX transaction and to bring the confidence back to the financial system, there must be a clearing mechanism, not merely a settlement system that does not guarantee parties' obligations, to protect the public and the market participants.

VI. Conclusion

The definition of "swaps" must include both foreign exchange swaps and foreign exchange forwards, thereby subject to the mandatory clearing and exchange trading requirements of the Act. Although the Dodd-Frank Act requires that any foreign exchange instrument not be exempted from any provision of the Act prohibiting fraud or manipulation, the implication of excluding those instruments from the definition of swaps would likely propel casino-like behavior in the multi-trillion dollar OTC FX markets. Furthermore, given the size of the foreign exchange market, it must be regulated in a manner that can provide complete transparency and reduce credit and default risks, i.e., it should be subject to the same regulatory tenets applicable to all other derivatives markets.

Congress clearly questioned and challenged the exclusion provision. Now it is up to the Treasury to implement rules and regulations consistent with the legislative intent. In doing so, the Treasury should not exclude \$ 4 trillion-per-day FX markets from the Dodd-Frank regulatory template applied to all other derivatives; rather the Treasury must let CFTC and the SEC utilize the tools necessary to achieve the goal of the Dodd-Frank Act – "to provide free and open access to *clearing and exchange trading*."

Sincerely,

A handwritten signature in blue ink that reads "Michael Greenberger". The signature is written in a cursive, flowing style.

Michael Greenberger, J.D.
Law School Professor
University of Maryland School of Law