

**The Foreign Exchange Committee
The Financial Markets Lawyers Group**

**33 Liberty St., 7th Floor
New York, NY 10045**

Commodity Exchange Act § 4s
Commission Regulation 23.431(a)(3)

June 7, 2013

Gary Barnett
Director, Division of Swap Dealer and Intermediary Oversight
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: The Foreign Exchange Committee and Financial Markets Lawyers Group – Request for Technical Clarification of Relief Granted in CFTC Letter No. 13-12 for Transactions in BIS 31 Currencies

Dear Mr. Barnett:

The Foreign Exchange Committee (the “**FXC**”) is an industry group that has been providing guidance and leadership to the global foreign exchange market since 1978. The Committee includes representatives of major financial and non-financial institutions engaged in foreign currency trading in the United States.¹ The Financial Markets Lawyers Group (“**FMLG**”) is composed of lawyers who support foreign exchange and other financial markets trading in leading worldwide financial institutions.² Both the FXC and the FMLG are sponsored by the Federal Reserve Bank of New York.³

In response to a request from the FXC and FMLG, the Commission’s Division of Swap Dealer and Intermediary Oversight (“**DSIO**”) granted no-action relief⁴ from the requirement that swap dealers and major swap participants disclose a pre-trade mid-market mark with respect to certain foreign exchange transactions involving “BIS 13 Currencies”, subject to the conditions stated in the letter. In response to a subsequent request from FXC and FMLG, the DSIO issued a further no-action letter⁵ that

¹ The FXC includes members from the sell-side and buy-side. The FXC firms signing on to this letter are: Banco Itau BBA; Bank of America Merrill Lynch; Barclays; BlackRock; Citigroup; CLS Bank International; Credit Agricole CIB; Deutsche Bank; EBS; Fischer Francis Trees & Watts; FX Concepts; Goldman Sachs & Co.; HSBC; JP Morgan Chase; Mellon Capital; Microsoft Corporation; Mizuho Corporate Bank; QFR Capital Management; Standard Chartered; State Street Bank and Trust Company; TD Securities; The Royal Bank of Scotland plc; Thomson Reuters; UBS; and Wells Fargo.

² The FMLG includes members from the following institutions signing on to this letter: Bank of America, NA; Barclays; BNP Paribas; Citigroup Global Markets Inc.; CLS Bank International; Credit Suisse; Deutsche Bank; Goldman Sachs & Co.; HSBC Securities (USA) Inc. (affiliate member); JP Morgan Chase & Co.; Morgan Stanley; Royal Bank of Canada; Standard Chartered Bank; State Street Bank and Trust Company; The Bank of New York Mellon; UBS AG; U.S. Bank National Association; and Wells Fargo.

³ Although the FXC and the FMLG are sponsored by the Federal Reserve Bank of New York, this request letter is not endorsed by the Federal Reserve Bank of New York or the Federal Reserve System.

⁴ CFTC Letter No. 12-42 (Dec. 6, 2012).

⁵ CFTC Letter No. 13-12 (May 1, 2013).

extended the scope of the relief granted in CFTC Letter No. 12-42 to cover transactions in a wider range of foreign currencies – namely, specified transactions in which each currency is included among the top 31 currencies (by percentage share of average daily turnover) described in the Bank for International Settlements' Triennial Central Bank Survey Report on global foreign exchange market activity in 2010 (“**BIS 31 Currencies**”).⁶ The DSIO cited data submitted by the FMLG and FXC to demonstrate that the pre-trade mid-market mark that would be disclosed for relevant transactions in BIS 31 Currencies would be substantially similar to publicly available information.

As the DSIO recognized, the BIS 31 Currencies, unlike the BIS 13 Currencies, include restricted currencies, such as the Korean won.⁷ Forwards and options on restricted currencies, when transacted by a party outside the currency's issuing jurisdiction, by convention or of necessity may settle without delivery of the restricted currency. FMLG and FXC are concerned that the condition of CFTC Letter No.13-12 that transactions be “physically settled” could be read to require physical exchange of each of the currencies underlying the transaction, which would vitiate the relief for transactions involving a restricted currency.

Accordingly, FMLG and FXC request⁸ that the DSIO issue a no-action letter restating the relief granted in CFTC Letter No. 13-12 for transactions in the BIS 31 Currencies, with the technical clarification that if a currency underlying a transaction is one of those enumerated below (an “enumerated currency”), settlement of the transaction may occur by delivery of a corresponding amount of a different currency (the “settlement currency”) or, in cases where a corresponding payment in the settlement currency is concurrently due in respect of the other currency in the pair underlying the transaction, by a single net payment in the settlement currency. Without this clarification, uncertainty regarding the interpretation of the “physically settled” condition in CFTC Letter No. 13-12 could inhibit transactions in a substantial number of the BIS 31 Currencies.

For purposes of this request, the enumerated currencies among the BIS 31 Currencies are: Korean won, Indian rupee, Russian rouble, Chinese renminbi, Brazilian real, New Taiwan dollar, Malaysian ringgit, Philippine peso, Chilean peso, Indonesian rupiah and Israeli new shekel.

For the reasons stated above, the FXC and FMLG respectfully request the DSIO issue the requested no-action relief. Please do not hesitate to contact the FXC's and the FMLG's legal counsel, Joshua Cohn of Mayer Brown LLP, at 212-506-2539 or jcohn@mayerbrown.com, should you have any questions regarding our request.

⁶ These are composed of the following: US dollar, Euro, Japanese yen, Pound sterling, Australian dollar, Swiss franc, Canadian dollar, Hong Kong dollar, Swedish krona, New Zealand dollar, Korean won, Singapore dollar, Norwegian krona, Mexican peso, Indian rupee, Russian rouble, Chinese renminbi, Polish zloty, Turkish lira, South African rand, Brazilian real, Danish krone, New Taiwan dollar, Hungarian forint, Malaysian ringgit, Thai baht, Czech koruna, Philippine peso, Chilean peso, Indonesian rupiah and Israeli new shekel. See Triennial Central Bank Survey - Report on Global Foreign Exchange Market Activity in 2010, Bank for International Settlements, page 12, Table B.4 (available at www.bis.org/publ/rpfx10t.pdf).

⁷ See footnote 14 of CFTC Letter No. 13-12 (“The BIS 13 Currencies referenced in Staff Letter 12-42 excluded the Korean won, which is a restricted currency.”).

⁸ Although at this time the FXC and FMLG are addressing only the aspects of CFTC Letter No. 13-12 that relate to its coverage of restricted currency transactions, we may make further submissions or seek to engage in dialogue with the DSIO regarding other concerns raised by CFTC Letter No. 13-12.

Sincerely,

The Foreign Exchange Committee

By: 
Jeff Felt, Committee Chair

By: _____
Adnan Akant, Buy Side Chair

The Financial Markets Lawyers Group

By: _____
Jeff Lillien

cc: Hon. Gary Gensler, Chairman
Hon. Jill E. Sommers, Commissioner
Hon. Bart Chilton, Commissioner
Hon. Scott D. O'Malia, Commissioner
Hon. Mark P. Wetjen, Commissioner
Commodity Futures Trading Commission
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UNDERTAKING AND CERTIFICATION

I, the undersigned, a representative member of the FMLG who has been duly appointed to sign this Undertaking and Certification on behalf of the FMLG, hereby undertake that I will notify U.S. Commodity Futures Trading Commission staff promptly if any of the representations made in connection with or related to the FXC's and FMLG's Request for No-action Relief dated June 7, 2013 cease to be true or correct, or become incomplete or misleading.

I hereby certify that the material facts set forth in the attached letter dated June 7, 2013 are true and complete to the best of my knowledge.

Signed: 
Name: Jeff Lillian
Date: June 7, 2013