

**The Financial Markets Lawyers Group**  
**33 Liberty St., 7th Floor**  
**New York, NY 10045**

Commodity Exchange Act Sections 2(a)(13) and 4r  
Commission Regulations Parts 43 and 45

November 21, 2012

Richard Shilts  
Acting Director, Division of Market Oversight  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20581

Re: Financial Markets Lawyers Group – Request for Interpretative Letter for Swap Dealers in Connection with Foreign Exchange Prime Brokerage<sup>1</sup>

Dear Mr. Shilts:

The Financial Markets Lawyers Group (“**FMLG**”)<sup>1</sup> is seeking interpretative guidance from the Commodity Futures Trading Commission (the “**Commission**”) and the staff, in the context of foreign exchange prime brokerage (“**FX Prime Brokerage**”), regarding application of the rules relating to reporting of FX Transactions (“**SDR Reporting**”)<sup>2</sup> and real-time reporting of FX Transactions (“**Real-Time Reporting**”)<sup>3</sup> and together with SDR Reporting, “**Swap Reporting**”). The FX Transactions covered by this request mean uncleared, over-the-counter transactions in foreign currencies that constitute swaps, as defined in Section 1a(47) of the Commodity Exchange Act (the “**Act**”) and Commission Regulation 1.3(xxx) (“**FX Swaps**”) and over-the-counter physically-settled foreign exchange forwards and swap agreements that were exempted from the definition of swap by the U.S. Department of the Treasury (“**Exempt FX Transactions**” and together with FX Swaps, “**FX Transactions**”).<sup>4</sup> Although Exempt FX Transactions are not subject to certain of the requirements governing FX Swaps, such as central clearing, the Exempt FX Transactions are subject to SDR Reporting. In order to satisfy the Swap Reporting duties for both FX Swaps and Exempt FX Transactions in the context of FX Prime Brokerage, it is necessary to allocate responsibility between the prime broker and the executing dealers. Unless this relief is granted, FX Prime Brokerage, as currently structured, will not be able to continue after January 10, 2013 (when Swap Reporting for swap dealers takes effect for FX Transactions) because, without allocation of responsibilities, between the prime broker and the executing dealers, the prime broker and the executing dealers will not be able to satisfy the regulatory standards. The FMLG’s proposal provides for satisfaction of the Swap Reporting requirements and differs from the Commission’s structure only in that

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<sup>1</sup> FMLG is composed of lawyers who support foreign exchange and other financial markets trading in leading worldwide financial institutions. The FMLG includes members from the following institutions signing onto this Letter: Bank of America, N.A.; BNP Paribas; Citigroup Global Markets Inc.; Deutsche Bank; Goldman, Sachs & Co.; HSBC Securities (USA) Inc.; JP Morgan Chase & Co.; Morgan Stanley; Royal Bank of Canada; State Street Bank and Trust Company; The Bank of New York Mellon; UBS AG; U.S. Bank National Association; and Wells Fargo. The FMLG is sponsored by the Federal Reserve Bank of New York and advises on legal issues relevant to the global foreign exchange and foreign exchange swaps markets. Although FMLG is sponsored by the Federal Reserve Bank of New York, this interpretative letter request is not endorsed by the Federal Reserve Bank of New York or the Federal Reserve System.

responsibility for certain of the reporting duties is allocated between prime brokers and executing dealers. We ask that the Commission and staff grant this relief by December 31, 2012.

## **I. Introduction**

A large portion of the FX Transactions executed by FMLG Members with counterparties that are not swap dealers, major swap participants, security-based swap dealers, or major security-based swap participants (“**Counterparties**”) are carried out under FX Prime Brokerage arrangements. In an FX Prime Brokerage arrangement, a Counterparty establishes a direct relationship with a prime broker that intermediates trades between the Counterparty and a wide variety of dealers with whom the prime broker (but not the Counterparty) has a direct credit relationship. As discussed in more detail in Part III below, the arrangement allows the Counterparty, on its own behalf or through an entity representing one or more Counterparties (a “**Counterparty Representative**”) to seek bids for a specified type of FX Transaction from one or more executing dealers, based on parameters that have been pre-approved by the prime broker, and to negotiate an FX Transaction with an executing dealer, on behalf of the prime broker as principal (an “**ED-PB Swap**”). After acceptance of the ED-PB Swap, the prime broker establishes an FX Transaction with identical material economic terms and conditions with the Counterparty (the “**Counterparty Mirror Swap**”). In many cases, the executing dealer will never know the identity of the Counterparty or Counterparties to whom the FX Transaction is been allocated because the Counterparty Representative will negotiate the terms of the ED-PB Swap with the executing dealer on behalf of a number of Counterparties and will allocate the FX Transaction to the Counterparties only after execution of the Counterparty Mirror Swap with the prime broker.<sup>5</sup>

The Swap Reporting regulations do not provide for an allocation of responsibilities among swap dealers in the context of FX Prime Brokerage. As a result, a plain reading of the Swap Reporting requirements suggests that the ED-PB Swap and the Counterparty Mirror Swap would be treated as independent, reportable transactions under both SDR Reporting and Real-Time Reporting. This result would be difficult to comply with and produce misleading data regarding FX Transactions in the context of Real-Time Reporting.

The FMLG’s proposed framework would provide for timely disclosure of the pricing and other economic terms of each ED-PB Swap negotiated under an FX Prime Brokerage arrangement under Real-Time Reporting and ensure that there is an audit trail for all aspects of the related Counterparty Mirror Swaps effected under the SDR Reporting framework. The framework would avoid potentially misleading reporting of mirror transactions and tailor the application of the regulatory requirement in a manner that achieves greater efficiencies (for both the swap dealers and the Counterparties), as required by the applicable regulatory standards.<sup>6</sup>

## **II. Request for Interpretative Letter**

The FMLG hereby requests that the Commission’s Division of Market Oversight (“**DMO**”) issue an interpretative letter stating, in the context of an FX Prime Brokerage relationship, that (i) the prime broker is required to comply only with SDR Reporting for a Counterparty Mirror Swap, treating the time of acceptance by the prime broker of the ED-PB Swap associated with the Counterparty Mirror Swap as the time of execution of the Counterparty Mirror Swap; (ii) the prime broker is not required to comply with Real-Time Reporting for a Counterparty Mirror Swap or the ED-PB Swap (since the ED-PB Swap will be reported under Real-Time Reporting by the executing dealer); and (iii) the executing dealer is required to report the ED-PB Swap under both the SDR Reporting and the Real-Time Reporting rules (if such swap is required to be reported under the Real-Time Reporting rule), including the post-trade event reporting requirements. Compliance with this allocation of responsibilities would not be optional or

subject to negotiation. Although this request addresses FX Prime Brokerage, firms would be able to rely on this relief in connection with prime brokerage arrangements relating to any uncleared, over-the-counter transaction that is a “swap” as defined in Section 1a(47) under the Act and Commission Regulation 1.3(xxx), provided that any firm that elects to do so will have independently taken such steps as may be necessary and appropriate to ensure that such arrangements conform to the terms and conditions of this letter and any applicable relief (it being understood that the undertaking attached to this letter shall not apply to any asset class other than foreign exchange or the matters addressed herein). The FMLG’s allocation model applies only to bilateral swaps and not to cleared swaps.

The relief we are requesting would be conditioned on the following: (i) allocation of responsibilities under this framework would not be optional or subject to negotiation between the parties; (ii) the prime broker and the executing dealer would each be registered with the Commission as a swap dealer; and (iii) the ED-PB Swap and the Counterparty Mirror Swap would have identical economic terms and pricing, subject to adjustment in the case of the Counterparty Mirror Swap as a result of the prime brokerage servicing fee.

A summary of the allocation proposal and an example of how it would apply in practice is attached as Annex A.

### **III. Description of FX Prime Brokerage**

To establish an FX Prime Brokerage relationship, a Counterparty opens an account with a prime broker and enters into an ISDA Master Agreement, Schedule and Credit Support Annex and a prime brokerage agreement with the prime broker. In connection with the documentation, the prime broker grants the Counterparty limited agency powers to enter into FX Transactions for the prime broker with approved executing dealers, subject to specified limits and parameters.<sup>7</sup> The prime broker conducts due diligence and know-your-customer reviews and establishes credit limits and collateral requirements with respect to the Counterparty prior to approving and entering into a prime brokerage relationship.

The prime broker enters into “give-up” arrangements with the executing dealers who are approved by the prime broker. Under these arrangements, executing dealers agree to negotiate FX Transactions with the Counterparty or Counterparty Representative, as agent for the prime broker, within the specified parameters and to face the prime broker as a counterparty on the ED-PB Swaps. A give-up agreement between the prime broker and the executing dealer typically specifies the procedures for acceptance and rejection of an ED-PB Swap by the prime broker.

Under FX Prime Brokerage, the Counterparty or Counterparty Representative will seek bids for a desired FX Transaction from one or more of the approved executing dealers. The FX Transaction must satisfy the parameters established by the prime broker. Once the Counterparty or Counterparty Representative and executing dealer agree on terms, the Counterparty or Counterparty Representative and the executing dealer will each provide notice of the terms of the ED-PB Swap to the prime broker. As a matter of custom and practice and, in many cases, as a matter of contract, the prime broker is required to accept the ED-PB Swap provided the ED-PB Swap is with an approved executing dealer, the Counterparty or Counterparty Representative and the executing dealer have committed to the material terms of the ED-PB Swap and the ED-PB Swap is within the designated parameters provided to the Counterparty and the executing dealer. After acceptance of the ED-PB Swap, the prime broker will enter into an identical transaction (*i.e.*, the Counterparty Mirror Swap) with the Counterparty. The Counterparty Mirror Swap may be allocated by a Counterparty Representative among various Counterparties.

If the prime broker determines that the terms of the proposed ED-PB Swap are not within the pre-established parameters, it may reject the FX Transaction. Unlike securities prime brokerage, the rejected transaction is then cancelled and, unless otherwise agreed by the parties, would generally not be rebooked as a new trade between the executing dealer and the Counterparty. In this case, there would be no Counterparty Mirror Swap entered into or reported by the prime broker.

In accordance with general market practice, if the executing dealer and the Counterparty agree to amend the ED-PB Swap, then the prime broker and the Counterparty will mirror that amendment with respect to the Counterparty Mirror Swap.<sup>8 9</sup>

The Counterparty is typically charged a standard servicing fee by the prime broker in connection with the FX Prime Brokerage services. This servicing fee is pre-agreed between the prime broker and the Counterparty and is billed to the Counterparty periodically by the prime broker.<sup>10</sup>

A diagram of the FX Prime Brokerage structure is set forth at Annex B.

#### **IV. Requested Relief for Swap Reporting**

Allocation of reporting responsibilities between the executing dealer and the prime broker reflects the bifurcated nature of the prime brokerage relationship. The key price discovery event occurs upon finalization of the terms of the ED-PB Swap, since that transaction is used as a template for the Counterparty Mirror Swap.

Under the FMLG's allocation model, executing dealers would be responsible for reporting the ED-PB Swap, and amendments and terminations of the ED-PB Swap under both the SDR Reporting rules and the Real-Time Reporting rules. Prime brokers would complete SDR Reporting only for the Counterparty Mirror Swap.

##### **A. SDR Reporting**

The executing dealer would be responsible for reporting the ED-PB Swap. The execution time would be the time as of which the Counterparty and the executing dealer agree on the terms of the trade. If a prime broker rejects an ED-PB Swap, the executing dealer would report a cancellation of the Swap to the SDR and the cancellation time would be the time at which the prime broker rejected the ED-PB Swap.

After accepting the ED-PB Swap, the prime broker will enter into a mirror trade with the Counterparty. The execution time for this Counterparty Mirror Swap, for SDR Reporting purposes, would be the time as of which the prime broker accepts the ED-PB Swap.

Post-trade events, such as amendments and terminations of the Counterparty Mirror Swap and the ED-PB Swap are made in parallel. The prime broker would be responsible for Swap Reporting with respect to such events for the Counterparty Mirror Swap, and the executing dealer would be responsible for Swap Reporting with respect to such events for the ED-PB Swap.

##### **B. Real-Time Reporting**

For FX Transactions conducted as part of an FX Prime Brokerage arrangement, Real-Time Reporting obligations (if applicable at all, which they would not be for FX Transactions subject to the Treasury Exemption) should apply only to the executing dealer (for the ED-PB Swap). The executing dealer would be responsible for reporting both initiation of the ED-PB Swap as well as post-trade events

(to the extent that Real-Time Reporting were required given the nature of the changes to the ED-PB Swap). The Counterparty Mirror Swap would not be subject to Real-Time Reporting (either at initiation or for post-trade events).

Imposing a Real-Time Reporting requirement on both the ED-PB Swap and the Counterparty Mirror Swap does not make sense where, as is the case in FX Prime Brokerage, the terms and pricing of the two FX Transactions is the same.<sup>11</sup> Reporting both transactions to the market suggests there are two separate pricing events and independent investment determinations when, in fact, there is only one pricing event and one investment decision that is facilitated by an intermediary. In addition, if Real-Time Reporting were required for the Counterparty Mirror Swap, the pricing used (*i.e.*, that referenced by the ED-PB Swap) would not reflect market changes that occur between the execution of the ED-PB Swap and the Counterparty Mirror Swap. As a result, posting the economic terms of the Counterparty Mirror Swap upon execution could be misleading. Finally, to the extent that the Commission were to require that both FX Transactions be reported in the Real-Time Reporting system, that would suggest that there is more trading activity and price discovery in the market than is actually the case, since the two Swaps are linked.

If the executing dealer and prime broker are bank branches or business units of the same legal entity, the executing dealer would report the ED-PB Swap under the Real-Time Reporting Rule at the time the Counterparty and executing dealer agree on the terms of the ED-PB Swap, but the executing dealer would not report the ED-PB Swap under the SDR Reporting rule under this circumstance because intra-entity trades are not reportable under Part 45. However, upon acceptance of the trade, the prime broker will report the Counterparty Mirror Swap to the SDR for purposes of SDR Reporting.

### C. Unique Swap Identifier (USIs) / Audit Trail

Current reporting infrastructure does not provide for a reference to the USI of the ED-PB Swap (the “**ED-PB USI**”) in the SDR Reporting submission undertaken by the prime broker for the Counterparty Mirror Swap. If the Commission were to require inclusion of the ED-PB USI in the initial SDR Reporting submission by the prime broker for the Counterparty Mirror Swap, such requirement could delay the SDR Reporting submission by the prime broker sufficiently so that the prime broker may not be in a position to comply with SDR Reporting within the time frame required by the SDR Reporting Rule.

If requested by the Commission, functionality could be built into the reporting reports submitted by the industry:

- (i) to add a prime broker identifier into the SDR Reporting submission for the Counterparty Mirror Swap, indicating that there is another side to the Swap transaction; and/or
- (ii) to add the ED-PB USI into the SDR Reporting submission by the prime broker for the Counterparty Mirror Swap.

Currently, there are no processes or infrastructures in place that would allow the information outlined in (i) and (ii) above to be submitted to an SDR within the applicable reporting timelines for all types of FX Transactions. As a result, compliance with these obligations will require additional time to build the required infrastructure. Another difficulty with this proposal is that the ED-PB USI will generally not be known to the prime broker unless the executing dealer were required to disclose the ED-PB USI to the prime broker.

The FMLG believes that it would be helpful for the ED-PB USI to be reported to the SDR the first time that SDR Reporting is carried out by the prime broker in respect to the Counterparty Mirror Swap. However, in order to avoid delays in reporting the Counterparty Mirror Swap in situations where the executing dealer is not able to supply the prime broker with the ED-PB USI prior to the time at which the prime broker accepts the ED-PB Swap, if the Commission does require reporting of the ED-PB USI, the FMLG requests that the Commission grant relief under this letter to allow the reporting prime broker to amend the SDR Reporting submission at some point after execution to include the ED-PB USI where the prime broker does not have the information at the time it initially reports the Counterparty Mirror Swap.

#### **V. Public Policy Benefits**

The requested relief promotes accurate and consistent reporting while fulfilling the policy objectives of Swap Reporting. Prime brokers and executing dealers will have clearly delineated Swap Reporting obligations, which will be consistently applied in the marketplace. Further, requiring Real-Time Reporting for the ED-PB Swap, and not for the Counterparty Mirror Swap, would prevent the publication of potentially misleading FX Transaction data.

#### **VI. Conclusion**

Neither the Commission nor the staff has previously issued an exemptive, no-action or interpretative letter regarding the application of Parts 43 or 45 to swap dealers in connection with FX Prime Brokerage relationships. The FMLG notes that the SEC has previously granted no-action relief with respect to derivative arrangements involving “mirror transactions” with third party dealers in an unrelated context. Although the logic of that SEC No-Action Letter is applicable only by analogy, the framework of the SEC No-Action Letter is similar to that proposed by the FMLG in this request for relief and may provide a useful reference point for the Commission and its staff to consider.<sup>12</sup>

The FMLG respectfully requests that, if DMO denies this request for an interpretative letter, it consider granting alternative relief or an alternative position to alleviate the duplicative burdens placed on prime brokers and executing dealers to comply with Swap Reporting requirements in an FX Prime Brokerage arrangement.

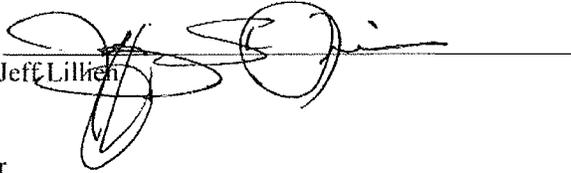
Please do not hesitate to contact the FMLG's representative member, Jeff Lillien, of Deutsche Bank AG, at (212) 250-2699 or jeff.lillien@db.com should you have any questions regarding our request.

Sincerely,

**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  
1155 21st Street NW  
Washington, DC 20581

**UNDERTAKING AND CERTIFICATION**

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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 the U.S. Commodity Futures Trading Commission staff promptly if any of the representations made in connection with or related to FMLG's Request for Interpretative Letter, dated November 20, 2012, related to FX Prime Brokerage and the application of the Swap Reporting requirements in the context of FX Prime Brokerage (the "Letter") cease to be true or correct, or become incomplete or misleading.

I hereby certify that the material facts set forth in the attached Letter are true and complete to the best of my knowledge. This undertaking and certification relates only to the matters addressed in the Letter and does not apply to any prime brokerage arrangement relating to any asset class other than foreign exchange or to any other trade reporting issue.

Signed



Name

Jeff Lillian

Date

November 29, 2012

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## ANNEX A

### Uniform Allocation of SDR Reporting and Real-Time Reporting Between Prime Brokers and Executing Dealers

#### **I. SDR Reporting and Real-Time Reporting**

##### **1. Reporting of Two Swaps**

For a swap intermediated through a prime broker, SDR Reporting and Real-Time Reporting responsibilities will be allocated with respect to the following transactions:

- (i) execution of the ED-PB Swap (both SDR Reporting and Real-Time Reporting);
- (ii) cancellation of the ED-PB Swap (SDR Reporting and Real-Time Reporting);
- (iii) entry into the Counterparty Mirror Swap (SDR Reporting);
- (iv) post-trade events (such as amendments and termination) reporting of the ED-PB Swap (SDR Reporting and Real-Time Reporting if the event affects the pricing of the Swap); and
- (v) post-trade event reporting of the Counterparty Mirror Swap (SDR Reporting).

There will be no reporting of the executing dealer-Counterparty relationship as neither faces the other as a principal on an FX Transaction.

The allocation of responsibilities for reporting reflects the nature of the prime brokerage relationship. The SDR Reporting and Real-Time Reporting obligations would be allocated as follows:

- (i) executing dealer would comply with SDR Reporting obligations with respect to entry into the ED-PB Swap, and, to the extent required, with Real-Time Reporting Requirements as well, *e.g.*, if the transaction is not subject to the Treasury Exemption;
- (ii) executing dealer would comply with SDR Reporting and, if a post-trade event (such as a termination or amendment) of an FX Transaction changes the pricing of the FX Transaction subject to Real-Time Reporting, with Real-Time Reporting as well for the ED-PB Swap in respect to the post-trade event);
- (iii) executing dealer would comply with SDR Reporting and Real-Time Reporting requirements for a cancellation of the ED-PB Swap if the ED-PB Swap is rejected by the prime broker; and
- (iv) prime broker would comply with the SDR Reporting obligations for the Counterparty Mirror Swap both at execution and in respect to post-trade event reporting.

##### **2. Execution Time**

For SDR Reporting and Real-Time Reporting undertaken by the executing dealer for the ED-PB Swap, the execution time will be the time at which the executing dealer and the Counterparty agree on the terms of the FX Transaction. If the prime broker rejects the trade, then the executing dealer would report a cancellation under SDR Reporting and Real-Time Reporting promptly upon cancellation.

For SDR Reporting undertaken by the prime broker of the Counterparty Mirror Swap, the execution time will be the time at which the prime broker accepts the ED-PB Swap (which establishes terms and pricing for the Counterparty Mirror Swap).

## II. EXAMPLE: REPORTING OF A NEW TRADE

### Overview:

Event	Scenario	Reporting Party	
		SDR Reporting	Real-Time Reporting
New Trade	<b>ED-PB Swap:</b>		
	executing dealer v. prime broker	executing dealer	executing dealer
	executing dealer v. prime broker (executing dealer and prime broker branches of same legal entity)	N/A	executing dealer/prime broker (Legal Entity)
	executing dealer v. prime broker (ED-PB Swap is rejected or amended)	executing dealer	executing dealer (if required)
	<b>Counterparty Mirror Swap:</b>		
	prime broker v. Counterparty	prime broker	N/A

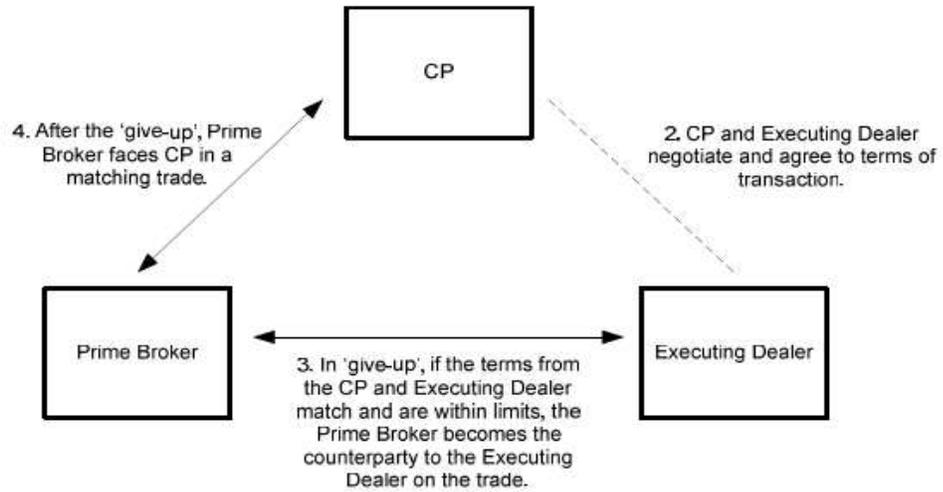
### Explanations:

- ED-PB Swap:
  - Real-Time Reporting and SDR Reporting must be carried out by the executing dealer at the time the Counterparty or Counterparty Representative and the executing dealer agree on the terms of the ED-PB Swap.
  - If the executing dealer and the prime broker are bank branches or business units of the same legal entity, the executing dealer would report the ED-PB Swap under the Real-Time Reporting rule at the time the Counterparty or Counterparty Representative and the executing dealer agree on the terms of the ED-PB Swap, but the executing dealer would not report the ED-PB Swap under the SDR Reporting rule because intra-entity trades are not reportable under Part 45.
- Counterparty Mirror Swap:
  - SDR Reporting required by the prime broker at the time the prime broker accepts the ED-PB Swap.
  - No Real-Time Reporting would be required, because pricing information is stale at that point in time; relevant pricing information has been reported by the executing dealer with respect the ED-PB Swap (which has identical pricing and economic terms to the Counterparty Mirror Swap). Real-Time Reporting would create a misleading impression of a deeper market than actually exists.

## ANNEX B

### Diagram of Typical Prime Brokerage Transaction

1. CP and Prime Broker execute Prime Brokerage Agreement; Prime Broker and Executing Dealer execute Give-Up Agreement; Prime Broker sends designation notice to Executing Dealer with CP limits.



## END NOTES

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<sup>1</sup>This Request for an Interpretative Letter is being submitted simultaneously with a parallel request to the Division of Swap Dealer and Intermediary Oversight seeking a Request for Interpretative Letter in respect to allocation of responsibilities between prime brokers and executing dealers for compliance with the Business Conduct Standards in the context of FX Prime Brokerage arrangements.

<sup>2</sup> See 17 C.F.R. part 45 and Swap Data Recordkeeping and Reporting Requirements, 77 Fed. Reg. 2136 (Jan 13, 2012).

<sup>3</sup> See 17 C.F.R. part 43 and Real-Time Public Reporting of Swap Transaction Data, 77 Fed. Reg. 1182 (Jan. 9, 2012).

<sup>4</sup> On November 16, 2012, pursuant to authority granted in Section 1a(47)(E) of the Act, the U.S. Department of the Treasury exempted physically-settled currency forwards and physically-settled currency swaps from the definition of “swap” (the “**Treasury Exemption**”). See Department of the Treasury, Determination of Foreign Exchange Swaps and Foreign Exchange Forwards under the Commodity Exchange Act, <http://www.treasury.gov/press-center/press-releases/Pages/tg1773.aspx>.

<sup>5</sup> This will be the case even though the Counterparty Representative will provide the executing dealer with information about all of the Counterparties represented by it. For purposes of this Letter, although we refer to the Counterparty Mirror Swap in the singular, in actuality, after allocation by the Counterparty Representative, the Counterparty Mirror Swap will be composed of a number of separate FX Transactions, each of which will have a separate Counterparty designated by the Counterparty Representative.

<sup>6</sup> Section 15(a) of the Act requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the Act or issuing an order. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. Although this standard is not directly applicable to Commission staff in considering an interpretative letter, these factors are addressed in this request.

<sup>7</sup> These may include, for example, the type of trade, tenor of trade, type of currencies, maximum net open position, maximum daily settlement amount or other risk-based limits and general trading parameters.

<sup>8</sup> In the event that the ED-PB Swap is allocated through the Counterparty Mirror Swap to a number of different Counterparties, adjustments to the Counterparty Mirror Swap dictated by changes made by the ED and the Counterparty Representative to the ED-PB Swap are implemented, in accordance with general market practice, on a pro rata basis across the range of FX Transactions between the Counterparties and the prime broker comprising the Counterparty Mirror Swap.

<sup>9</sup> To the extent that changes are made to the Counterparty Mirror Swap that do not mirror those made to the ED-PB Swap (other than as a result of administrative requirements, such as those required in order to satisfy portfolio compression requirements), the relief from the Real-Time Reporting requirements sought by this letter would not apply and the prime broker would be required to comply with both SDR Reporting and Real-Time Reporting with respect to the Counterparty Mirror Swap.

<sup>10</sup> The prime brokerage service fee reflects the service costs of the credit intermediation role played by the prime broker as well the cost of the substantial back-office and middle-office administrative services that the prime broker must perform in connection with booking, reconciling, settling, maintaining and adjusting the two mirror FX Transactions and handling collateral. Although substantially all FX Transactions involve straight through processing and, as a result, costs may be lower for FX Prime Brokerage than for prime brokerage arrangements involving other asset classes, the prime broker does incur costs in connection with the booking and administration of the matched FX Transactions. These costs are reflected in the service fee.

<sup>11</sup> As described in End Note 10 and the accompanying text, the prime broker typically charges a prime brokerage service fee. In some cases, the fee is incorporated into the pricing of the Counterparty Mirror Swap as a mark up, mark down or spread.

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<sup>12</sup> See Credit Suisse First Boston LLC, SEC No-Action Letter (Aug. 31, 2005). Although the relief provided in that SEC No-Action letter did not relate to trade reporting, the basis for the relief granted by the SEC relied heavily on a recognition that two “mirror” derivative transactions were the equivalent of one transaction between the customer and the third party dealer and not two, economically different, transactions.