collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical uses; (b) the accuracy of the above estimate of the burden of the proposed information collection; (c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and (d) ways to minimize the reporting burdens on respondents, including the use of automated collection techniques or other forms of information technology.

Treasury Department PRA Clearance Officer: Robert Dahl, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue NW., Washington, DC 20220.

BEP Contact: Sonya White, Deputy Chief Counsel, United States Department of the Treasury, Bureau of Engraving and Printing, Room 419–A, 14th and C Streets SW., Washington, DC 20228.

Robert Dahl,

Treasury Department PRA Clearance Officer.

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DEPARTMENT OF THE TREASURY

Determination of Foreign Exchange Swaps and Foreign Exchange Forwards Under the Commodity Exchange Act

AGENCY: Department of the Treasury, Departmental Offices.

ACTION: Final determination.

SUMMARY: The Commodity Exchange Act (''CEA''), as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''), authorizes the Secretary of the Treasury (''Secretary'') to issue a written determination that foreign exchange swaps, foreign exchange forwards, or both, should not be regulated as swaps under the CEA. The Secretary is issuing a determination that exempts both foreign exchange swaps and foreign exchange forwards from the definition of ''swap,'' in accordance with the applicable provisions of the CEA.

DATES: Effective November 20, 2012.

FOR FURTHER INFORMATION CONTACT: Office of Financial Markets, 1500 Pennsylvania Avenue NW., Washington, DC 20220, (202) 622–2000; Thomas E. Scanlon, Office of the General Counsel, 1500 Pennsylvania Avenue NW., Washington, DC 20220, (202) 622–8170.

SUPPLEMENTARY INFORMATION: Title VII of the Dodd-Frank Act [1] amends the CEA, as well as Federal securities laws, to provide a comprehensive regulatory regime for swaps. Section 721 of the Dodd-Frank Act amends section 1a of the CEA, which, in relevant part, defines the term ''swap'' and includes foreign exchange swaps and foreign exchange forwards in the definition.[2] Section 1a(47)(E) of the CEA authorizes the Secretary to make a written determination that ''foreign exchange swaps'' [3] or ''foreign exchange forwards,'' [4] or both— (I) should not be regulated as swaps under the CEA; and (II) are not structured to evade the Dodd-Frank Act in violation of any rule promulgated by the Commodity Futures Trading Commission (''CFTC'') pursuant to section 721(c) of the Dodd-Frank Act.[5]

On October 28, 2010, the Department of the Treasury (''Treasury'') published in the **Federal Register** a Notice and Request for Comments (''October 2010 Notice'') to solicit public comment on a wide range of issues relating to whether foreign exchange swaps and foreign exchange forwards should be exempt from the definition of the term ''swap'' under the CEA.[6]

On May 5, 2011, Treasury published a notice of proposed determination (''NPD'') seeking comment on a proposed determination that would exempt both foreign exchange swaps and foreign exchange forwards from the definition of ''swap,'' as well as on the factors that would support such a determination.

In addition, Treasury staff has engaged in a broad outreach to representatives from multiple market segments, as well as market regulators and the Federal regulatory agencies. After assessing the comments in response to the October 2010 Notice and the NPD, consulting with Federal regulators, and considering the factors set forth in section 1b(a) of the CEA, as discussed below, the Secretary finds that a determination pursuant to sections 1a(47)(E) and 1b that ''foreign exchange swaps'' and ''foreign exchange forwards'' should not be regulated as swaps under the CEA, and therefore should be exempted from the definition of the term ''swap'' under the CEA, is appropriate.

In making a determination pursuant to sections 1a(47)(E) and 1b of the CEA, the Secretary must consider, and has considered, the following factors:

(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 the CEA 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.[7]

I. Summary of Final Determination

The CEA, as amended by the Dodd-Frank Act, provides a comprehensive regulatory regime for swaps and derivatives, including a wide range of foreign exchange derivatives, such as foreign exchange options, currency swaps, or non-deliverable forwards (''NDFs''). Among other measures, this regulatory regime provides for clearing and exchange-trading requirements that are designed to mitigate risks, promote price transparency, and facilitate more stable, liquid markets for derivative instruments.

In general, swaps, including foreign exchange derivatives, carry three types of risks: (i) Counterparty credit risk prior to settlement; (ii) market risk; and (iii) settlement risk. Counterparty credit risk prior to settlement is the risk that a party to the transaction potentially could default prior to the settlement date, which could result in the non-defaulting party suffering an economic loss associated with having to replace the defaulted contract with another transaction at the then-current terms.

[1] Public Law 111–203, title VII.

[2] 7 U.S.C. 1a(47).

[3] 7 U.S.C. 1a(25).

[4] 7 U.S.C. 1a(24).

[5] 7 U.S.C. 1(a)(47)(E)(i).

[6] 75 FR 66,426 (Oct. 28, 2010). Thirty comments were submitted in response to the October 2010 Notice.

[7] 7 U.S.C. 1b(a). In addition, section 1b(b) of the CEA provides that, ''[i]f the Secretary makes a determination to exempt foreign exchange swaps and foreign exchange forwards from the definition of the term 'swap','' the Secretary must submit a separate ''determination'' to the appropriate committees of Congress, which contains (1) an explanation as to why foreign exchange swaps and foreign exchange forwards are ''qualitatively different from other classes of swaps'' such that foreign exchange swaps and foreign exchange forwards are ''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.'' The Secretary has submitted this determination to the appropriate committees of Congress, and, therefore, this determination is effective, pursuant to section 1a(47)(E)(ii) of the CEA.

Market risk is the risk that the value of the contract changes over the term of the transaction. In this context, market risk is intertwined with counterparty credit risk prior to settlement because the non-defaulting party (who thus bears the credit risk) also bears the risk that the value of the prior contract might have declined when that party seeks to replace the defaulted contract with another transaction. Settlement risk, particularly in the context of a foreign exchange swap or forward transaction, is the risk that the contract will not be settled in accordance with the initial terms, including when one party to the transaction delivers the currency it owes the counterparty, but does not receive the other currency from that counterparty.

The payment obligations on currency swaps, interest rate swaps, credit default swaps, commodity swaps and other derivatives fluctuate in response to changes in the value of the underlying variables on which those derivatives contracts are based. As a result, for most types of swaps, the full extent of the future payments to be exchanged is not known at the outset of the contract and is determined throughout the life of the contract. Moreover, as the term of a swap or derivative contract increases, a party generally is exposed to greater counterparty credit risk and market risk prior to settlement. Settlement of most types of swaps and derivatives involves only payments of net amounts that are based on the changes in the value of the variables underlying the derivatives contracts. Given the features of most swaps and derivatives, including some types of foreign exchange derivatives, the clearing and exchange-trading requirements under the CEA, where applicable, would mitigate the relevant risks, notably counterparty credit risks prior to settlement.

By contrast, foreign exchange swap and forward participants know their own and their counterparties' payment obligations and the full extent of their exposures at settlement throughout the life of the contract. Thus, while the mark-to-market value of a position in a foreign exchange swap or forward may vary based on changes in the exchange rate or interest rates, the actual settlement amounts do not.

Under the regulatory regime enacted by the Dodd-Frank Act, foreign exchange swaps and forwards generally are subject to the requirements of the CEA and, in particular, would be subject to central clearing and exchange trading,[8] unless the Secretary determines that foreign exchange swaps and forwards ''(I) should not be regulated as swaps under [the CEA]; and (II) are not structured to evade [the Dodd-Frank Act] in violation of any rules promulgated by the [CFTC] pursuant to section 721(c) of the [Dodd-Frank Act].'' [9]

Under the CEA, a ''foreign exchange swap'' is narrowly defined as ''a transaction that solely involves— (A) an exchange of 2 different currencies on a specific date at a fixed rate that is agreed upon on the inception of the contract covering the exchange'' and ''(B) a reverse exchange of [those two currencies] at a later date and at a fixed rate that is agreed upon on the inception of the contract covering the exchange.'' [10] Likewise, the CEA narrowly defines a ''foreign exchange forward'' as ''a transaction that solely involves the exchange of 2 different currencies on a specific future date at a fixed rate agreed upon on the inception of the contract covering the exchange.'' [11]

The Secretary's authority to issue a determination is limited to foreign exchange swaps and forwards and does not extend to other foreign exchange derivatives. Foreign exchange options, currency swaps, and NDFs (as discussed below) may not be exempted from the CEA's definition of ''swap'' because they do not satisfy the statutory definitions of a foreign exchange swap or forward.

After considering the statutory factors and the comments on the NPD, the Secretary is issuing this determination to exempt foreign exchange swaps and forwards because of the distinctive characteristics of these instruments. Unlike most other swaps, foreign exchange swaps and forwards have fixed payment obligations, are settled by the exchange of actual currency, and are predominantly short-term instruments.

Counterparty credit risk prior to settlement is significantly reduced by the structure of a foreign exchange swap or forward transaction, particularly because the term for each type of transaction generally is very short. For the vast majority of foreign exchange swap or forward contracts, the risk profile is centered on settlement risk. Settlement risk often is addressed in foreign exchange swaps and forwards through the use of payment-versus-payment (''PVP'') settlement arrangements,[12] particularly with large financial institutions.

Treasury believes, as do several commenters,[13] that requiring central clearing and trading under the CEA on foreign exchange swaps and forwards would potentially introduce operational risks and challenges to the current settlement process. If central clearing were to be required, the central clearing facility would be effectively guaranteeing both settlement and market exposure to replacement cost. As a result, combining clearing and settlement in a market that involves settlement of the full principal amounts of the contracts would require capital backing, in a very large number of currencies, well in excess of what will be required for swaps that are settled on a ''net'' basis. Treasury believes that requiring foreign exchange swaps and forwards to be cleared and settled through the use of new systems and technologies could introduce new, unforeseen risks in this market.

II. Overview of the Comments on the NPD

In response to the NPD, Treasury received 26 comment letters. Of these, 15 expressed support for the proposed determination, while 11 were generally opposed. Several commenters who support the proposed determination filed letters that incorporated by reference—as well as reconfirmed—statements and arguments they made in response to the October 2010 Notice.[14]

A. Comments Supporting Proposed Determination

Commenters who support issuing an exemption generally argue that foreign exchange swaps and forwards are functionally different from other over-the-counter (''OTC'') derivatives because foreign exchange swaps and forwards involve an actual exchange of principal, are predominantly very short in

[8] 7 U.S.C. 2(h)(1)–(2). In general, section 2(h)(1) of the CEA, as added by the Dodd-Frank Act, prohibits a person from engaging in a swap unless the person submits such swap for clearing to a derivatives clearing organization that is registered under the CEA if the CFTC requires the swap, or a category of swaps, to be cleared. 7 U.S.C. 2(h)(1). In addition, section 2(h)(8) of the CEA provides that any swap required to be cleared is subject to trade-execution requirements. 7 U.S.C. 2(h)(8). Pursuant to section 4s(e) of the CEA, uncleared swaps are subject to margin requirements under the CEA. 7 U.S.C. 6s(e). Thus, as a result of this determination pursuant to sections 1a(47)(E) and 1b of the CEA, foreign exchange swaps and forwards would not be subject to margin requirements under the CEA.

[9] 7 U.S.C. 1a(47)(E)(i).

[10] 7 U.S.C. 1a(25).

[11] 7 U.S.C. 1a(24).

[12] PVP settlement arrangements permit the final transfer of one currency to take place only if the final transfer of the other currency also takes place, thereby virtually eliminating settlement risk.

[13] *See, e.g.,* American Express Co., at 1; American Bankers Ass'n *et al.,* at 3; FX Investor Group, at 1; Global FX Division of SIFMA, *et al.* (''Global FX Division''), at 1–2.

[14] References made herein to the comment letters are to those submitted in response to the NPD, unless otherwise noted.

duration and have high turnover rates.[15] These commenters note that this market functions predominantly as a global payments market and is used significantly by end-users for hedging purposes.[16] Many corporate participants have expressed concern that the additional costs and operational difficulty associated with clearing foreign exchange swaps and forwards would adversely affect their business activities and discourage hedging activity.[17] Commenters also have cautioned that imposing mandatory clearing and exchange trading requirements on the foreign exchange market would increase systemic risk by concentrating risk in one or more clearinghouses.[18]

Commenters supporting the proposed determination argue that settlement risk is the primary risk associated with foreign exchange swaps and forwards, and they state that the settlement of trades through CLS Bank International (''CLS''), has largely addressed these concerns.[19, 20]

Given the particular characteristics of foreign exchange swaps and forwards, most commenters emphasize that counterparty credit risk is not as significant a risk for these transactions, relative to other derivative transactions, and that the widespread use of credit support annexes (''CSAs'') and standard ISDA documentation mitigates this risk.

Moreover, commenters who favor an exemption maintain that foreign exchange swaps and forwards generally trade in a highly liquid, efficient, and transparent inter-bank market that is characterized by a high degree of electronic trading.[21] The major participants in the foreign exchange swaps and forwards market predominantly are either depository institutions or affiliates of depository institutions, over which banking regulators have substantial visibility and exercise strong regulatory oversight. A few of these commenters also observe that the Federal Reserve Board has authority to craft appropriate regulations governing systemically important financial market utilities and payment, clearing, and settlement activities, as designated under Title VIII of the Dodd-Frank Act.[22]

B. Comments Opposing Proposed Determination

By contrast, commenters who urge Treasury not to issue a determination to exempt foreign exchange swaps and forwards, as proposed, criticize several aspects of Treasury's proposal. Some commenters who oppose an exemption for foreign exchange swaps and forwards raise a general concern that the exemption would create an ''enormous'' loophole, citing the large size of this market, as well as the lack of a fundamental economic difference, in their view, between foreign exchange swaps and forwards and other derivative products.[23] In light of the recent financial crisis, these commenters argue that such loopholes can play a significant role in undermining financial stability by preserving an opaque, unregulated and under-capitalized market. Opponents also express concerns that an exemption could be used to mask complex transactions in an effort to avoid subjecting them to clearing and trading requirements.[24]

One commenter, for example, contends that ''foreign exchange swaps and forwards have all of the relevant characteristics of other categories of derivatives that are subject to the clearing and exchange trading requirements of the Dodd-Frank Act,'' and states that the ''case for the exemption [presented in the NPD] is especially weak since the [NPD] concedes that many critical measures that support such an exemption simply do not exist.''[25]

In addition, several commenters[26] contend that foreign exchange swap and forward contracts pose significant counterparty credit risk which, as one commenter states, arises precisely because these transactions entail fixed payment obligations.[27] In this regard, some commenters have outlined potential techniques, systems ''analogous to traditional central counterparty clearing''[28] that, in their view, could be developed in order to conduct foreign exchange swap and forward transactions that can be subject to initial and variation margin payments designed to minimize the credit risk exposures to the parties.[29]

III. Analysis, Consideration of Statutory Factors, and Implications of Final Determination and Treatment of NDFs

A. Analysis of Why Foreign Exchange Swaps and Forwards Should Not Be Regulated as Swaps Under the CEA

(i) Foreign Exchange Swaps and Forwards Differ in Significant Ways From Other Classes of Swaps

Foreign exchange swaps and forwards are particular types of transactions that are qualitatively different from other classes of derivatives covered under the definition of ''swap'' in the CEA. The distinctive structural characteristics of foreign exchange swaps and forwards, particularly the certainty of payment amounts and shorter maturities, as well as the market characteristics of these instruments, merit different regulatory treatment pursuant to this determination. Moreover, largely due to the required exchange of principal amounts, foreign exchange swaps and forwards are not structured to evade the requirements of the Dodd-Frank Act or regulations prescribed by the CFTC.

First, foreign exchange swaps and forwards involve the actual exchange of the principal amounts of the two currencies in the contract (i.e., they are settled on a physical basis). Unlike many other derivative instruments whose payment obligations fluctuate frequently in response to changes in the value of the underlying variables on which those derivatives contracts are based, the payment obligations of foreign exchange swaps and foreign exchange forwards, as defined by the CEA, are fixed at the inception of the agreement and involve the exchange of full principal for settlement. A currency swap, also known as a cross-currency basis swap, differs significantly from a foreign exchange swap or forward because the actual amount of the cash flow exchanged by a party is unknown at the onset of the transaction; instead, in a currency swap, a payment obligation on either party is dependent on the fluctuation of one or more floating interest rates during the term of the transaction. As a result, the cash flows underlying the transaction can be

[15] *See, e.g.,* Alternative Investment Management Ass'n (''AIMA''), at 2; BlackRock, Inc., at 2.

[16] *See* comment on October 2010 Notice by 3M, Cargill Inc. *et al.,* at 2.

[17] *See* Coalition for Derivatives End-Users, at 2.

[18] *See, e.g.,* BlackRock, at 2; FX Alliance, Inc. (''FXall''), at 1.

[19] *See, e.g.,* comment on October 2010 Notice by Global FX Division, at 12–14; Global FX Division comment on NPD, at 3; Thomson Reuters, at 2.

[20] CLS, which began operations in September 2002 and is the predominant global PVP settlement system, currently provides settlement services for 17 currencies that represent 93 percent of the total daily value of foreign exchange swaps and forwards traded globally; *See* date and figures issued by CLS, available at *http://www.cls-group.com/About/Pages/History.aspx.*

[21] Thomson Reuters, at 2 (supporting Treasury's statement regarding the extent to which foreign exchange forwards trade on electronic platforms and noting that ''these figures rise steadily each year'').

[22] *See, e.g.,* BlackRock, Inc., at 2.

[23] Quantitative Investment Management, at 1; *see also, e.g.,* Council of Institutional Investors, at 1–2; Americans for Financial Reform, at 13.

[24] Americans for Financial Reform, at 13; Better Markets, Inc., at 11–13.

[25] Better Markets, Inc., at 2.

[26] *See, e.g.,* Duffie, at 3–5; Better Markets, Inc., at 14–15.

[27] Better Markets, Inc., at 14.

[28] Better Markets, at 17.

[29] Better Markets, Inc., at 16–19; Duffie at 5–9.

affected by market volatility or illiquidity. By contrast, foreign exchange swap and forward participants know their own and their counterparties' payment obligations and the full extent of their exposure at settlement throughout the life of the contract. Thus, while the mark-to-market value of a position in a foreign exchange swap or forward may vary based on changes in the exchange rate or interest rates, the actual settlement amounts do not. The requirement to exchange the full principal amounts of two different currencies qualitatively distinguishes foreign exchange swaps and forwards from other swaps, and contributes to a risk profile that is largely concentrated on settlement risk.

Second, foreign exchange swaps and forwards typically have much shorter maturities as compared to other derivatives. For example, interest rate swaps and credit default swaps generally have maturity terms between two and thirty years, and five to ten years, respectively.[30] In stark contrast, over 98 percent of foreign exchange swaps and forwards mature in less than one year, and 68 percent mature in less than one week.[31] BIS data since 1998, collected on a triennial basis, generally show that foreign exchange swaps and forwards consistently have had shorter maturities, in line with the current levels (*i.e.*, prior reports also show approximately 98 percent of these transactions maturing in less than one year, and approximately 68 percent maturing in less than one week).[32] Since counterparty credit risk increases as the term of a contract increases, foreign exchange swaps and forwards carry significantly lower levels of counterparty credit risk, relative to other swaps and derivatives. Correspondingly, the market risk associated with foreign exchange swaps and forwards is relatively lower because these transactions have shorter maturities.

Third, foreign exchange swaps and forwards are not structured to evade regulatory requirements that apply to other types of swaps. Rather, the uses of foreign exchange swaps and forwards are distinct from other swaps. Because of their unique structure and duration, as outlined above, foreign exchange swaps and forwards are predominantly used as a source of funding to hedge risk associated with short-term fluctuations in foreign currency values and to manage global cash-flow needs. For example, businesses that sell goods in international trade, or that make investments in foreign countries, frequently ask their banks to arrange foreign exchange swaps and forwards to control the risk that their own country's currency will rise or fall against the other country's currency while a sale or investment is pending.[33] Other derivatives, such as currency swaps or interest rate swaps, are used for a broader range of purposes. For example, a business that conducts transactions in several countries, each with a different currency, could use currency swaps to stabilize the value of its sales revenue (or costs), instead of actually obtaining those currencies to fund transactions to parties located in those countries. Likewise, a business that obtains a syndicated loan with a floating interest rate could use an interest rate swap to stabilize the level of its loan payments.

Fourth, foreign exchange swaps and forwards already trade in a highly transparent and liquid market. Market participants have access to readily available pricing information through multiple sources,[34] and one commenter noted that these developments have lowered transactions costs.[35] Today, it is estimated that approximately 41and 72 percent of foreign exchange swaps and forwards, respectively, already trade across a range of electronic platforms.[36] As a result, mandatory exchange trading requirements under the CEA would be unlikely to improve price transparency significantly. Additionally, the Depository Trust and Clearing Corporation (''DTCC'') has submitted an application to register with the CFTC as a swap data repository (''SDR''), and is testing a foreign exchange trade repository service through which DTCC intends to provide both public and regulatory reporting, as early as the first quarter of 2013.[37]

(ii) Settlement Risk Is the Main Risk and Is Effectively Mitigated Through Various Measures

As discussed above, counterparties to foreign exchange swaps and forwards face three distinct risks: (i) Counterparty credit risk prior to settlement; (ii) market risk; and (iii) settlement risk. Counterparty credit risk and market risk prior to settlement exist in foreign exchange swaps and forwards transactions, but the risk of economic loss largely is attributable to the fluctuating exchange rate or interest rate of the two currencies. For example, if a counterparty defaults on a foreign exchange forward prior to the settlement date (e.g., as a consequence of bankruptcy) and the exchange rate of the two specified currencies were to have moved during that period, the non-defaulting party would be exposed to market risk if that party were to be required to replace that contract (i.e., actually obtain the currency desired in the original forward contract) at a higher price.

Settlement risk, in the context of a foreign exchange swap or forward transaction, is the risk that the contract will not be settled in accordance with the initial terms, including when one party to the transaction delivers the currency it owes the counterparty, but does not receive the other currency due from that counterparty.

The key distinction between counterparty credit risk prior to settlement and settlement risk is that, with the latter, a party's failure to deliver a currency under a foreign exchange swap or forward agreement entails a risk to the non-defaulting party of the loss of principal as a result of the non-defaulting party's delivery of the underlying principal sum of currency under the agreement coupled with the other party's failure to deliver its required principal payment.

In contrast to other derivatives, including other foreign exchange derivatives, the parties' ultimate payment obligations on a foreign exchange swap or forward are known and fixed from the beginning of the contract and involve the actual ''exchange'' of a predetermined amount of principal at settlement.[38]

The distinguishing characteristics of foreign exchange swaps and forwards, as described above, result in a risk profile that is largely concentrated on

[30] Foreign Exchange Committee (''FXC''), comment on October 2010 Notice (''FXC Letter''), at 3.

[31] FXC Letter, at 3; FXJSC survey data; Bank for International Settlements (''BIS'') Triennial Central Bank Survey of Foreign Exchange and Derivatives Market Activity, available at *http://www.bis.org/publ/rpfxf10t.htm.*

[32] BIS Triennial Central Bank Survey of Foreign Exchange and Derivatives Market Activity, *available at http://www.bis.org/publ/rpfxf10t.htm.*

[33] AIMA, at 2.

[34] *See, e.g.,* comment on October 2010 Notice by Global FX Division of the Securities Industry and Financial Markets Ass'n, Association for Financial Markets in Europe, and the Asia Securities Industry and Financial Markets Ass'n (''Global FX Division''), at 11.

[35] Global FX Division, comment on NPD, at 2 (noting that these developments have ''resulted in tight spreads'').

[36] NPD, 76 FR at 25,777; BIS, Greenwich Associates, Oliver Wyman analysis.

[37] *See* DTCC release, ''DTCC Begins User Testing on Foreign Exchange Repository,'' May 3, 2012, available at *http://www.dtcc.com/news/press/releases/2012/press_release_dtcc_begins_user_testing.php.*

[38] By contrast, the payment obligations of most other derivatives occur on an interim basis (e.g., monthly or quarterly), based on the incremental profit or loss on a transaction and either party's payment may be made with a common currency.

settlement risk, rather than counterparty credit risk prior to settlement.

The foreign exchange swap and forward market relies on the extensive use of PVP settlement arrangements, which permit the final transfer of one currency to take place only if the final transfer of the other currency also takes place, thereby virtually eliminating settlement risk. Even though these settlement arrangements do not guarantee performance on the contract, they do prevent principal payment flows from occurring if either party defaults.

As noted above, CLS, which began operations in September 2002 and is the predominant global PVP settlement system, currently provides settlement services for 17 currencies that represent 93 percent of the total daily value of foreign exchange swaps and forwards traded globally. CLS is a specialized settlement system that operates a multilateral PVP settlement system to reduce foreign exchange settlement risk (but not credit risk, which is mitigated by other measures). CLS estimates that it settles 68 percent of global foreign exchange trading, through 63 settlement member banks and approximately 15,000 third-party users.[39] In the foreign exchange swaps and forwards market in particular (exclusive of other transactions involving currencies), CLS estimates that it settles more than 50 percent of foreign exchange swap and forward transactions that are subject to settlement risk.

According to a September 2010 Foreign Exchange Committee (''FXC'') survey, roughly 75 percent of foreign exchange transactions are settled without settlement risk to either party.[40] This figure includes trades settled by CLS, settled between affiliates of the same corporation, and settled across a single bank's books for its clients. (Transactions that are internally settled between corporate affiliates, cash settled, or settled across a single-bank's books for its clients are not subject to settlement risk.) The extensive use of CLS and privately negotiated PVP settlement arrangements between banks, financial intermediaries, and their clients largely addresses settlement risk in the market for foreign exchange swaps and forwards, and, as a result, constitutes an important, objective difference between foreign exchange swaps and forwards and swaps that otherwise are subject to regulation under the CEA.[41]

(iii) Foreign Exchange Swaps and Forwards Are Subject to Less Counterparty Credit Risk Prior To Settlement Than Other Derivatives

Counterparty credit risk increases with the length of a contract because that increases the length of time during which a counterparty could suffer from adverse developments. Foreign exchange swap and forward contracts have a very short average length. As noted above, 68 percent of foreign exchange swap and forward contracts mature in less than a week, and 98 percent mature in less than a year. Other derivatives, such as interest rate swaps, generally have much longer maturity terms (*e.g.*, between two and thirty years) than foreign exchange swaps and forwards, and thus pose significantly more counterparty credit risk than foreign exchange swaps and forwards.[42]

Central clearing could provide foreign exchange swap and forward participants with protection against the risk of default by their counterparties (*i.e.,* the replacement cost of a transaction if a counterparty fails to perform). However, as noted in the NPD, imposing a central clearing requirement on the foreign exchange swaps and forwards market raises two concerns. First, requiring central clearing may lead to combining clearing and settlement in one facility, which would create large currency and capital needs for that entity due to: (i) The sheer size and volume of the foreign exchange swaps and forwards market; and (ii) the fact that the central clearing facility would be effectively guaranteeing both settlement and market exposure to replacement cost. Treasury believes that it is unlikely a central counterparty (''CCP'') would be able to provide the settlement services required by this market, either directly or in conjunction with another service provider, such as CLS.

Providing central clearing separately from settlement presents the second concern, namely: required clearing likely would disrupt the existing settlement process by introducing additional steps between trade execution and settlement that pose significant operational challenges. The existing settlement process for this market functions well and has been critical to mitigating this market's main source of risk. The operational challenges associated with the addition of a central clearing requirement, one that is very different from the core clearing functions currently handled by CCPs, and the potentially disruptive effects on transactions in the large market of foreign exchange swaps and forwards, outweigh the benefits that central clearing would provide, thus making these instruments ill-suited for regulation as swaps.

(iv) Foreign Exchange Swaps and Forwards Transacted by Banks in the Foreign Exchange Market Already Are Subject to Oversight

The foreign exchange market itself has long been subject to extensive and coordinated oversight, reflecting its unique characteristics and functioning. Since the introduction of floating exchange rates in the early 1970s, the largest central banks and regulators have undertaken strong and coordinated oversight measures for the foreign exchange market, given its critical role in monetary policy and the global payments system. This global strategy, led by the Committee on Payment and Settlement Systems (''CPSS''), resulted in the design and implementation of CLS and other PVP settlement arrangements. The Federal Reserve regularly conducts reviews of the risk management and operational processes of major foreign exchange market participants. These reviews inform Basel Committee on Banking Supervision (''BCBS'') and CPSS updates to bank supervisory guidelines on managing foreign exchange settlement risk.[43]

As referenced above, banks, affiliates in bank holding companies in the U.S., and banking organizations operating in other jurisdictions are the key players in the foreign exchange swaps and forwards market. Roughly 95 percent of foreign exchange swaps and forwards transactions occur between banks acting either on their own behalf or on behalf of their clients.[44] More specifically, the clients of banks that typically engage in foreign exchange swaps and forwards are companies, particularly multi-

[39] *See* figures issued by CLS, available at *http://www.cls-group.com/About/Pages/History.aspx.*

[40] FXC Letter, at 5. Formed in 1978 under the sponsorship of the Federal Reserve Bank of New York, the FXC is an industry group that produces best practice recommendations for the foreign exchange industry, addressing topics such as management of risk in operations and trading.

[41] Additionally, the vast majority of foreign exchange swap and forward transactions are transacted by well-capitalized and regulated financial institutions; the financial and operational safeguards used by these financial institutions mitigates the settlement risk that a counterparty otherwise would face in a foreign exchange swap or forward.

[42] As noted above, some commenters contend that counterparty credit risk ''remains a significant concern in the foreign exchange markets,'' even though ''non-crisis risk is more concentrated in longer-duration contracts.'' Better Markets, Inc., at 14–15.

[43] *See* Bank for Int'l Settlements, Supervisory guidance for managing risks associated with the settlement of foreign exchange transactions, (Aug. 2012), *available at http://www.bis.org/publ/bcbs229.htm.*

[44] American Bankers Ass'n *et al.,* at 1.

national corporations, that engage in cross-border investments or other commercial transactions that require payments in the local currency.[45] Banks are subject to ongoing consolidated supervision, and supervisors regularly monitor their foreign exchange related exposures, internal controls, risk management systems, and settlement practices.

(v) The Foreign Exchange Swaps and Forwards Market Already Is Highly Transparent and Traded Over Electronic Trading Platforms

Foreign exchange swaps and forwards already trade in a highly transparent market. Market participants have access to readily available pricing information through multiple sources. Approximately 41 percent and 72 percent of foreign exchange swaps and forwards, respectively, already trade across a range of electronic platforms and the use of such platforms has been steadily increasing in recent years.[46] The use of electronic trading platforms provides a high level of pre- and post-trade transparency within the foreign exchange swaps and forwards market.[47] Thus, mandatory exchange trading requirements would not significantly improve price transparency or reduce trading costs within this market.

(vi) Foreign Exchange Swaps and Forwards Will Be Subject to Oversight Under the CEA

The Secretary's determination that foreign exchange swaps and forwards should not be regulated as ''swaps'' under the CEA does not affect the application of relevant provisions of the CEA that are designed to prevent evasion and improve market transparency. Commenters who oppose an exemption argue that the exemption would create a large regulatory loophole that could exacerbate systemic risk.[48] However, all foreign exchange transactions would remain subject to the CFTC's new trade-reporting (but not the real-time reporting) requirements,[49] enhanced anti-evasion authority,[50] and strengthened business-conduct standards.[51] As noted above, the creation of a global foreign exchange trade repository, such as the SDR created by DTCC, will expand reporting to regulators and the public more broadly.

B. Statutory Considerations

In considering whether to exempt foreign exchange swaps and forwards from the definition of the term ''swap,'' the Secretary must consider, and has considered (including in light of the comments received), five factors, as follows.

(i) Systemic Risk, Transparency, Financial Stability

Treasury has considered several factors to assess 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. As stated in the NPD, given the reduced counterparty credit risk profile of this market as compared to the markets for other swaps and derivatives, the logistical challenges of implementing central clearing within this market significantly outweigh the marginal benefits that central clearing and exchange trading might provide.

Several commenters have challenged Treasury's consideration of this statutory factor, contending, for example, that Treasury's proposed analysis regarding the ''operational challenges'' that would arise by interposing a CCP into the settlement process ''carries no weight under the statutory test.''[52] One commenter offers its belief that ''exempting foreign exchange forwards and swaps at this time from the clearing and trading requirements of [the Dodd-Frank Act] could increase systemic risk at a time when regulators around the globe are trying to reduce it.''[53]

Regulating foreign exchange swaps and forwards under the CEA would require insertion of a CCP into an already well-functioning settlement process. Currently, no entity or system exists that can efficiently clear and settle the thousands of foreign exchange swaps and forwards transactions that are executed on a daily basis, and Treasury is not aware of any proposal to build sufficient capabilities in this area. Requiring the use of new systems and technologies could introduce new risks and challenges for the settlement process of foreign exchange swaps and forwards. Other derivative transactions, such as interest rate swaps and credit default swaps, create settlement obligations that equal only the change in the market price or other financial variable relative to a fixed or predefined amount—not the full principal amounts—and, thus, result in materially smaller daily payment obligations for those markets. While the existing CLS and other PVP settlement systems protect against the risk of principal loss in the foreign exchange swaps and forwards market, central clearing would further protect a participant against the economic loss of profit on a transaction if the counterparty to the transaction defaults before final settlement. However, combining these two functions in a market that involves settlement of the full principal amounts

[45] For example, a U.S.-based company seeking to acquire specialized brewery equipment from a manufacturer in Germany could agree to pay for the purchase in euros, on a specified future date (e.g., the delivery date of the equipment). If the U.S.-based company needs to fix its payment of euros based on the current exchange rate (to control the risk that the price of the euro will rise while the sale is pending), then the company could enter into a foreign exchange forward with its bank under which, on the specified date, (i) the company would deliver the dollars to its bank and (ii) the bank would deliver the euros to the company, payable to the manufacturer.

[46] BIS, Greenwich Associates, Oliver Wyman analysis.

[47] American Bankers Ass'n *et al.,* at 3.

[48] For example, Better Markets, Inc., at 3, states: ''[Exchange-trading and clearing systems] offer the only feasible way to create a marketplace that is relatively free from the [information] asymmetry that can convert inevitable market disturbances into catastrophes. An exemption for the large and diverse foreign exchange market undercuts that essential goal.''

[49] 7 U.S.C. 1a(47)(E)(iii). *See also* Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136 (Jan. 13, 2012); Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps, 77 FR 35200 (June 12, 2012).

[50] *See* note 77, infra.

[51] 7 U.S.C. 1a(47)(E)(iv). *See also* Business Conduct Standards for Swap Dealers and Major Swap Participants with Counterparties, 77 FR 9734 (Feb. 17, 2012); Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants, 77 FR 20128 (Apr. 3, 2012); Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, 77 FR 55904 (Sept. 11, 2012).

[52] Better Markets, Inc., at 8. Separately, Americans for Financial Reform (''AFR'') contends that, under section 721 of the Dodd-Frank Act, ''Treasury must present an actual independent analysis which clearly demonstrates that this risk is not significant.'' AFR, at 8. Sections 1a(47)(E) and 1b of the CEA do not require Treasury to conduct an ''independent'' analysis of each of the statutory factors, as AFR contends. Rather, section 1b(a) of the CEA plainly requires the Secretary to ''consider'' each of the five factors, and does not contain any provision that suggests that any one or more of those factors may be pivotal in reaching any determination. Furthermore, subsection 1b(b) of the CEA requires the Secretary to ''submit to the appropriate committees of Congress a determination that contains—(1) an explanation [regarding qualitative differences between foreign exchange swaps and forwards and other classes of 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.'' A ''determination'' that explains those ''qualitative'' differences and identifies those ''objective'' differences satisfies the law; neither subsection 1b(b)(1) or 1b(b)(2) requires Treasury to conduct an ''independent'' analysis of the type that AFR describes in its comment letter.

[53] Commodity Markets Council, at 1–2.

of the contracts would require massive capital backing in a very large number of currencies, representing a much greater commitment for a potential CCP in the foreign exchange swaps and forwards market than for any other type of derivatives market.

The CPSS and the Technical Committee of the International Organization of Securities Commissions (''IOSCO'') recently issued principles for financial market infrastructures (''FMIs'') (herein ''FMI Principles'') that highlight the close connection between clearing systems and settlement systems.[54] The FMI Principles are intended to apply to several types of FMIs, including a CCP, and establish heightened risk-management standards for the relevant FMIs in the jurisdictions of the CPSS–IOSCO members.[55] In particular, the FMI Principles state:

> An FMI's processes should be designed to complete final settlement, at a minimum no later than the end of the value date. This means that any payment, transfer instruction, or other obligation that has been submitted to and accepted by an FMI in accordance with its risk management and other relevant acceptance criteria should be settled on the intended value date. An FMI that is not designed to provide final settlement on the value date (or same-day settlement) would not satisfy this principle, even if the transaction's settlement date is adjusted back to the value date after settlement * * *. [D]eferral of final settlement to the next-business day can entail overnight risk exposures. For example, if a [central securities depository] or CCP conducts its money settlements using instruments or arrangements that involve next-day settlement, a participant's default on its settlement obligations between the initiation and finality of settlement could pose significant credit and liquidity risks to the FMI and its other participants.[56]

Consistent with the FMI Principles, considering whether the required clearing for foreign exchange swaps and forwards would create systemic risk, pursuant to section 1b(a)(1) of the CEA, entails considering whether the required clearing can prudently be undertaken in conjunction with the settlement systems necessary for the foreign exchange swaps and forwards market.

To date, no CCP has developed a practical solution to guarantee the timely settlement of the payment obligations of the extraordinarily large volumes of transactions in foreign exchange swaps and forwards, including the provision of or coordination with the settlement services that are essential to the market.[57] Introducing a central clearing facility without settlement capabilities would be inconsistent with the standards being developed by regulators through CPSS–IOSCO, and would not improve market functioning. Instead, requiring central clearing would raise unnecessary operational challenges by introducing additional steps between trade execution and settlement. Given that any risks created through the increased complexity would be magnified by the number of currencies involved, among other factors, requiring the use of a CCP for clearing foreign exchange swaps and forwards is not warranted.

In response to the October 2010 Notice, end-users of foreign exchange swaps and forwards have expressed significant concern that requiring centralized clearing would substantially increase the costs of hedging foreign exchange risks. Commenters argue that additional costs associated with collateral, margin, and capital requirements required by the CCP would potentially reduce their incentives to manage foreign exchange risks.[58] Such additional costs borne by non-financial end-users could lead to lower cash flows or earnings, which would divert financial resources from investment and discourage international trade, thereby limiting the growth of U.S. businesses.[59] Several commenters also suggest that requiring centralized clearing of foreign exchange swaps and forwards could lead non-financial end-users to move production facilities overseas in order to establish ''natural hedges'' through the consistent use of local currencies and force them to reconsider the use of CLS in light of the additional costs associated with central clearing.[60]

As noted above, the market for foreign exchange transactions is one of the most transparent and liquid global trading markets. Pricing is readily available through multiple sources and a large portion of foreign exchange trades currently are executed through electronic trading platforms.[61]

In light of these and similar factors raised by the commenters, mandating centralized clearing and exchange trading under the CEA for foreign exchange swaps and foreign exchange forwards would actually introduce operational challenges. These challenges and risks could potentially lead to disruptive effects in this market which likely would outweigh any benefits associated with mandated clearing and exchange trading.[62]

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[54] Bank for Int'l Settlements, ''Principles for financial market infrastructures,'' Apr. 2012, available at *http://www.bis.org/publ/cpss101a.pdf.* The FMI Principles were issued following a proposal, issued in April 2011, and public comment. The Federal Reserve Board and the Federal Reserve Bank of New York are members of the CPSS, and the CFTC and Securities and Exchange Commission (''SEC'') are members of the Technical Committee of IOSCO. Treasury expects that the FMI Principles will be applied through rules and regulatory guidance issued, as appropriate, by the Federal agencies that supervise the relevant FMIs which are subject to their jurisdiction. Accordingly, Treasury believes that the FMI Principles reasonably should be taken into account with respect to the consideration of clearing and settlement systems for foreign exchange swaps and forwards.

[55] FMI Principles, at 5–7, 12.

[56] FMI Principles, at 65.

[57] In addition, even though a few commenters have outlined mechanisms for clearing foreign exchange swaps and forwards, none of these mechanisms clearly contemplate a system for clearing that would also settle those foreign exchange swaps and forwards, particularly given the scale and complexity for physical settlement of multiple currencies in the current market for foreign exchange swaps and forwards. *See, e.g.,* Better Markets, Inc., at 16–19 (This commenter outlines two mechanisms for clearing involving the use of a derivatives clearing organization (''DCO''). Under one option, the DCO apparently would conduct both the clearing and settlement functions (but the outline does not describe how the DCO itself would establish the systems necessary to settle the massive volume of currencies flowing through the foreign exchange swaps and forwards contracts); the second option stipulates that the DCO would clear transactions, but settlement would be conducted through ''CLS or a similar institution [that is] a PVP provider'' or through an alternative mechanism.); Duffie, at 7–9 (outlining a scheme using a ''financial utility'' that operates as a ''quasi-CCP,'' only to compute and collect margin payments, and that operates independently of, yet coordinated with, a PVP provider (such as CLS), which settles the foreign exchange swaps and forwards).

[58] *See, e.g.,* comment on October 2010 Notice by National Ass'n of Manufacturers, at 4.

[59] *See, e.g.,* comment on October 2010 Notice by 3M, Cargill Inc. *et al.,* at 6.

[60] *See, e.g.,* comment on October 2010 Notice by Coalition for Derivatives End-Users, at 16–17.

[61] *See, e.g.,* comment on NPD by Coalition for Derivatives End-Users, at 1–2 (''[T]he [foreign exchange] market has pioneered the adoption of more transparent electronic trading platforms. Because the market is highly liquid and decentralized, liquidity can exist more easily on multiple electronic platforms and pricing transparency is more readily available. Applying the clearing and exchange trading requirements to these transactions would not improve pricing transparency to any notable degree.'').

Furthermore, Treasury understands that at least one global foreign exchange trading repository has been created pursuant to section 21 of the CEA (7 U.S.C. 24a, as added by section 728 of the Dodd-Frank Act), which will expand reporting coverage for swaps, including foreign exchange swaps and forwards, regardless of whether the Secretary issues a determination that these transactions should not be regulated as ''swaps'' under the CEA. *See* DTCC release, available at *http://www.dtcc.com/news/press/releases/2012/press_release_dtcc_begins_user_testing.php.* The CFTC has adopted final rules relating to the registration and regulation of SDRs. 17 CFR Part 49. *See* CFTC, Final Rule on Swap Data Repositories: Registration Standards, Duties, and Core Principles, 76 FR 5453 (Sept. 1, 2011)).

[62] *See also* comment by FXall, at 1.

(ii) Regulatory Scheme Comparable to That of the CEA

Treasury has considered several factors to assess whether foreign exchange swaps and foreign exchange forwards are already subject to a regulatory scheme that is materially comparable to that established by the CEA for other classes of swaps.

One commenter has noted that foreign exchange swaps and forwards will not fall outside of the scope of regulatory oversight under the CEA; ''[o]n the contrary, foreign exchange swaps and forwards will be required to be reported to swap data repositories and regulated swaps market actors (i.e., swap dealers and major swap participants) will be required to comply with applicable conduct of business rules when engaging in foreign exchange swaps and forwards transactions.'' [63] Other commenters, however, have stated that currently there is no ''regulatory regime'' that is ''comparable to the framework mandated under the Dodd-Frank Act.'' [64]

Since the introduction of floating exchange rates in the early 1970s, central banks and regulators have undertaken strong and coordinated oversight measures for the foreign exchange market because of the critical role this market plays in the conduct of countries' monetary policy. More specifically, in 1996, the CPSS launched a globally coordinated strategy on behalf of central banks, calling for specific actions by individual banks, industry groups and central banks to address and reduce risk in the foreign exchange market. This strategy has resulted in specific actions undertaken to address settlement risk, to mitigate counterparty credit risk and, in conjunction with the BCBS, to develop global supervisory guidelines on managing foreign exchange risk. Largely as a result of these measures, liquidity in the foreign exchange market was maintained during the recent financial crisis, and, as noted by many market observers, the foreign exchange market was one of the few parts of the financial market that remained liquid throughout the financial crisis.[65]

One of the key goals of this work was to expand the use of PVP settlement systems. Such systems largely eliminate settlement risk, which is the predominant risk in a foreign exchange swap or forward. As noted, PVP settlement ensures that the final transfer of one currency occurs only if a final transfer of the other currency or currencies takes place, thereby virtually eliminating settlement risk. In order to support such PVP arrangements, central banks undertook significant actions by extending operating hours of payment systems, providing cross-border access to central bank accounts and enhancing the legal certainty around such settlement arrangements.

The creation of CLS was an important outcome of this work. CLS is the predominant PVP settlement system, settling the majority of all global foreign exchange transactions in 17 currencies, through 63 settlement member banks and approximately 15,000 third party users.

A comparable regulatory scheme applies to the settlement system conducted through CLS. While the Federal Reserve is the primary regulator for CLS, a CLS Oversight Committee [66] consisting of 22 central banks was established to provide coordinated oversight of CLS by all central banks whose currencies are settled through its system. As a result of this group's efforts, each participating central bank now maintains accounts for CLS and has created a window period during which real-time gross settlement systems are open to accommodate the funding necessary for the settlement of payment instructions. CLS also has developed a set of risk management tests that it applies to each instruction it submits for settlement to mitigate the associated credit, market and liquidity risks.

On July 18, 2012, the Financial Stability Oversight Council (''Council'') designated CLS as a financial market utility that is systemically important, pursuant to section 804 of the Dodd-Frank Act.[67] The designation of CLS by the Council subjects CLS to requirements under Title VIII of the Dodd-Frank Act, including risk-management standards, reporting and recordkeeping requirements, and examinations (as well as potential enforcement actions) by the Federal Reserve.

Participants in the foreign exchange swaps and forwards market largely consist of banks that are subject to prudential supervision, including comprehensive risk-management oversight. In addition, Treasury notes that the vast majority of established regulatory schemes also actively encourage the use of CSAs and master netting agreements to reduce counterparty credit risk exposures.[68] Similar to changes made to enable the use of PVP settlement arrangements, central banks and governments worked to strengthen the legal foundations of bilateral and multilateral netting. Master netting agreements mitigate credit risk by enabling closeout netting in the event of a default or bankruptcy. CSAs can also be negotiated as a supplement to master agreements to further reduce and mitigate exposures to counterparties by collateralizing transactions.

(iii) Adequacy of Supervision by Bank Regulators, Including Capital and Margin Requirements

Treasury has assessed the extent to which bank regulators supervise participants in the foreign exchange market, including by imposing capital and margin requirements.

The predominant participants in the foreign exchange swaps and forwards market are banks that long have been subject to prudential supervision. In fact, nearly all trading within the foreign exchange market involves bank counterparties.[69] Roughly 95 percent of foreign exchange trading involves banks acting in the capacity of either principal or agent. For a number of structural reasons, banks have distinct advantages to provide the liquidity and funding necessary to conduct foreign exchange swaps and forwards, which involve the exchange of principal, rather than just interim variable cash flows. In conjunction with providing the liquidity, funding, and foreign exchange risk-management needed to conduct these transactions, banks have efficient and ready access to CLS to settle transactions on a PVP basis. Prudential supervisors regularly monitor the activities, exposures, internal controls and risk management systems of these banks.[70] In order to meet safety-and-

[63] AIMA, at 2. *See also* Thomson Reuters, at 2 (commenting on the presence of ''enhanced oversight'').

[64] *See* Better Markets, at 8.

[65] *See, e.g.,* Global FX Division, at 11–12. *But see* Better Markets, Inc. at 19–28.

[66] Federal Reserve Board, ''Protocol for Cooperative Oversight Arrangement for CLS,'' Nov. 25, 2008, *available at http://www.federalreserve.gov/paymentsystems/cls_protocol.html*.

[67] 12 U.S.C. 5463; 12 CFR part 1320 (Designation of Financial Market Utilities).

[68] With respect to this factor, one commenter states that ''the 'encouraged' use of private contractual provisions is not a credible substitute for mandatory clearing mechanisms operated by entities that are registered and subject to a host of core principles covering virtually every aspect of a clearing operation.'' Better Markets, at 9.

[69] One commenter takes issue with this point, noting that while the ''vast majority of trading in foreign exchange swaps and forwards may involve banks,'' not all such transactions do. This commenter further argues that, in the absence of ''mandatory, uniform, and transparent margin requirements,'' there is ''an ad hoc assortment of voluntary 'banking' practices aimed at 'risk management.' '' Better Markets, at 10.

[70] *See, e.g.,* supervisory and examination standards for wholesale payments systems

Continued

soundness requirements, banks have implemented monitoring systems, limits, internal controls, hedging techniques, and similar risk-management measures. Furthermore, counterparty credit risk management is a fundamental issue for banking supervisors and is extensively addressed in bank supervisory guidelines as well as under the Basel Accords.

In addition to the supervisory measures discussed above, the OTC Derivatives Supervisors Group, which includes market and bank regulators from the U.S., France, Germany, Japan, Switzerland and the U.K., has been securing commitments from market participants since 2005 to strengthen market infrastructure, risk management practices, and transparency in the OTC derivatives market.

(iv) Adequacy of Payment and Settlement Systems

Treasury also has assessed the extent of adequate payment and settlement systems for foreign exchange swaps and forwards. With respect to this factor, as noted, the strategy developed by central banks successfully resulted in the establishment of PVP settlement systems to virtually eliminate the settlement risk associated with foreign exchange swaps and forwards, with CLS being the primary example of this work. Central banks undertook significant actions to support these robust PVP settlement arrangements. As a result, roughly 75 percent of notional foreign exchange is either settled through CLS or otherwise settled without risk, including trades that are settled between affiliates of the same corporation or across a single bank's books for its clients.[71] In the foreign exchange swaps and forwards market in particular, CLS estimates that it settles more than 50 percent of foreign exchange swap and forward transactions that are subject to settlement risk.[72] CLS also has announced a multi-year strategic objective to expand settlement services to include additional currencies, increase volume capacity, and add additional settlement times. Treasury understands that the Federal Reserve and the CLS Oversight Committee are currently reviewing these plans, as well as encouraging the expansion of other PVP settlement services. Furthermore, the vast majority of foreign exchange swaps and forwards that are not settled with CLS, or through some other internal netting mechanism, have a regulated banking entity as one (or both) of the counterparties. In light of the prudential supervision of these entities, particularly the controls that must be applied to meet the expectations of their regulators, these financial institutions must maintain adequate payment and settlement arrangements.

(v) Possible Use of Exemption To Evade Requirements

Treasury has considered several factors to assess whether the use of an exemption for foreign exchange swaps and foreign exchange forwards could be used to evade otherwise applicable regulatory requirements. Treasury shares the concern, expressed by several commenters,[73] that issuing an exemption for foreign exchange swaps and forwards potentially could be exploited by some market participants to evade regulatory requirements that otherwise would apply to the substance of a transaction. Nonetheless, the nature of foreign exchange swaps and forwards transactions (as defined by the CEA) makes it difficult for these products to be structured to replicate the cash flows associated with currency or interest rate swaps to evade regulatory requirements under the CEA. The likelihood that foreign exchange swaps and forwards might be structured to evade other regulatory requirements is further reduced by the extensive oversight by regulators, particularly the supervision of banks which are the main participants in this market.

Unlike other types of swaps, foreign exchange swaps and forwards are distinct because, as defined by the CEA, these transactions must (1) involve the exchange of the principal amounts of the two currencies exchanged, as opposed to a set of cash flows based upon some floating reference rate, and (2) be settled on a physical basis.[74]

A ''swap'' regulated under the CEA, such as a currency swap, interest rate swap, or other derivative, generally involves a periodic exchange of a floating amount of cash flows between the counterparties based on the value of the underlying variable(s) on which the derivative contract is based. In contrast, a foreign exchange swap (which will be exempt from the definition of ''swap'' under this determination) involves a simple exchange of principal at one point in time and a reversal of that exchange at some later date. For example, a user of a currency swap could seek funding advantages by obtaining financing in a foreign currency and swapping those cash flows back to the user's locally denominated currency. This would then entail paying or receiving a series of floating interest rate payments (*i.e.,* based on prevailing interest rates) over the life of the transaction. This ability to receive periodic payments during the term of a transaction is a significant feature of ''swaps'' that will be regulated under the CEA, which is absent from a foreign exchange swap or foreign exchange forward.

As discussed above, in a foreign exchange swap transaction, the payment obligations are fixed at the onset of the transaction—with the prices of both legs of the transaction set by highly transparent and liquid markets—and the payments must be made in the currencies involved in the swap. In contrast, the actual amount of the cash flow exchanged by a party to a currency swap (or other derivatives transaction) is unknown at the onset of the transaction. Instead, a payment obligation on either party is dependent on the future value of one or more rates or some future event. The price of the payment itself can be hindered by market volatility or illiquidity, which could affect the value of the transaction.

While foreign exchange swaps could be used by some market participants to speculate on the short-term path of interest rates in some contexts, the operational challenges and transaction costs associated with transforming these instruments to replicate currency or interest rate swaps significantly reduce the likelihood that market participants would do so in order to evade regulatory requirements under the CEA.[75]

developed by the Federal Financial Institutions Examination Council, available at *http://ithandbook.ffiec.gov/it-booklets/wholesale-payment-systems/wholesale-payment-systems-risk-management.aspx.*

[71] One commenter disputes this position, stating that ''[t]he CLS system completely disregards the counterparty credit risk.'' Americans for Financial Reform, at 12. This commenter asserts that ''CLS merely settles transactions between the parties by collecting payments from each party and distributing payments once all parties meet their obligations.'' *Id.*

[72] In this regard, one commenter notes that, notwithstanding the settlement of more than 50 percent of foreign exchange swaps and forwards transactions by CLS, a ''significant volume'' of those transactions are not settled by CLS, and asserts that ''[t]his state of affairs is not 'adequate' under any reasonable interpretation.'' Better Markets, at 11.

[73] As one commenter contends, for example, ''market participants have a boundless ingenuity for developing new products and strategies that fall within the interstices of any regulatory framework.'' Better Markets, Inc. at 11.

[74] In this regard, Treasury notes that, in other swaps transactions, the parties may, by agreement, physically settle their obligations.

[75] Some commenters share this view. Thomson Reuters, for example, states: ''Although transactions costs are becoming lower each year, transforming an interest rate swap into a foreign exchange swap would entail operational challenges and transactions costs. Thomson Reuters believes that increased reporting obligations for all swaps and the enhanced CFTC anti-evasion authority will deter participants from overbroad use of the FX

To begin with, the transactions costs associated with replicating currency swaps through the use of foreign exchange swaps likely would be significant because a market participant would need to regularly roll over its foreign exchange swap position as it seeks to replicate a currency swap. For example, a participant would need to consider the costs associated with the series of separate bid-ask spreads accompanying each of the foreign exchange swap transactions, as well as the costs of monitoring those positions. Thus, whether a participant would structure foreign exchange swap transactions in order to replicate other, non-exempt swaps that are subject to central clearing requirements would be highly dependent on the costs associated with the operational or systems arrangements necessary to execute the foreign exchange swap transactions, relative to the costs imposed by CCPs to clear the other, non-exempt swap transactions, which could vary among market participants. Moreover, as discussed above, approximately 95 percent of foreign exchange swaps and forwards transactions occur between banks. The systems that banks use to conduct foreign exchange swaps and forwards transactions are subject to consolidated supervision, including oversight of the internal controls used to monitor foreign exchange swaps and forwards. Treasury believes, as one commenter similarly noted, that because regulated banks conduct the bulk of foreign exchange swaps and forwards transactions, the risk of using these transactions to evade otherwise applicable regulatory requirements is relatively lower.[76]

Importantly, a determination to exempt foreign exchange swaps and forwards from regulation as ''swaps'' under the CEA will not affect the application of other provisions that are designed to prevent evasion by market participants and improve market transparency. In particular, under the Dodd-Frank Act all foreign exchange swaps and forwards will remain subject to the CFTC's new trade-reporting requirements, enhanced anti-evasion authority, and strengthened business-conduct standards for swaps dealers and major swap participants.[77] Furthermore, the planned opening of global foreign exchange trade repositories will expand reporting to regulators and the public more broadly. This additional reporting will also provide regulators with enhanced information that can be used to detect attempts by market participants to use foreign exchange swaps or forwards to replicate the cash flows associated with currency, interest rate swaps, or other derivatives in order to evade regulatory requirements.

C. Implications of Determination; Treatment of NDFs

(i) Implications of a Determination To Exempt Foreign Exchange Swaps and Forwards From the Term ''Swap'' Under the CEA

Because the Secretary is issuing a written determination to exempt both foreign exchange swaps and forwards from the definition of a ''swap'' under the CEA, these transactions, as well as certain parties that engage in these transactions, will not be subject to some requirements under the CEA, notably the clearing and exchange-trading requirements.

However, foreign exchange swaps and forwards and the parties to such transactions will still be subject to trade-reporting requirements, business conduct standards (including the anti-fraud provision) in section 4s(h) of the CEA and the rules promulgated thereunder by the CFTC, and anti-evasion requirements promulgated by the CFTC. In this regard, section (c) of the determination—which reflects the language of sections 1a(47)(E)(iii)–(iv) and 1b(c) of the CEA—provides that, notwithstanding this determination, certain requirements under the CEA will apply to any foreign exchange swap or foreign exchange forward, or to any party engaged in such a transaction, to the extent provided by such requirements.

Under section 1a(47)(F) of the CEA, a foreign exchange swap or foreign exchange forward that is ''listed and traded on or subject to the rules of a designated contract market or a swap execution facility, or that is cleared by a derivatives clearing organization, shall not be exempt from any provision of [CEA], or the amendments under [Title VII of the Dodd-Frank Act] prohibiting fraud or manipulation.''[78] Additionally, a determination issued by the Secretary shall not ''affect, or be construed to affect, the applicability of [the CEA] or the jurisdiction of the [CFTC] with respect to agreements, contracts, or transactions in foreign currency pursuant to section 2(c)(2) [of the CEA, regarding retail transactions].''[79]

(ii) Treatment of NDFs Under the Determination

Several commenters who support issuing a determination to exempt foreign exchange swaps and forwards urge Treasury to extend the determination to apply to NDFs involving foreign exchange.

In general, an NDF is a swap that is cash-settled between two counterparties, with the value of the contract determined by the movement of exchange rates between two currencies. On the contracted settlement date, the profit to one party is paid by the other based on the difference between the contracted NDF rate (set at the trade's inception) and the prevailing NDF fix (usually a close approximation of the spot foreign exchange rate) on an agreed notional amount. NDF contracts do not involve an exchange of the agreed-upon notional amounts of the currencies involved. Instead, NDFs are cash settled in a single currency, usually a reserve currency. NDFs generally are used when international trading of a physical currency is relatively difficult or prohibited.[80]

Several commenters acknowledge the distinction between NDFs and foreign exchange swaps and forwards, as defined by the CEA. One commenter, for example, states that ''NDFs are cash-settled, short-term forward contracts in a foreign currency, in which the profit or loss is calculated as the difference between the contractually agreed upon [foreign exchange] rate and the [foreign exchange] rate on the date of settlement.''[81] Nonetheless,

exemption under consideration.'' *See also* FX Investor Group, at 2.

[76] FX Investor Group, at 2 (observing that ''there is little risk of such institutions not ensuring that the spirit of this rule is met'').

[77] *See* CEA section 1a(47)(E)(iii) (reporting) and (iv) (business conduct standards), 7 U.S.C 1a(47)(E)(iii) and (iv). *See* also Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 FR 48,208, 48,253 (''CFTC–SEC Joint Products Rule'') (addressing the application of certain reporting requirements and business-conduct standards). In addition, Treasury notes that: (i) CEA section 1a(47)(F)(i), 7 U.S.C. 1a(47)(F)(i), provides that foreign exchange swaps and forwards that are listed and traded on or subject to the rules of a designated contract market or swap execution facility, or are cleared by a derivatives clearing organization, shall not be exempt from the fraud and manipulation provisions of the CEA; and (ii) section 753 of the Dodd-Frank Act amends section 6(c) of the CEA to provide, in relevant part, that ''it shall be unlawful for any person, directly or indirectly, to manipulate or attempt to manipulate the price of any swap, or of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity.'' 7 U.S.C. 9, 15. *See also* CFTC–SEC Joint Products Rule, 77 FR at 48,253, n. 512.

[78] 7 U.S.C. 1a(47)(F)(i).

[79] 7 U.S.C. 1a(47)(F)(ii) (referring, in turn, to 7 U.S.C. 2(c)(2)).

[80] *See* CFTC–SEC Joint Products Rule, 77 FR at 48,254–255.

[81] Coalition for Derivatives End-Users (''Coalition''), at 3. *See also* Covington & Burling, LLP, at 2 (''in an NDF, the trade closes out at maturity upon delivery of the net value of the

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commenters who urge Treasury to extend the proposed determination to cover NDFs contend that ''NDFs are economically and functionally identical to [foreign exchange] forwards, despite the fact that they are cash settled in just one currency and do not involve the exchange of underlying currencies because of currency controls or local law restrictions in certain foreign jurisdictions.'' [82] These commenters argue, therefore, that the grounds that Treasury identified in the NPD for issuing an exemption for foreign exchange forwards likewise should apply to NDFs.[83] Moreover, one commenter argues that the definition of a ''foreign exchange forward'' in the CEA does not require the ''physical exchange'' of the two currencies and, thus, this term should not be interpreted as precluding the inclusion of an NDF within the scope of an exemption.[84]

The statutory provisions that limit a ''foreign exchange forward'' or a ''foreign exchange swap'' to an ''exchange'' of two different currencies entail the actual delivery of those currencies as an integral part of the transaction, rather than simply a transfer of the value corresponding to the difference in the prices of the two currencies on a specified date.[85] Treasury observes that, recognizing the foregoing, the CFTC and Securities and Exchange Commission (collectively, the ''Commissions'') have defined the term ''swap'' to include an NDF.[86] Correspondingly, the Commissions have determined that ''foreign exchange forward'' or ''foreign exchange swap'' do not encompass an NDF.[87] In the preamble to the CFTC–SEC Joint Products Rule, the Commissions explain that ''NDFs do not meet the definitions of 'foreign exchange forward' or 'foreign exchange swap' set forth in the CEA [because] NDFs do not involve an 'exchange' of two different currencies (an element of the definition of both a foreign exchange forward and a foreign exchange swap); instead, they are settled by payment in one currency (usually U.S. dollars).'' [88] Accordingly, Treasury concludes that an NDF would not meet either definition under the CEA for the purposes of this determination.[89]

The requirement in the definitions of ''foreign exchange forward'' and ''foreign exchange swap,'' respectively, to ''exchange'' the two currencies should not be interpreted as requiring each foreign exchange swap or forward transaction to be settled independently. Rather, an entity, such as CLS or any other operator of a multilateral PVP settlement system, that settles a series of foreign exchange swap and forward transactions may use appropriate mechanisms to net transactions involving the same parties and the same currencies, and deliver each of the currencies to the respective parties. Applying appropriate mechanisms during the settlement process to net qualifying foreign exchange swap and forward transactions conducted by a group of parties should satisfy the limitations under the CEA because the essential elements of each of those transactions—namely, an exchange of two different currencies at a predefined, fixed rate—are left intact.[90]

III. Procedural Analysis

A. Executive Order 12866 and Executive Order 13563

Executive Orders 13563 and 12866 direct an agency to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to prepare a regulatory flexibility analysis unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. It is hereby certified that this determination would not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that entities that engage in foreign exchange swaps and forwards, as defined by the CEA and as described in this determination, tend to be large entities. Accordingly, a regulatory flexibility analysis is not required.

IV. Final Determination

Pursuant to section 1a(47)(E)(ii), the Secretary will submit this final determination to the appropriate committees of Congress as of November 20, 2012. For the reasons set forth in sections I and II, which are incorporated into and made part of this section IV, the Secretary issues a determination, as follows:

(a) *Definitions.*

For the purposes of this determination, the following definitions apply:

(1) *Act* means the Commodity Exchange Act.

(2) *Commission* means the Commodity Futures Trading Commission.

(3) *Dodd-Frank Act* means the Dodd-Frank Wall Street Reform and Consumer Protection Act.

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underlying exchange, denominated in a pre-determined currency (usually the deliverable currency in the currency pair)'').

[82] Investment Company Institute, at 4.

[83] Investment Company Institute, at 4 (contending that ''the minimal benefits to overseeing systemic risk from including NDFs within the central clearing and exchange trading regime do not justify the costs of narrowly interpreting the definition of [foreign exchange] forward to exclude NDFs'').

[84] MFX Solutions, Inc., at 2 (''[The definitions of foreign exchange forward and foreign exchange swap] set limits on the scope of Treasury's exemptive authority under Section 721 of the Dodd-Frank Act and as such seem to rule out an exemption from the definition of 'swap' for non-fixed rate foreign exchange swaps and forwards. The definitions, however, do not appear to preclude exemption of non-deliverable swaps and forwards since the need for a 'physical exchange' is not specified in the CEA's definitions.'').

[85] *Accord* Further Definition of ''Swap''; ''Security-Based Swap''; and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 FR at 48,256 (Aug. 13, 2012) (''CFTC–SEC Joint Products Rules'').

[86] 17 CFR 1.3(xxx)(3)(v)(C).

[87] 17 CFR 1.3(xxx)(3)(iii) (defining the term foreign exchange forward); 17 CFR 1.3(xxx)(3)(iv) (defining the term foreign exchange swap).

[88] CFTC–SEC Joint Products Rule, 77 FR at 48,255.

[89] Under section 712(d)(1) of the Dodd-Frank Act, 15 U.S.C. 8302(d)(1), the Commissions are authorized to further define the term ''swap'' under the CEA, and Treasury does not intend that the Commissions' joint rules in respect of the status of NDFs as swaps be affected by this written determination issued under other provisions of the CEA.

[90] Nothing in this paragraph is intended to: (1) Address transactions described in footnote 539 of the CFTC–SEC Joint Products Rule; or (2) establish a ''bookout'' right allowing parties to avoid exchanging currencies, each of which, depending on the relevant facts and circumstances, may fall within CFTC regulation 1.3(xxx)(6)(ii). Regarding the former, in the CFTC–SEC Joint Products Rule, the Commissions stated:

> [l]ikewise, the Commissions have determined that a foreign exchange transaction, which initially is styled as or intended to be a ''foreign exchange forward,'' and which is modified so that the parties settle in a reference currency (rather than settle through the exchange of the 2 specified currencies), does not conform with the definition of ''foreign exchange forward'' in the CEA.

See CFTC–SEC Joint Products Rule at 48255 n.539 (internal citation omitted).

(4) *Foreign exchange forward* shall have the same meaning as in section 1a(24) of the Act.

(5) *Foreign exchange swap* shall have the same meaning as in section 1a(25) of the Act.

(6) *Swap* shall have the same meaning as in section 1a(47) of the Act.

(b) *Authority and purpose.* This determination is issued under sections 1a(47)(E) and 1b of the Act in order to implement the provisions of the Act relating to the treatment of foreign exchange swaps and foreign exchange forwards as swaps under the Act.

(c) *Findings and exemption.* (1) *Considerations.* The Secretary has considered—

(i) 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, and finds that the required trading and clearing of these instruments would introduce new challenges and could result in negative consequences, without improving transparency;

(ii) 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, and finds that the regulatory scheme for foreign exchange swaps and foreign exchange forwards applicable in the U.S., as well as the regulatory schemes in other jurisdictions, have required specific actions that address settlement risk, mitigate counterparty credit risk, and manage other risks associated with foreign exchange swaps and forwards;

(iii) The extent to which bank regulators of participants in the foreign exchange market provide adequate supervision, including capital and margin requirements, and finds that regulators are adequately supervising these participants, in part by requiring the implementation of risk-management and operational processes, including the use of payment-versus-payment settlement arrangements for settling transactions and the adoption of credit support annexes with counterparties;

(iv) The extent of adequate payment and settlement systems, and finds that these systems are adequate for foreign exchange swaps and foreign exchange forwards, particularly because a specialized settlement system, which is subject to Federal oversight, has proven capabilities to settle the majority of all global foreign exchange transactions in multiple currencies; and

(v) The use of a potential exemption of foreign exchange swaps and foreign exchange forwards to evade otherwise applicable regulatory requirements, and finds that foreign exchange swaps and foreign exchange forwards, as defined under the Act, are distinguished from other derivatives, widely used by supervised banks for bona fide funding transactions, and not likely to be used to evade otherwise applicable regulatory requirements because of operational and transactions costs associated with potentially transforming these instruments into other derivatives that are subject to regulatory requirements under the Act.

(2) *Exemption.* Upon consideration of each of the factors set forth in section 1b of the Act, the Secretary finds that—

(i) Foreign exchange swaps and foreign exchange forwards should not be regulated as swaps under the Act; and

(ii) Foreign exchange swaps and foreign exchange forwards are not structured to evade the requirements of the Dodd-Frank Act, in violation of any rule promulgated by the Commission, pursuant to section 721(c) of the Dodd-Frank Act (15 U.S.C. 8321)—and, accordingly, hereby determines that any foreign exchange swap or foreign exchange forward hereby is exempt from the definition of the term ''swap'' under the Act.

(d) *Scope*—As provided in sections 1a(47)(E) and 1b(c) of the Act—

(1) *Reporting.* Notwithstanding this determination, all foreign exchange swaps and foreign exchange forwards shall be reported to a either a swap data repository or, if there is no swap data repository that would accept such swaps or forwards, to the Commission, pursuant to section 4r of the Act (7 U.S.C. 6r) within such time period as the Commission may by rule or regulation prescribe.

(2) *Business standards.* Notwithstanding this determination, any party to a foreign exchange swap or forward that is a swap dealer or major swap participant (as such terms are defined under the Act or under section 721(c) of the Dodd-Frank Act (15 U.S.C. 8321)) shall conform to the business conduct standards contained in section 4s(h) of the Act (7 U.S.C. 6s(h)).

(3) *Effect of determination.* This determination shall not exempt any foreign exchange swap or foreign exchange forward traded on a designated contract market or swap execution facility from any applicable anti-manipulation provision of the Act.

Dated: November 16, 2012.

Timothy F. Geithner,

Secretary.

[FR Doc. 2012–28319 Filed 11–19–12; 8:45 am]

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DEPARTMENT OF THE TREASURY

Open Meeting of the Financial Research Advisory Committee

AGENCY: Office of Financial Research, Department of the Treasury.

ACTION: Notice of open meeting.

SUMMARY: The Financial Research Advisory Committee for the Treasury's Office of Financial Research is convening for its first meeting on Wednesday, December 5, 2012 in the Cash Room, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220, beginning at 10 a.m. Eastern Time. The meeting will be open to the public via live webcast at *http://www.treasury.gov/ofr* and limited seating may also be available.

DATES: The meeting will be held on Wednesday, December 5, 2012, beginning at 10 a.m. Eastern Time.

ADDRESSES: The meeting will be held in the Cash Room, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220. The meeting will be open to the public via live webcast at *http://www.treasury.gov/ofr.* A limited number of seats may be available for those interested in attending the meeting in person, and those seats would be on a first-come, first-served basis. Because the meeting will be held in a secured facility, members of the public who plan to attend the meeting must contact the Office of Financial Research (OFR) by email at *andrea.b.ianniello@treasury.gov* by 5 p.m. Eastern Time on November 26, 2012 to inform the OFR of their desire to attend the meeting and to receive further instructions about building clearance.

FOR FURTHER INFORMATION CONTACT: Andrea Ianniello, Designated Federal Officer, Office of Financial Research, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220, (202) 622–3002 (this is not a toll-free number), *andrea.b.ianniello@treasury.gov.* Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, 10(a)(2), through implementing regulations at 41 CFR 102–3.150.

Public Comment: Members of the public wishing to comment on the business of the Financial Research Advisory Committee are invited to