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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510–6250

November 29, 2010

Submitted Electronically Through www.regulations.gov

The Honorable Timothy Geithner
Secretary
United States Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

RE: **Request for Comments on Exempting Foreign Exchange Swaps and Forwards From Regulation under the Commodities Exchange Act**

Dear Secretary Geithner:

The purpose of this letter is to respond to your request for comment on whether you should exercise authority under Section 721 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) to exempt certain foreign exchange swaps and foreign exchange forwards from regulation as "swaps" under the Commodities Exchange Act (CEA).[1]

Overview. The wholesale exemption of non-cleared foreign exchange swaps[2] and foreign exchange forwards[3] from regulation "as swaps" under the CEA would be unwise for a number of reasons. First, a blanket exemption would open the door to financially engineered foreign exchange swaps and forwards that could be used to disguise other types of transactions and would be difficult to police. The use of foreign exchange swaps and forwards to "mask" other types of transactions could undermine derivatives regulation as a whole, as well as systemic risk safeguards established in the Dodd-Frank Act. For example, as discussed further below, the recent Greek crisis shows how a foreign currency swap was used to disguise a billion dollar loan to Greece and to create undisclosed long-term debt. This transaction, which a Greek

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[1]Section 721 of the Dodd-Frank Act, Public Law 111-203, 124 Stat. 1376 (2010), amends section 1a of the CEA to provide a definition of a "swap." As part of that definition, Section 1a(47)(E) authorizes the Secretary of the Treasury to exempt certain foreign exchange swaps and foreign exchange forwards, or both, from regulation under the CEA by making a written determination that they should not be regulated as swaps under the CEA, and are not structured to evade the Dodd-Frank Act in violation of any rule promulgated by the Commodities Future Trading Commission (CFTC). The Secretary is required to consider certain enumerated factors, and the Department of the Treasury has solicited comments on those and related issues. 75 Fed.Reg. 66426-27 (Oct. 28, 2010).

[2] 7 U.S.C. 1a(25) (defines a foreign exchange swap 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 the 2 currencies described in subparagraph (A) at a later date and at a fixed rate that is agreed upon on the inception of the contract covering the exchange").

[3] 7 U.S.C. 1a(24) (defines a foreign exchange forward as "a transaction that solely involves an exchange of 2 different currencies on a specific future date at a fixed rate that is agreed upon on the inception of the contract covering the exchange").

official later described as "just an ordinary swap," actually posed substantial financial risk to Greece, and, along with other undisclosed debts, necessitated a massive bailout. The global impact of the Greek foreign currency swap demonstrates how even a single such transaction can contribute to systemic risk that can damage international financial systems.

A second consideration is the sheer size of the foreign exchange derivatives market, which is one of the largest financial markets in the world. While Section 1a(47)(F) of the CEA, as provided in the Dodd-Frank Act, currently requires the regulation of standardized foreign exchange swaps and forwards that are traded on exchanges or cleared by derivatives clearing organizations, the statute leaves open the issue of exempting from regulation all foreign exchange swaps and forwards that are traded off-exchange without clearing. Those types of swaps and forwards currently make up a sizeable portion of the foreign exchange derivatives market and involve trillions of dollars. Exempting them from regulation would not only leave a multi-trillion-dollar market unregulated, but also create a powerful new incentive for derivative dealers to favor non-cleared, off-exchange foreign exchange swaps and forwards, pushing the market in the opposite direction of what Congress intended and increasing systemic risk.

A related concern is establishing different regulatory requirements for similar financial instruments, which opens the door to regulatory arbitrage and financial gamesmanship. There is currently little economic difference between foreign exchange options, which are not eligible for exemption, and foreign exchange swaps and forwards, which are. It makes little economic sense to regulate foreign exchange options, but not their functional equivalents. If Treasury were nevertheless, despite all of these problems, to exempt non-cleared foreign exchange swaps and forwards from regulation under the CEA, it would need to determine the contours of that exemption. The Dodd-Frank Act makes it clear that the exemption does not extend to reporting and business standard requirements, but fails to specify which regulatory requirements would no longer apply. Any proposed rule would have to address that issue to ensure the limited statutory exemption provided is not abused and to minimize systemic risk.

These issues are discussed in further detail below.

Subcommittee Investigation. Over the past two years, the Permanent Subcommittee on Investigations, which I chair, has conducted an extensive investigation delving into key causes of the financial crisis. As a part of that investigation, the Subcommittee has analyzed hundreds of financial derivative products, including credit default swaps (CDS), residential mortgage-backed securities (RMBS), and collateralized debt obligations (CDOs). We gathered and reviewed extensive documentation related to these derivatives and interviewed dozens of financial institution employees, government officials, and academic experts. We also held four hearings and released thousands of hearing exhibits.

In prior years, the Subcommittee has conducted extensive investigations into other issues related to swaps, including how swaps transactions can be misused. For example, in a 2008 investigation, the Subcommittee exposed how some financial institutions used abusive total return swaps and other swap transactions to help foreign clients evade payment of U.S. taxes on

U.S. stock dividends.[4] In 2007, the Subcommittee held hearings and released a report which examined, in part, the impact of over-the-counter (OTC) commodity swaps on energy prices, including how a single hedge fund could use OTC swaps to influence futures prices and increase the prices of the underlying commodities.[5] In still another investigation in 2002, the Subcommittee exposed how two major U.S. financial institutions used energy swaps to disguise multi-million-dollar loans to the Enron Corporation.[6]

One key factor in each of these investigations was the lack of regulation and transparency in OTC swaps markets, including trades involving credit default swaps and commodity swaps. The market for each of these swaps was vast, involving trillions of dollars in annual trades, but was subject to virtually no regulation, due to a statutory bar on federal oversight of swaps.[7] Because the transactions were executed through private bilateral contractual agreements or on electronic exchanges which, by law, were exempt from federal oversight, there was little or no transparency with respect to the issuers, sellers, or buyers of these swaps, relevant market prices, or trading volumes. In addition, there were often no net capital or margin requirements to ensure that buyers would be able to meet the financial obligations they assumed through these products. In short, despite the trillions of dollars of trading in these products, no one knew who owed what to whom, whether market participants had the ability to pay, or even the total size of the markets.

Naked credit default swaps, for example, contributed to the financial crisis, in part because they allowed financial institutions and other investors to make unlimited bets on the default of specified assets, thereby amplifying the potential for market losses. Again, in the CDS market, no one knew exactly who owed what to whom. So when AIG teetered on the brink of default because of CDS obligations it could not afford to pay, no one knew where the cascading chain of related defaults might end. That uncertainty made a bailout from U.S. taxpayers the only viable solution to avoid potential financial disaster.

The Dodd-Frank Act was enacted, in part, to put an end to that type of uncertainty, to bring transparency and order to the previously unregulated derivative markets, and to eliminate the need for future taxpayer bailouts. Those statutory objectives apply with equal urgency to preventing taxpayer bailouts related to foreign exchange swaps and forwards. In addition, the statute's repeal of the CFMA's blanket prohibition on regulating swaps provides a compelling lesson on the dangers of wholesale regulatory exemptions and how they can contribute to systemic risk.

Vulnerability to Misuse. The recent Greek financial crisis provides a vivid example of how foreign exchange swaps and forwards can be used to mask other transactions, evade otherwise applicable regulatory requirements, and increase systemic risk. By illustrating how easily foreign exchange derivatives can be manipulated and misused, the Greek crisis provides evidence of why none of those derivatives should be exempted from regulatory oversight.

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[4] See "Dividend Tax Abuse: How Offshore Entities Dodge Taxes on U.S. Stock Dividends," S.Hrg. 110-778 (Sept. 11, 2008).
[5] See "Excessive Speculation in the Natural Gas Market," S.Hrg. 110-235 (June 25 and July 9, 2007).
[6] See "The Role of the Financial Institutions in Enron's Collapse," S.Hrg. 107-618 (July 23 and 30, 2002).
[7] This prohibition on federal regulation of swaps was put into place by the Commodity Futures Modernization Act (CFMA) of 2000, and repealed ten years later by the Dodd-Frank Act.

In 2001, Goldman Sachs structured a purported foreign currency swap for the government of Greece. The transaction was reportedly designed to enable Greece to obtain a billion dollar loan from Goldman Sachs without disclosing the resulting sovereign debt obligation to EU authorities.[8] In substance, the transaction was a billion dollar loan from Goldman Sachs to Greece in exchange for a mortgage on the Greek government's airport and lottery fees for many years into the future. The Greek government's immediate receipt of funds was disclosed, but the debt obligations were not. When the Greek government finally disclosed the entire transaction to EU authorities earlier this year,[9] a Greek government official reportedly characterized the transaction as "just an ordinary swap."[10]

Some commentators have suggested that the transaction may have been structured as a foreign currency swap in order to evade certain then-applicable EU accounting standards that would otherwise have required immediate disclosure of the debt.[11] In designing the transaction, Goldman Sachs reportedly employed a legitimate foreign currency swap structure, but used "off-market" historical price relationships (rather than current spot relationships) between the euro versus the U.S. dollar and the yen.[12] The resulting swap provided a large upfront payment to Greece from Goldman Sachs (the loan), and a delayed balloon payment to Goldman from Greece's airport and lottery fees over a period of years that extended at one point until 2037 (the undisclosed debt and loan repayment).[13] Greece's disclosure of its previously hidden debt obligation triggered further investigation and served as a catalyst for the ongoing eurozone sovereign debt crisis, which has required a $140 billion bailout of the Greek government by EU central banks and the IMF, raised questions about whether other countries have similar undisclosed sovereign debt masked as foreign exchange swaps, and exposed a source of substantial systemic risk to the EU financial system.[14]

The Greek foreign exchange swap was the subject of a 2003 article in Risk Magazine that foreshadowed current concerns about the transaction:

> "There is no doubt that Goldman Sachs' deal with Greece was a completely legitimate transaction under [then-applicable] rules. Moreover, both Goldman and Greece's public debt division are following a path well-trodden by other European sovereigns and

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[8] See, e.g., "Wall St. Helped Mask Debt Fueling Europe's Crisis," New York Times (Feb. 14, 2010); "Greece's Currency Swap Draws New Scrutiny," Wall Street Journal (Feb. 18, 2010); "Too Bad Not To Fail," The American Scholar (June 1, 2010), republished at www.theamericanscholar.org. Though described here for convenience as a single transaction, the foreign exchange swap masked two similar deals, one related to airport fees and the other related to lottery fees, which actually involved multiple tranches and transactions.

[9] Der Spiegel (Feb. 2010); see also articles cited in note 8, supra.

[10] "Greece's Currency Swaps Draw New Scrutiny," supra note 8.

[11] See, e.g., "Revealed: Goldman's Mega-Deal For Greece," Risk Magazine (July 1, 2003), republished at www.risknet.com.

[12] Id.

[13] Goldman Sachs reportedly hedged its exposure . Id.. In 2005, Goldman Sachs reportedly sold its interest in the foreign currency swap to the National Bank of Greece for an undisclosed sum. "Greece's Currency Swaps Draw New Scrutiny," supra note 8. In 2008, Goldman Sachs reportedly arranged a transaction in which the National Bank of Greece transferred the swap to a Special Purpose Vehicle (SPV), utilizing the SPV as an off-balance sheet accounting device. Id.

[14] Id. Commentators have noted the similarities between the AIG bailout by U.S. taxpayers and the sovereign debt bailout engineered by the EU and IMF. See, e.g., "Too Big Not To Fail," supra note 8.

derivatives dealers. However, like many accounting-driven derivatives transactions, such deals are bound to create discomfort among those who like accounts to reflect economic reality. For example, the Greece-Goldman deal may be of interest to credit rating agency Standard & Poors, which upgraded Greece's long term debt from A to A+ in 2003."[15]

An undisclosed billion-dollar debt, misleading accounting, an inflated credit rating, and a public bailout -- the Greek foreign exchange swap raises a host of disturbing issues. The Greek government's use of a foreign currency swap to mask debt and evade accounting disclosure standards demonstrates precisely why foreign exchanges swaps and forwards should not be exempted from regulation.

There is also no reason to believe that Greece's use of a foreign currency swap to disguise an undisclosed loan transaction is unique. Enron employed a similar technique, using energy swaps, to disguise multi-million-dollar loans from major U.S. financial institutions. Italy also reportedly entered into a foreign exchange swap involving an interest expense to Italy pegged at LIBOR minus1677 basis points – an arrangement which suggests the counterparty paid Italy 16.77% of the total notional value of the swap on an annualized basis. Though described as a foreign exchange swap, the transaction may instead involve a series of undisclosed loans to Italy from a major market-maker in foreign exchange derivatives.[16] Since financial markets are increasingly global, transactions designed for an entirely different purpose can easily be structured as foreign exchange swaps simply by incorporating use of a foreign currency at some point in the transaction. Loans are particularly easy to re-engineer as foreign exchange swaps or forwards. Indeed, some speculate that the use of foreign exchange swaps to conceal loans may already be commonplace.[17]

The Greek foreign currency swap also illustrates the scope of the potential consequences of exempting foreign exchange derivatives from federal regulations intended to enhance transparency and stability. It highlights the fact that foreign exchange derivatives can involve massive amounts of money, hidden sovereign debt, and issues involving foreign currencies and foreign central banks. It shows how a single foreign exchange transaction, when large and undisclosed, can contribute to systemic risk, not only for a particular country, but for regional and even global financial systems. These considerations weigh heavily against exempting foreign exchange swaps and forwards from regulation under the CEA.

Multi-Trillion-Dollar Markets. In addition to the ease with which foreign exchange derivatives can be engineered to conceal transactions with hidden risks, the sheer number and size of foreign exchange transactions that occur each year raise regulatory concerns. Every day, sovereign nations, international financial institutions, and multinational businesses engage in foreign exchange transactions can involve millions, even billions, of dollars at a time. In

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[15] "Revealed: Goldman's Mega-Deal For Greece," supra note 11.

[16] "Derivatives and Public Debt Management," International Securities Market Association in Cooperation with the Council on Foreign Affairs (2001) at 126-129. See also "Enron and Italy: Parallels Between Rome's Efforts To Qualify For Euro Entry And The Financial Chicanery in Texas," Financial Times (Feb. 21, 2002); "Step Aside Greece: How Gustavo Piga Revealed Europe's Enron in 2001 – Focusing on Italy's Libor MINUS 16.77% Swap," zerohedge.com (2/28/10).

[17] See, e.g., "Enron and Italy: Parallels Between Rome's Efforts To Qualify For Euro Entry And The Financial Chicanery in Texas," supra note 16.

questioning why any portion of such a vast market should be exempted from regulation, one commentator (a former Goldman Sachs Vice President) recently stated:

> "The traded foreign exchange market is the big enchilada. It is the largest financial market in the world. The Bank for International Settlements estimates that the daily turnover in this market, including swaps, futures and spot purchases, is $4 trillion as of April 2010. This turnover increased more than 20% in the last 3 years."[18]

As of June 2010, the Bank for International Settlement indicates that the current over-the-counter derivatives market in foreign exchange contracts has a total outstanding notional amount of about $53 trillion, divided among foreign exchange swaps and forwards in a notional amount of nearly $26 trillion, foreign currency swaps in a notional amount of about $16 trillion, and foreign exchange options in a notional amount of about $11 trillion.[19] Most analysts agree that, while some of the foreign exchange swaps and forwards are cleared and executed on regulated exchanges, the vast majority are not. Instead, they are typically executed through bilateral, off-exchange agreements that are often neither cleared nor subject to margin requirements. These non-cleared swaps and forwards involve trillions of dollars in trades annually. By any measure, the amount of trading in non-cleared foreign exchange swaps and forwards is simply too large to be wholly exempted from regulation.

Some foreign exchange derivative dealers are reportedly opposed to the inclusion of foreign exchange derivatives in the Dodd-Frank Act's regulatory scheme, because the foreign exchange market played no role in the collapse of the U.S. housing market, functioned well throughout the recent crisis, and is vital to global commerce.[20] Some of these opponents of regulation believe that foreign exchange derivatives are being unfairly swept in with the toxic financial products that contributed to the crisis.[21]

Some contend that the foreign exchange derivatives market's huge size and lack of standardization make its products unsuitable for regulation, especially mandatory central clearing.[22] At the same time, however, some point out that the industry has already mitigated counterparty settlement risk through the industry-owned Continuously Linked Settlement (CLS) system. According to industry, CLS facilitates the orderly settlement of 55% of all foreign exchange obligations by eliminating time differences in trades across 17 currencies. Another 30% of all transactions are on the interbank market that is subject to cross-clearing of offsetting obligations which, the industry asserts, negates settlement risk.[23]

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[18] Wallace C. Turbeville, "The Foreign Exchange Mystery," (Oct. 14, 2010) (Mr. Turbeville is a "former CEO of VMAC LLC and a former Vice President of Goldman, Sachs & Co., now Visiting Scholar at the Roosevelt Institute"), at www.newdeal2.org.

[19] See Bank of International Settlements Table 19, "Amounts outstanding of over-the-counter (OTC) derivatives," available at http://www.bis.org/statistics/otcder/dt1920a.pdf. See also "Is Geithner Planning A Stealth Attack on the Wall Street Reform Bill?," Oct. 7, 2010, at www.banksterUSA.com.

[20] See, e.g., "Traders Angered By Swaps Legislation," Financial Times (Oct. 3, 2010).

[21] Id.

[22] Id.

[23] Id.

Far from justifying a regulatory exemption, however, the existence of the industry's own settlement system suggests that central clearing is possible for many, perhaps most, foreign exchange swaps and forwards. It also demonstrates that the industry itself has already recognized the need to mitigate settlement risk. With respect to the industry's assertion that cross-clearing on the interbank market is sufficient to negate interbank settlement risk, the counterparties to Bear Stearns and Lehman Brothers might respectfully disagree. While cross-clearing may mitigate the settlement risk in day-to-day interdealer transactions, it does not address the risk of potential total default by a significant market participant operating with insufficient margin. Reasonable margin requirements offer vital safeguards that would come into play only if foreign exchange swaps and forwards were subject to full regulation as swaps under the CEA.

Exempting foreign exchange swaps and forwards would not only leave a key, multi-trillion-dollar market unregulated, but would also create a powerful new incentive for derivative dealers to favor the issuance of non-cleared, off-exchange foreign exchange swaps and forwards over standardized products that are cleared and traded on an exchange. That new incentive would tilt the foreign exchange derivatives market in the opposite direction of Congressional intent as expressed in the Dodd-Frank Act which favors cleared transactions, while at the same time increasing systemic risk.

Still another consideration is that foreign exchange derivatives necessarily affect the international community. The G-20 group of nations, with the support of the United States, has been calling on its member countries to engage in consistent regulation of swaps across international lines. Two months ago, on September 15, 2010, the European Union issued a statement on swaps regulation indicating that foreign exchange swaps would be regulated like all other swaps. If the United States were instead to exempt a large number of foreign exchange forwards and swaps from U.S. oversight, it would conflict with both the EU approach and the G-20's call for consistency. The G-20 has also expressed concerns about currency manipulation. Fully regulated foreign exchange derivatives markets would foster transparency and work to mitigate concerns about currency manipulation, providing yet another reason that the multi-trillion-dollar foreign exchange forwards and swaps market should not be made exempt from U.S. regulatory oversight.

Functionally Equivalent Instruments. Still another consideration that should be taken into account in the exemption decision is that foreign exchange swaps, foreign exchange forwards, and foreign exchange options perform economically similar functions and should be regulated in an equivalent manner. Exempting the first two from regulation, however, would ensure that similar financial instruments are treated differently, opening the door to regulatory arbitrage and gamesmanship.

Foreign exchange swaps involve the exchange of two different currencies on a specific date at a fixed rate that is agreed upon in advance. Foreign exchange forwards involve the exchange of two different currencies on a specific future date at a fixed rate agreed upon in advance. Foreign exchange options give the options owner the right but not the obligation to exchange two different currencies on a specific date at a fixed rate agreed upon in advance. Substantively, all three focus on exchanging currencies at specified dates using pre-determined

rates, but each uses a different execution method. Swaps and forwards are typically executed through off-exchange, non-cleared, bilateral agreements, while listed options are traded on regulated exchanges subject to margin, capital, and transparency requirements.

Since listed foreign exchange options are not exempted from regulation under the Dodd-Frank Act, the U.S. foreign exchange options market will continue to be subject to central clearing and other regulatory requirements under the CEA.[24] Yet there is no meaningful, substantive distinction between these options and foreign exchange swaps and forwards that would justify splintering the market and requiring extensive regulation of foreign exchange options on the one hand, and a near-total exemption of non-cleared foreign exchange swaps and forwards on the other.[25] To the contrary, these three types of foreign exchange derivatives — swaps, forwards and options – ought to be treated in a like manner, as regulated transactions under the CEA.

Tailoring the Exemption. If, despite the multi-trillion-dollar size of the market for non-cleared foreign exchange swaps and forwards, the dangers inherent in unregulated foreign exchange derivatives being misused to hide other transactions, and the need to treat foreign exchange swaps, forwards, and options in a similar fashion, Treasury were to decide to grant the exemption permitted in Section 721, any proposed rule implementing that decision would need to spell out exactly how that exemption would apply.

Section 721 authorizes the creation of only a narrow regulatory exemption for foreign exchange derivatives. The new Section 1a(47)(E)(i), for example, states that foreign exchange swaps and forwards are to be treated as swaps unless an exemption is granted by the Treasury Secretary, thereby creating a presumption that swaps regulations will apply to foreign exchange swaps and forwards unless explicitly determined to the contrary. In addition, Sections 1a(47)(E)(iii) and (iv) state that even exempted swaps and forwards must comply with the law's requirements for reporting trades to swap data repositories and applying business standards to swap dealers and major swap participants. Section 1a(47)(F)(i) further constrains the exemption by stating that it cannot be applied to foreign exchange swaps and forwards that are traded on exchanges, cleared, or sold to retail clients. The question then becomes, if a specific group of non-cleared foreign exchange swaps and forwards are to be exempted from regulation as swaps, what exactly are they exempt from? Any proposed rule would need to address that issue.

Some key issues here would be the extent to which the exempted swaps and forwards would be excused from the Dodd-Frank Act's clearing, margin, and transparency requirements. Congress has expressed a strong preference for clearing swaps. Clearing operations include the establishment of standard margin requirements. A margin system ensures that market

[24] The discretionary exemption contained in Section 721 refers only to foreign exchange swaps and forwards, and does not mention foreign exchange options. Since Section 721 expressly defines the scope of the exemption as applicable only to foreign exchange swaps and forwards, and omits any reference to foreign exchange options, foreign exchange options remain fully regulated. According to Senate staff involved in the drafting of the Dodd-Frank Act, proposals were made to exempt foreign exchange options along with swaps and forwards, but as drafted, Section 721 authorizes the Secretary to exempt only foreign exchange swaps and forwards.

[25] Notwithstanding the issuance of an exemption, all foreign exchange swaps and forwards must still be reported to a data repository and participants to such transactions must conform to business conduct standards pursuant to the Dodd Frank Act and its implementing regulations. Public Law 111-203, 124 Stat. 1376, Section 721 (2010).

participants post and maintain certain minimum amounts of capital in relation to their trades, to help protect against counterparty credit risk and ensure prompt trade settlements. Margining increases the likelihood that a market participant can and will pay any financial obligations incurred in connection with a trade. Margin requirements also limit a market participant's ability to borrow against assets in a manner that might jeopardize the payment of its trading debts. Cleared trades also increase market transparency and efficiency, by ensuring that accurate and timely trade data is reported to swap data repositories and to the public. Trade data reporting helps establish and disseminate market prices and trading volumes, and also helps create an audit trail for specific trades. That information can be used by investors, analysts, regulators, and policymakers to understand trading patterns, detect market abuses, and safeguard the market against price manipulation, financial fraud, and other misconduct. In the event the Treasury were to use the authority under Section 721 to exempt foreign exchange swaps and forwards from regulation as swaps, it is respectfully suggested that Treasury fashion that exemption in a manner that will preserve the statute's incentives for issuing cleared, on-exchange swaps.

Finally, if you were to determine, despite the considerations demonstrating why a blanket exemption is ill-advised, to grant an exemption under Section 721, one possible approach to limit the negative consequences would be to tailor that exemption so that it does not apply to all non-cleared foreign exchange and forwards, but only to a subset that is less vulnerable to misuse and systemic risk. Perhaps the exemption could apply only to those non-cleared foreign exchange swaps and forwards that fall below a specified dollar and duration limit, take place between regulated swap dealers, are subject to the CLS settlement system, and meet other criteria designed to prevent abuses and systemic risk. Any such limited exemption would also need to be accompanied by a strong anti-evasion provision to stop the engineering of abusive foreign exchange swaps and forwards that would appear to fall within the exempted category but actually disguise other, perhaps hidden, financial transactions. Better yet would be to refrain from exercising any exemptive authority under Section 721.

Thank you for the opportunity to comment on this matter.

Sincerely,

Carl Levin
Chairman
Permanent Subcommittee on Investigations