

Board of Governors of the Federal Reserve System

Regulation NN Retail Foreign Exchange Transactions

12 CFR 240; effective May 13, 2013



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AUTHORITY: 7 U.S.C. 2(c)(2)(E), 12 U.S.C. 248, 321-338, 1813(q), 1818, 1844(b), 3106a, 3108.

institutions wherever located. This part applies to subsidiaries of banking institutions organized under the laws of the United States or any U.S. state that are not subject to the jurisdiction of another federal regulatory agency authorized to prescribe rules or regulations under section 2(c)(2)(E) of the Commodity Exchange Act (7 U.S.C. (2)(c)(2)(E)).

(d) *International applicability.* Sections 240.3 and 240.5 through 240.16 do not apply to retail foreign exchange transactions between a foreign branch or office of a banking institution and a non-U.S. customer. With respect to those transactions, the foreign branch or office remains subject to any disclosure, recordkeeping, capital, margin, reporting, business conduct, documentation, and other requirements of applicable foreign law.

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SECTION 240.2—Definitions

For purposes of this part, the following terms have the same meaning as in the Commodity Exchange Act (7 U.S.C. 1 *et seq.*): “affiliated person of a futures commission merchant”; “associated person”; “contract of sale”; “commodity”; “futures commission merchant”; “future delivery”; “option”; “security”; and “security futures product.”

(a) *Affiliate* has the same meaning as in section 2(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(k)).

(b) *Banking institution* means:

- (1) A state member bank (as defined in 12 CFR 208.2);
- (2) An uninsured state-licensed U.S. branch or agency of a foreign bank;
- (3) A financial holding company (as defined in section 2 of the Bank Holding Company Act of 1956; 12 U.S.C. 1841);
- (4) A bank holding company (as defined in section 2 of the Bank Holding Company Act of 1956; 12 U.S.C. 1841);
- (5) A savings and loan holding company

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SECTION 240.1—Authority, Purpose, and Scope

(a) *Authority.* This part is issued by the Board of Governors of the Federal Reserve System (the Board) under the authority of section 2(c)(2)(E) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(E)), sections 9 and 11 of the Federal Reserve Act (12 U.S.C. 321-338 and 248), section 5(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(b)), sections 9 and 13a of the International Banking Act of 1978 (12 U.S.C. 3106a and 3108), and sections 3(q) and 8 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q) and 1818).

(b) *Purpose.* This part establishes rules applicable to retail foreign exchange transactions engaged in by banking institutions on or after May 13, 2013.

(c) *Scope.* Except as provided in paragraph (d) of this section, this part applies to banking institutions, as defined in section 240.2(b) of this part, and any branches or offices of those

(as defined in section 10 of the Home Owners Loan Act; 12 U.S.C. 1467a)

(6) A corporation operating under the fifth undesignated paragraph of section 25 of the Federal Reserve Act (12 U.S.C. 603), commonly known as “an agreement corporation;” and

(7) A corporation organized under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*), commonly known as an “Edge Act corporation.”

(c) *Commodity Exchange Act* means the Commodity Exchange Act (7 U.S.C. 1 *et seq.*).

(d) *Eligible contract participant* has the same meaning as in the Commodity Exchange Act (7 U.S.C. 1 *et seq.*, as implemented in 17 CFR 1.3(m)).

(e) *Forex* means foreign exchange.

(f) *Identified banking product* has the same meaning as in section 401(b) of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27(b)).

(g) *Institution-affiliated party* or *IAP* has the same meaning as in 12 U.S.C. 1813(u)(1), (2), or (3).

(h) *Introducing broker* means any person who solicits or accepts orders from a retail forex customer in connection with retail forex transactions.

(i) *Related person*, when used in reference to a retail forex counterparty, means:

(1) Any general partner, officer, director, or owner of ten percent or more of the capital stock of the retail forex counterparty;

(2) An associated person or employee of the retail forex counterparty, if the retail forex counterparty is not an insured depository institution;

(3) An IAP, if the retail forex counterparty is an insured depository institution; and

(4) Any relative or spouse of any of the foregoing persons, or any relative of such spouse, who shares the same home as any of the foregoing persons.

(j) *Retail foreign exchange dealer* means any person other than a retail forex customer that is, or that offers to be, the counterparty to a retail forex transaction, except for a person

described in item (aa), (bb), (cc)(AA), (dd), or (ff) of section 2(c)(2)(B)(i)(II) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(B)(i)(II)).

(k) *Retail forex account* means the account of a retail forex customer, established with a banking institution, in which retail forex transactions with the banking institution as counterparty are undertaken, or the account of a retail forex customer that is established in order to enter into such transactions.

(l) *Retail forex account agreement* means the contractual agreement between a banking institution and a retail forex customer that contains the terms governing the customer’s retail forex account with the banking institution.

(m) *Retail forex business* means engaging in one or more retail forex transactions with the intent to derive income from those transactions, either directly or indirectly.

(n) *Retail forex counterparty* includes, as appropriate:

(1) A banking institution;

(2) A retail foreign exchange dealer;

(3) A futures commission merchant;

(4) An affiliated person of a futures commission merchant; and

(5) A broker or dealer registered under section 15(b) (except paragraph (11) thereof) or 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b), 78o-5) or a U.S. financial institution other than a banking institution, provided the counterparty is subject to a rule or regulation of a Federal regulatory agency covering retail forex transactions.

(o) *Retail forex customer* means a customer that is not an eligible contract participant, acting on his, her, or its own behalf and engaging in retail forex transactions.

(p) *Retail forex proprietary account* means a retail forex account carried on the books of a banking institution for one of the following persons; a retail forex account of which 10 percent or more is owned by one of the following persons; or a retail forex account of which an aggregate of 10 percent or more of which is owned by more than one of the following persons:

- (1) The banking institution;
- (2) An officer, director or owner of ten percent or more of the capital stock of the banking institution; or
- (3) An employee of the banking institution, whose duties include:
 - (i) The management of the banking institution's business;
 - (ii) The handling of the banking institution's retail forex transactions;
 - (iii) The keeping of records, including without limitation the software used to make or maintain those records, pertaining to the banking institution's retail forex transactions; or
 - (iv) The signing or co-signing of checks or drafts on behalf of the banking institution;
- (4) A spouse or minor dependent living in the same household as of any of the foregoing persons; or
- (5) An affiliate of the banking institution.

(q) *Retail forex transaction* means an agreement, contract, or transaction in foreign currency, other than an identified banking product or a part of an identified banking product, that is offered or entered into by a banking institution with a person that is not an eligible contract participant and that is:

- (1) A contract of sale of a commodity for future delivery or an option on such a contract; or
- (2) An option, other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)); or
- (3) Offered or entered into on a leveraged or margined basis, or financed by a banking institution, its affiliate, or any person acting in concert with the banking institution or its affiliate on a similar basis, other than:
 - (i) A security that is not a security futures product as defined in section 1a(47) of the Commodity Exchange Act (7 U.S.C. 1a(47)); or
 - (ii) A contract of sale that—
 - (A) Results in actual delivery within two days; or
 - (B) Creates an enforceable obligation to deliver between a seller and buyer

- that have the ability to deliver and accept delivery, respectively, in connection with their line of business; or
- (iii) An agreement, contract, or transaction that the Board determines is not functionally or economically similar to an agreement, contract, or transaction described in paragraph (p)(1) or (p)(2) of this section.

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SECTION 240.3—Prohibited Transactions

(a) *Fraudulent conduct prohibited.* No banking institution or its related persons may, directly or indirectly, in or in connection with any retail forex transaction:

- (1) Cheat or defraud or attempt to cheat or defraud any person;
- (2) Knowingly make or cause to be made to any person any false report or statement or cause to be entered for any person any false record; or
- (3) Knowingly deceive or attempt to deceive any person by any means whatsoever.

(b) *Acting as counterparty and exercising discretion prohibited.* A banking institution that has authority to cause retail forex transactions to be effected for a retail forex customer without the retail forex customer's specific authorization may not (and an affiliate of such an institution may not) act as the counterparty for any retail forex transaction with that retail forex customer.

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SECTION 240.4—Notification

(a) *Notification required.* Before commencing a retail forex business, a banking institution shall provide the Board with prior written notice in compliance with this section. The notice will become effective 60 days after a complete notice is received by the Board, provided the Board does not request additional information or object in writing. In the event the Board requests additional information, the notice will become effective 60 days after all information requested by the Board is re-

ceived by the Board unless the Board objects in writing.

(b) *Notification requirements.* A banking institution shall provide the following in its written notification:

- (1) Information concerning customer due diligence, including without limitation credit evaluations, customer appropriateness, and “know your customer” documentation;
- (2) The haircuts to be applied to noncash margin as provided in 240.9(b)(2);
- (3) Information concerning new product approvals;
- (4) Information on addressing conflicts of interest; and
- (5) A resolution by the banking institution’s Board of Directors that the banking institution has established and implemented written policies, procedures, and risk measurement and management systems and controls for the purpose of ensuring that it conducts retail forex transactions in a safe and sound manner and in compliance with this part.

(c) *Treatment of existing retail forex businesses.* A banking institution that is engaged in a retail forex business on the effective date of this part may continue to do so, until and unless the Board objects in writing, so long as the institution submits the information required to be submitted under paragraphs (b)(1) through (5) of this section within 30 days of the effective date of this part, subject to an extension of time by the Board, and such additional information as requested by the Board thereafter.

(d) *Compliance with the Commodity Exchange Act.* A banking institution that is engaged in a retail forex business on the effective date of this part and complies with paragraph (c) of this section shall be deemed to be acting pursuant to a rule or regulation described in section 2(c)(2)(E)(ii)(I) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(E)(ii)(I)).

(a) *Application of purchases and sales.* Any banking institution that—

- (1) Engages in a retail forex transaction involving the purchase of any currency for the account of any retail forex customer when the account of such retail forex customer at the time of such purchase has an open retail forex transaction for the sale of the same currency;
- (2) Engages in a retail forex transaction involving the sale of any currency for the account of any retail forex customer when the account of such retail forex customer at the time of such sale has an open retail forex transaction for the purchase of the same currency;
- (3) Purchases a put or call option involving foreign currency for the account of any retail forex customer when the account of such retail forex customer at the time of such purchase has a short put or call option position with the same underlying currency, strike price, and expiration date as that purchased; or
- (4) Sells a put or call option involving foreign currency for the account of any retail forex customer when the account of such retail forex customer at the time of such sale has a long put or call option position with the same underlying currency, strike price, and expiration date as that sold shall:
 - (i) Immediately apply such purchase or sale against such previously held opposite transaction with the same customer; and
 - (ii) Promptly furnish such retail forex customer with a statement showing the financial result of the transactions involved and the name of any introducing broker to the account.

(b) *Close-out against oldest open position.* In all instances in which the short or long position in a customer’s retail forex account immediately prior to an offsetting purchase or sale is greater than the quantity purchased or sold, the banking institution shall apply such offsetting purchase or sale to the oldest portion of the previously held short or long position.

(c) *Transactions to be applied as directed by customer.* Notwithstanding paragraphs (a) and (b) of this section, the offsetting transaction

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SECTION 240.5—Application and Closing Out of Offsetting Long and Short Positions

shall be applied as directed by a retail forex customer's specific instructions. These instructions may not be made by the banking institution or a related person.

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SECTION 240.6—Disclosure

(a) *Risk disclosure statement required.* No banking institution may open or maintain an account for a retail forex customer for the purpose of engaging in retail forex transactions unless the banking institution has furnished the retail forex customer with a separate written disclosure statement containing only the language set forth in paragraph (d) of this section and the disclosures required by paragraphs (e), (f), and (g) of this section.

(b) *Acknowledgement of risk disclosure statement required.* The banking institution must receive from the retail forex customer a written acknowledgement signed and dated by the customer that the customer received and understood the written disclosure statement required by paragraph (a) of this section.

(c) *Placement of risk disclosure statement.* The disclosure statement may be attached to other documents as the initial page(s) of such documents and as the only material on such page(s).

(d) *Content of risk disclosure statement.* The language set forth in the written disclosure statement required by paragraph (a) of this section shall be as follows:

Risk Disclosure Statement

Retail forex transactions generally involve the leveraged trading of contracts denominated in foreign currency with a banking institution as your counterparty. Because of the leverage and the other risks disclosed here, you can rapidly lose all of the funds or property you give the banking institution as margin for such trading and you may lose more than you pledge as margin. You should be aware of and carefully consider the following points before determining whether such trading is appropriate for you.

(1) Trading foreign currencies is not on a regulated market or exchange—your banking institution is your trading counterparty and has

conflicting interests. The retail forex transaction you are entering into is not conducted on an interbank market, nor is it conducted on a futures exchange subject to regulation by the Commodity Futures Trading Commission. The foreign currency trades you transact are trades with your banking institution as the counterparty. When you sell, the banking institution is the buyer. When you buy, the banking institution is the seller. As a result, when you lose money trading, your banking institution is making money on such trades, in addition to any fees, commissions, or spreads the banking institution may charge.

(2) Any electronic trading platform that you may use for retail foreign currency transactions with your banking institution is not a regulated exchange. It is an electronic connection for accessing your banking institution. The terms of availability of such a platform are governed only by your contract with your banking institution. Any trading platform that you may use to enter into off-exchange foreign currency transactions is only connected to your banking institution. You are accessing that trading platform only to transact with your banking institution. You are not trading with any other entities or customers of the banking institution by accessing such platform. The availability and operation of any such platform, including the consequences of the unavailability of the trading platform for any reason, is governed only by the terms of your account agreement with the banking institution.

(3) You may be able to offset or liquidate any trading positions only through your banking institution because the transactions are not made on an exchange, and your banking institution may set its own prices. Your ability to close your transactions or offset positions is limited to what your banking institution will offer to you, as there is no other market for these transactions. Your banking institution may offer any prices it wishes. Your banking institution may establish its prices by offering spreads from third party prices, but it is under no obligation to do so or to continue to do so. Your banking institution may offer different prices to different customers at any point in time on its own terms. The terms of your account agreement alone govern the obliga-

tions your banking institution has to you to offer prices and offer offset or liquidating transactions in your account and make any payments to you. The prices offered by your banking institution may or may not reflect prices available elsewhere at any exchange, interbank, or other market for foreign currency.

(4) Paid solicitors may have undisclosed conflicts. The banking institution may compensate introducing brokers for introducing your account in ways that are not disclosed to you. Such paid solicitors are not required to have, and may not have, any special expertise in trading, and may have conflicts of interest based on the method by which they are compensated. You should thoroughly investigate the manner in which all such solicitors are compensated and be very cautious in granting any person or entity authority to trade on your behalf. You should always consider obtaining dated written confirmation of any information you are relying on from your banking institution in making any trading or account decisions.

(5) Retail forex transactions are not insured by the Federal Deposit Insurance Corporation.

(6) Retail forex transactions are not a deposit in, or guaranteed by, a banking institution.

(7) Retail forex transactions are subject to investment risks, including possible loss of all amounts invested.

Finally, you should thoroughly investigate any statements by any banking institution that minimize the importance of, or contradict, any of the terms of this risk disclosure. Such statements may indicate sales fraud.

This brief statement cannot, of course, disclose all the risks and other aspects of trading off-exchange foreign currency with a banking institution. I hereby acknowledge that I have received and understood this risk disclosure statement.

Date

Signature of Customer

(e) (1) *Disclosure of profitable accounts ratio.* Immediately following the language set forth in paragraph (d) of this section, the

statement required by paragraph (a) of this section shall include, for each of the most recent four calendar quarters during which the banking institution maintained retail forex customer accounts:

(i) The total number of retail forex customer accounts maintained by the banking institution over which the banking institution does not exercise investment discretion;

(ii) The percentage of such accounts that were profitable for retail forex customer accounts during the quarter; and

(iii) The percentage of such accounts that were not profitable for retail forex customer accounts during the quarter.

(2) *Statement of profitable trades.*

(i) The banking institution's statement of profitable trades shall include the following legend: Past performance is not necessarily indicative of future results.

(ii) Each banking institution shall provide, upon request, to any retail forex customer or prospective retail forex customer the total number of retail forex accounts maintained by the banking institution for which the banking institution does not exercise investment discretion, the percentage of such accounts that were profitable, and the percentage of such accounts that were not profitable for each calendar quarter during the most recent five-year period during which the banking institution maintained such accounts.

(f) *Disclosure of fees and other charges.* Immediately following the language required by paragraph (e) of this section, the statement required by paragraph (a) of this section shall include:

(1) The amount of any fee, charge, spread, or commission that the banking institution may impose on the retail forex customer in connection with a retail forex account or retail forex transaction;

(2) An explanation of how the banking institution will determine the amount of such fees, charges, spreads, or commissions; and

(3) The circumstances under which the banking institution may impose such fees, charges, spreads, or commissions.

(g) *Set-off.* Immediately following the lan-

guage required by paragraph (f) of this section, the statement required by paragraph (a) of this section shall include:

(1) A statement as to whether the banking institution will or will not retain the right to set off obligations of the retail forex customer arising from the customer's retail forex transactions, including margin calls and losses, against the customer's other assets held by the banking institution;

(2) If the banking institution states that it reserves its right to set off obligations of the retail forex customer arising from the customer's retail forex transactions against the customer's other assets, the banking institution must receive from the retail forex customer a written acknowledgement signed and dated by the customer that the customer received and understood the written disclosure required by paragraph (g)(1) of this section.

(h) *Future disclosure requirements.* If, with regard to a retail forex customer, the banking institution changes any fee, charge, or commission required to be disclosed under paragraph (f) of this section, then the banking institution shall mail or deliver to the retail forex customer a notice of the changes at least 15 days prior to the effective date of the change.

(i) *Form of disclosure requirements.* The disclosures required by this section shall be clear and conspicuous and designed to call attention to the nature and significance of the information provided.

(j) *Other disclosure requirements unaffected.* This section does not relieve a banking institution from any other disclosure obligation it may have under applicable law.

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SECTION 240.7—Recordkeeping

(a) *General rule.* A banking institution engaging in retail forex transactions shall keep full, complete and systematic records, together with all pertinent data and memoranda, of all transactions relating to its retail forex business, including:

(1) *Retail forex account records.* For each retail forex account:

(i) The name and address of the person for whom such retail forex account is carried or introduced and the principal occupation or business of the person;

(ii) The name of any other person guaranteeing the account or exercising trading control with respect to the account;

(iii) The establishment or termination of the account;

(iv) A means to identify the person who has solicited and is responsible for the account or assign account numbers in such a manner as to identify that person;

(v) The funds in the account, net of any commissions and fees;

(vi) The account's net profits and losses on open trades;

(vii) The funds in the account plus or minus the net profits and losses on open trades, adjusted for the net option value in the case of open options positions;

(viii) Financial ledger records that show separately for each retail forex customer all charges against and credits to such retail forex customer's account, including but not limited to retail forex customer funds deposited, withdrawn, or transferred, and charges or credits resulting from losses or gains on closed transactions; and

(ix) A list of all retail forex transactions executed for the account, with the details specified in paragraph (a)(2) of this section.

(2) *Retail forex transaction records.* For each retail forex transaction:

(i) The date and time the banking institution received the order;

(ii) The price at which the banking institution placed the order, or, in the case of an option, the premium that the retail forex customer paid;

(iii) The customer account identification information;

(iv) The currency pair;

(v) The size or quantity of the order;

(vi) Whether the order was a buy or sell order;

(vii) The type of order, if the order was not a market order;

- (viii) The size and price at which the order is executed, or in the case of an option, the amount of the premium paid for each option purchased, or the amount credited for each option sold;
 - (ix) For options, whether the option is a put or call, expiration date, quantity, underlying contract for future delivery or underlying physical, strike price, and details of the purchase price of the option, including premium, mark-up, commission, and fees;
 - (x) For futures, the delivery date; and
 - (xi) If the order was made on a trading platform:
 - (A) The price quoted on the trading platform when the order was placed, or, in the case of an option, the premium quoted;
 - (B) The date and time the order was transmitted to the trading platform; and
 - (C) The date and time the order was executed.
- (3) *Price changes on a trading platform.* If a trading platform is used, daily logs showing each price change on the platform, the time of the change to the nearest second, and the trading volume at that time and price.
- (4) *Methods or algorithms.* Any method or algorithm used to determine the bid or asked price for any retail forex transaction or the prices at which customers orders are executed, including, but not limited to, any markups, fees, commissions or other items which affect the profitability or risk of loss of a retail forex customer's transaction.
- (5) *Daily records* which show for each business day complete details of:
- (i) All retail forex transactions that are futures transactions executed on that day, including the date, price, quantity, market, currency pair, delivery date, and the person for whom such transaction was made;
 - (ii) All retail forex transactions that are option transactions executed on that day, including the date, whether the transaction involved a put or call, the expiration date, quantity, currency pair, delivery date, strike price, details of the purchase price of the option, including premium, mark-up, commission and fees, and the person for whom the transaction was made; and
 - (iii) All other retail forex transactions executed on that day for such account, including the date, price, quantity, currency and the person for whom such transaction was made.
- (6) *Other records.* Written acknowledgements of receipt of the risk disclosure statement required by section 240.6(b), offset instructions pursuant to section 240.5(c), records required under paragraphs (b) through (f) of this section, trading cards, signature cards, street books, journals, ledgers, payment records, copies of statements of purchase, and all other records, data and memoranda that have been prepared in the course of the banking institution's retail forex business.
- (b) *Ratio of profitable accounts.*
- (1) With respect to its active retail forex customer accounts over which it did not exercise investment discretion and that are not retail forex proprietary accounts open for any period of time during the quarter, a banking institution shall prepare and maintain on a quarterly basis (calendar quarter):
 - (i) A calculation of the percentage of such accounts that were profitable;
 - (ii) A calculation of the percentage of such accounts that were not profitable; and
 - (iii) Data supporting the calculations described in paragraphs (b)(1)(i) and (b)(1)(ii) of this section.
 - (2) In calculating whether a retail forex account was profitable or not profitable during the quarter, the banking institution shall compute the realized and unrealized gains or losses on all retail forex transactions carried in the retail forex account at any time during the quarter, and subtract all fees, commissions, and any other charges posted to the retail forex account during the quarter, and add any interest income and other income or rebates credited to the retail forex account during the quarter. All deposits and withdrawals of funds made by the retail forex customer during the quarter must be excluded from the computation of

whether the retail forex account was profitable or not profitable during the quarter. Computations that result in a zero or negative number shall be considered a retail forex account that was not profitable. Computations that result in a positive number shall be considered a retail forex account that was profitable.

(3) A retail forex account shall be considered “active” for purposes of paragraph (b)(1) of this section if and only if, for the relevant calendar quarter, a retail forex transaction was executed in that account or the retail forex account contained an open position resulting from a retail forex transaction.

(c) *Records related to possible violations of law.* A banking institution engaging in retail forex transactions shall make a record of all communications received by the banking institution or its related persons concerning facts giving rise to possible violations of law related to the banking institution’s retail forex business. The record shall contain: the name of the complainant, if provided; the date of the communication; the relevant agreement, contract, or transaction; the substance of the communication; and the name of the person who received the communication and the final disposition of the matter.

(d) *Records for noncash margin.* A banking institution shall maintain a record of all noncash margin collected pursuant to section 240.9. The record shall show separately for each retail forex customer:

- (1) A description of the securities or property received;
- (2) The name and address of such retail forex customer;
- (3) The dates when the securities or property were received;
- (4) The identity of the depositories or other places where such securities or property are segregated or held, if applicable;
- (5) The dates on which the banking institution placed or removed such securities or property into or from such depositories; and
- (6) The dates of return of such securities or property to such retail forex customer, or

other disposition thereof, together with the facts and circumstances of such other disposition.

(e) *Order tickets.*

(1) Except as provided in paragraph (e)(2) of this section, immediately upon the receipt of a retail forex transaction order, a banking institution shall prepare an order ticket for the order (whether unfulfilled, executed or canceled). The order ticket shall include:

- (i) Account identification (account or customer name with which the retail forex transaction was effected);
- (ii) Order number;
- (iii) Type of order (market order, limit order, or subject to special instructions);
- (iv) Date and time, to the nearest minute, the retail forex transaction order was received (as evidenced by timestamp or other timing device);
- (v) Time, to the nearest minute, the retail forex transaction order was executed; and
- (vi) Price at which the retail forex transaction was executed.

(2) *Post-execution allocation of bunched orders.* Specific identifiers for retail forex accounts included in bunched orders need not be recorded at time of order placement or upon report of execution as required under paragraph (e)(1) of this section if the following requirements are met:

- (i) The banking institution placing and directing the allocation of an order eligible for post-execution allocation has been granted written investment discretion with regard to participating customer accounts and makes the following information available to customers upon request:
 - (A) The general nature of the post-execution allocation methodology the banking institution will use;
 - (B) Whether the banking institution has any interest in accounts which may be included with customer accounts in bunched orders eligible for post-execution allocation; and
 - (C) Summary or composite data sufficient for that customer to compare the customer’s results with those of other

comparable customers and, if applicable, any account in which the banking institution has an interest.

(ii) Post-execution allocations are made as soon as practicable after the entire transaction is executed;

(iii) Post-execution allocations are fair and equitable, with no account or group of accounts receiving consistently favorable or unfavorable treatment; and

(iv) The post-execution allocation methodology is sufficiently objective and specific to permit the Board to verify fairness of the allocations using that methodology.

(f) *Record of monthly statements and confirmations.* A banking institution shall retain a copy of each monthly statement and confirmation required by section 240.10.

(g) *Form of record and manner of maintenance.* The records required by this section must clearly and accurately reflect the information required and provide an adequate basis for the audit of the information. A banking institution must create and maintain audio recordings of oral orders and oral offset instructions. Record maintenance may include the use of automated or electronic records provided that the records are easily retrievable, and readily available for inspection.

(h) *Length of maintenance.* A banking institution shall keep each record required by this section for at least five years from the date the record is created.

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SECTION 240.8—Capital Requirements

(a) *Capital required for a state member bank.* A banking institution defined in section 240.2(b)(1) offering or entering into retail forex transactions must be well-capitalized as defined in section 208.43 of Regulation H (12 CFR 208.43).

(b) *Capital required for an uninsured state-licensed branch of a foreign bank.* A banking institution defined in section 240.2(b)(2) offering or entering into retail forex transactions must be well-capitalized under the capital

rules made applicable to it pursuant to section 225.2(r)(3) of Regulation Y (12 CFR 225.2(r)(3)).

(c) *Capital required for financial holding companies and bank holding companies.* A banking institution defined in section 240.2(b)(3) or (4) offering or entering into retail forex transactions must be well-capitalized as defined in section 225.2(r) of Regulation Y (12 CFR 225.2(r)).

(d) *Capital required for savings and loan holding companies.* A banking institution defined in section 240.2(b)(5) offering or entering into retail forex transactions must be well-capitalized as defined in section 238.2(s) of Regulation LL (12 CFR 238.2(s)).

(e) *Capital required for an agreement corporation or Edge Act corporation.* A banking institution defined in section 240.2(b)(6) or (7) offering or entering into retail forex transactions must maintain capital in compliance with the capital adequacy guidelines that are made applicable to an Edge corporation engaged in banking pursuant to section 211.12(c)(2) of Regulation K (12 CFR 211.12(c)(2)).

3-3658

SECTION 240.9—Margin Requirements

(a) *Margin required.* A banking institution engaging, or offering to engage, in retail forex transactions must collect from each retail forex customer an amount of margin not less than:

(1) Two percent of the notional value of the retail forex transaction for major currency pairs and 5 percent of the notional value of the retail forex transaction for all other currency pairs;

(2) For short options, 2 percent for major currency pairs and 5 percent for all other currency pairs of the notional value of the retail forex transaction, plus the premium received by the retail forex customer; or

(3) For long options, the full premium charged and received by the banking institution.

(b) (1) *Form of margin.* Margin collected under paragraph (a) of this section or pledged

by a retail forex customer for retail forex transactions in excess of the requirements of paragraph (a) of this section must be in the form of cash or the following financial instruments:

- (i) Obligations of the United States and obligations fully guaranteed as to principal and interest by the United States;
- (ii) General obligations of any State or of any political subdivision thereof;
- (iii) General obligations issued or guaranteed by any enterprise, as defined in 12 U.S.C. 4502(10);
- (iv) Certificates of deposit issued by an insured depository institution, as defined in section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2));
- (v) Commercial paper;
- (vi) Corporate notes or bonds;
- (vii) General obligations of a sovereign nation;
- (viii) Interests in money market mutual funds; and
- (ix) Such other financial instruments as the Board deems appropriate.

(2) *Haircuts.* A banking institution shall establish written policies and procedures that include:

- (i) Haircuts for noncash margin collected under this section; and
- (ii) Annual evaluation, and, if appropriate, modification of the haircuts.

(c) *Major currencies.*

(1) For the purposes of paragraphs (a)(1) and (a)(2) of this section, major currency means:

- (i) United States Dollar (USD)
- (ii) Canadian Dollar (CAD)
- (iii) Euro (EUR)
- (iv) United Kingdom Pound (GBP)
- (v) Japanese Yen (JPY)
- (vi) Swiss Franc (CHF)
- (vii) New Zealand Dollar (NZD)
- (viii) Australian Dollar (AUD)
- (ix) Swedish Kroner (SEK)
- (x) Danish Kroner (DKK)
- (xi) Norwegian Krone (NOK), and
- (xii) Any other currency as determined by the Board.

(d) *Margin calls; liquidation of position.* For

each retail forex customer, at least once per day, a banking institution shall:

- (1) Mark the value of the retail forex customer's open retail forex positions to market;
- (2) Mark the value of the margin collected under this section from the retail forex customer to market;
- (3) Determine whether, based on the marks in paragraphs (d)(1) and (d)(2) of this section, the banking institution has collected margin from the retail forex customer sufficient to satisfy the requirements of this section; and
- (4) If, pursuant to paragraph (d)(3) of this section, the banking institution determines that it has not collected margin from the retail forex customer sufficient to satisfy the requirements of this section then, within a reasonable period of time, the banking institution shall either:
 - (i) Collect margin from the retail forex customer sufficient to satisfy the requirements of this section; or
 - (ii) Liquidate the retail forex customer's retail forex transactions.

3-3659

SECTION 240.10—Required Reporting to Customers

(a) *Monthly statements.* Each banking institution must promptly furnish to each retail forex customer, as of the close of the last business day of each month or as of any regular monthly date selected, except for accounts in which there are neither open positions at the end of the statement period nor any changes to the account balance since the prior statement period, but in any event not less frequently than once every three months, a statement that clearly shows:

- (1) For each retail forex customer:
 - (i) The open retail forex transactions with prices at which acquired;
 - (ii) The net unrealized profits or losses in all open retail forex transactions marked to the market;
 - (iii) Any money, securities or other property held as margin for retail forex transactions; and

- (iv) A detailed accounting of all financial charges and credits to the retail forex customer's retail forex accounts during the monthly reporting period, including: money, securities, or property received from or disbursed to such customer; realized profits and losses; and fees, charges, and commissions.
- (2) For each retail forex customer engaging in retail forex transactions that are options:
- (i) All such options purchased, sold, exercised, or expired during the monthly reporting period, identified by underlying retail forex transaction or underlying currency, strike price, transaction date, and expiration date;
- (ii) The open option positions carried for such customer and arising as of the end of the monthly reporting period, identified by underlying retail forex transaction or underlying currency, strike price, transaction date, and expiration date;
- (iii) All such option positions marked to the market and the amount each position is in the money, if any;
- (iv) Any money, securities or other property held as margin for retail forex transactions; and
- (v) A detailed accounting of all financial charges and credits to the retail forex customer's retail forex accounts during the monthly reporting period, including: money, securities, or property received from or disbursed to such customer; realized profits and losses; premiums and mark-ups; and fees, charges, and commissions.
- (b) *Confirmation statement.* Each banking institution must, not later than the next business day after any retail forex transaction, send:
- (1) To each retail forex customer, a written confirmation of each retail forex transaction caused to be executed by it for the customer, including offsetting transactions executed during the same business day and the rollover of an open retail forex transaction to the next business day;
- (2) To each retail forex customer engaging in forex option transactions, a written confirmation of each forex option transaction, containing at least the following information:
- (i) The retail forex customer's account identification number;
- (ii) A separate listing of the actual amount of the premium, as well as each mark-up thereon, if applicable, and all other commissions, costs, fees and other charges incurred in connection with the forex option transaction;
- (iii) The strike price;
- (iv) The underlying retail forex transaction or underlying currency;
- (v) The final exercise date of the forex option purchased or sold; and
- (vi) The date the forex option transaction was executed.
- (3) To each retail forex customer engaging in forex option transactions, upon the expiration or exercise of any option, a written confirmation statement thereof, which statement shall include the date of such occurrence, a description of the option involved, and, in the case of exercise, the details of the retail forex or physical currency position which resulted therefrom including, if applicable, the final trading date of the retail forex transaction underlying the option.
- (c) Notwithstanding the provisions of paragraphs (b)(1) through (3) of this section, a retail forex transaction that is caused to be executed for a pooled investment vehicle that engages in retail forex transactions need be confirmed only to the operator of such pooled investment vehicle.
- (d) *Controlled accounts.* With respect to any account controlled by any person other than the retail forex customer for whom such account is carried, each banking institution shall promptly furnish in writing to such other person the information required by paragraphs (a) and (b) of this section.
- (e) *Introduced accounts.* Each statement provided pursuant to the provisions of this section must, if applicable, show that the account for which the banking institution was introduced by an introducing broker and the name of the introducing broker.

3-3660**SECTION 240.11—Unlawful Representations**

(a) *No implication or representation of limiting losses.* No banking institution engaged in retail foreign exchange transactions or its related persons may imply or represent that it will, with respect to any retail customer forex account, for or on behalf of any person:

- (1) Guarantee such person or account against loss;
- (2) Limit the loss of such person or account; or
- (3) Not call for or attempt to collect margin as established for retail forex customers.

(b) *No implication of representation of engaging in prohibited acts.* No banking institution or its related persons may in any way imply or represent that it will engage in any of the acts or practices described in paragraph (a) of this section.

(c) *No Federal government endorsement.* No banking institution or its related persons may represent or imply in any manner whatsoever that any retail forex transaction or retail forex product has been sponsored, recommended, or approved by the Board, the Federal government, or any agency thereof.

(d) *Assuming or sharing of liability from bank error.* This section shall not be construed to prevent a banking institution from assuming or sharing in the losses resulting from the banking institution's error or mishandling of a retail forex transaction.

(e) *Certain guaranties unaffected.* This section shall not affect any guarantee entered into prior to the effective date of this part, but this section shall apply to any extension, modification or renewal thereof entered into after such date.

3-3661**SECTION 240.12—Authorization to Trade**

(a) *Specific authorization required.* No banking institution may directly or indirectly effect a retail forex transaction for the account of any retail forex customer unless, before the

transaction occurs, the retail forex customer specifically authorized the banking institution to effect the retail forex transaction.

(b) A retail forex transaction is “specifically authorized” for purposes of this section if the retail forex customer specifies:

- (1) The precise retail forex transaction to be effected;
- (2) The exact amount of the foreign currency to be purchased or sold; and
- (3) In the case of an option, the identity of the foreign currency or contract that underlies the option.

3-3662**SECTION 240.13—Trading and Operational Standards**

(a) *Internal rules, procedures, and controls required.* A banking institution engaging in retail forex transactions shall establish and implement internal rules, procedures, and controls designed, at a minimum, to:

(1) Ensure, to the extent reasonable, that each order received from a retail forex customer that is executable at or near the price that the banking institution has quoted to the customer is entered for execution before any order in any retail forex transaction for:

- (i) A proprietary account;
- (ii) An account in which a related person has an interest, or any account for which such a related person may originate orders without the prior specific consent of the account owner, if the related person has gained knowledge of the retail forex customer's order prior to the transmission of an order for a proprietary account;
- (iii) An account in which a related person has an interest, if the related person has gained knowledge of the retail forex customer's order prior to the transmission of an order for a proprietary account; or
- (iv) An account in which a related person may originate orders without the prior specific consent of the account owner, if the related person has gained knowledge of the retail forex customer's order prior to the transmission of an order for a proprietary account;

(2) Prevent banking institution related per-

sons from placing orders, directly or indirectly, with another person in a manner designed to circumvent the provisions of paragraph (a)(1) of this section; and

(3) Fairly and objectively establish settlement prices for retail forex transactions.

(b) *Disclosure of retail forex transactions.* No banking institution engaging in retail forex transactions may disclose that an order of another person is being held by the banking institution, unless the disclosure is necessary to the effective execution of such order or the disclosure is made at the request of the Board.

(c) *Handling of retail forex accounts of related persons of retail forex counterparties.* No banking institution engaging in retail forex transactions shall knowingly handle the retail forex account of any related person of another retail forex counterparty unless the banking institution:

(1) Receives written authorization from a person designated by such other retail forex counterparty with responsibility for the surveillance over such account;

(2) Prepares immediately upon receipt of an order for the account a written record of the order, including the account identification and order number, and records thereon to the nearest minute, by time-stamp or other timing device, the date and time the order is received; and

(3) Transmits on a regular basis to the other retail forex counterparty copies of all statements for the account and of all written records prepared upon the receipt of orders for the account pursuant to paragraph (c)(2) of this section.

(d) *Related person of banking institution establishing account at another retail forex counterparty.* No related person of a banking institution working in the banking institution's retail forex business may have an account, directly or indirectly, with another retail forex counterparty unless the other retail forex counterparty:

(1) Receives written authorization to open and maintain the account from a person designated by the banking institution of which it is a related person with responsi-

bility for the surveillance over the account pursuant to paragraph (a)(2) of this section;

(2) Prepares immediately upon receipt of an order for the account a written record of the order, including the account identification and order number, and records thereon to the nearest minute, by time-stamp or other timing device, the date and time the order is received; and

(3) Transmits on a regular basis to the banking institution copies of all statements for the account and of all written records prepared by the other retail forex counterparty upon receipt of orders for such account pursuant to paragraph (d)(2) of this section.

(e) *Prohibited trading practices.* No banking institution engaging in retail forex transactions may:

(1) Enter into a retail forex transaction, to be executed pursuant to a market or limit order at a price that is not at or near the price at which other retail forex customers, during that same time period, have executed retail forex transactions with the banking institution;

(2) Adjust or alter prices for a retail forex transaction after the transaction has been confirmed to the retail forex customer;

(3) Provide a retail forex customer a new bid price for a retail forex transaction that is higher than its previous bid without providing a new asked price that is also higher than its previous asked price by a similar amount;

(4) Provide a retail forex customer a new bid price for a retail forex transaction that is lower than its previous bid without providing a new asked price that is also lower than its previous asked price by a similar amount; or

(5) Establish a new position for a retail forex customer (except one that offsets an existing position for that retail forex customer) where the banking institution holds outstanding orders of other retail forex customers for the same currency pair at a comparable price.

3-3663**SECTION 240.14—Supervision**

(a) *Supervision by the banking institution.* A banking institution engaging in retail forex transactions shall diligently supervise the handling by its officers, employees, and agents (or persons occupying a similar status or performing a similar function) of all retail forex accounts carried, operated, or advised by the banking institution and all activities of its officers, employees, and agents (or persons occupying a similar status or performing a similar function) relating to its retail forex business.

(b) *Supervision by officers, employees, or agents.* An officer, employee, or agent of a banking institution must diligently supervise his or her subordinates' handling of all retail forex accounts at the banking institution and all the subordinates' activities relating to the banking institution's retail forex business.

3-3664**SECTION 240.15—Notice of Transfers**

(a) *Prior notice generally required.* Except as provided in paragraph (b) of this section, a banking institution must provide a retail forex customer with 30 days' prior notice of any assignment of any position or transfer of any account of the retail forex customer. The notice must include a statement that the retail forex customer is not required to accept the proposed assignment or transfer and may direct the banking institution to liquidate the positions of the retail forex customer or transfer the account to a retail forex counterparty of the retail forex customer's selection.

(b) *Exceptions.* The requirements of paragraph (a) of this section shall not apply to transfers:

- (1) Requested by the retail forex customer;
- (2) Made by the Federal Deposit Insurance Corporation as receiver or conservator under the Federal Deposit Insurance Act or other law; or
- (3) Otherwise authorized by applicable law.

(c) *Obligations of transferee banking institution.* A banking institution to which retail forex accounts or positions are assigned or

transferred under paragraph (a) of this section must provide to the affected retail forex customers the risk disclosure statements and forms of acknowledgment required by this part and receive the required signed acknowledgments within sixty days of such assignments or transfers. This requirement shall not apply if the banking institution has clear written evidence that the retail forex customer has received and acknowledged receipt of the required disclosure statements.

3-3665**SECTION 240.16—Customer Dispute Resolution**

(a) No banking institution shall enter into any agreement or understanding with a retail forex customer in which the customer agrees, prior to the time a claim or grievance arises, to submit any claim or grievance regarding any retail forex transaction or disclosure to any settlement procedure.

(b) *Election of forum.*

(1) Within 10 business days after the receipt of notice from the retail forex customer that the customer intends to submit a claim to arbitration, the banking institution shall provide the customer with a list of persons qualified in dispute resolution.

(2) The customer must, within 45 days after receipt of such list, notify the banking institution of the person selected. The customer's failure to provide such notice shall give the banking institution the right to select a person from the list.

(c) *Enforceability.* A dispute settlement procedure may require parties using the procedure to agree, under applicable state law, submission agreement, or otherwise, to be bound by an award rendered in the procedure if the agreement to submit the claim or grievance to the procedure was made after the claim or grievance arose. Any award so rendered by the procedure will be enforceable in accordance with applicable law.

(d) *Time limits for submission of claims.* The dispute settlement procedure used by the parties may not include any unreasonably short

limitation period foreclosing submission of a customer's claims or grievances or counterclaims.

(e) *Counterclaims.* A procedure for the settlement of a retail forex customer's claims or grievances against a banking institution or employee thereof may permit the submission of a counterclaim in the procedure by a person against whom a claim or grievance is brought if the counterclaim:

- (1) Arises out of the transaction or occurrence that is the subject of the retail forex customer's claim or grievance; and
- (2) Does not require for adjudication the presence of essential witnesses, parties, or third persons over which the settlement process lacks jurisdiction.

(f) *Cross-border transactions.* This section

shall not apply to transactions within the scope of sections 202, 302, and 305 of the Federal Arbitration Act (9 U.S.C. 202, 302, and 305).

3-3666

SECTION 240.17—Reservation of Authority

The Board may modify the disclosure, recordkeeping, capital and margin, reporting, business conduct, documentation, or other standards or requirements under this part for a specific retail forex transaction or a class of retail forex transactions if the Board determines that the modification is consistent with safety and soundness and the protection of retail forex customers.

Statutory Authority for Regulation NN

3-3676

COMMODITY EXCHANGE ACT

SECTION 2—Jurisdiction of Commission; Liability of Principal for Act of Agent; Commodity Futures Trading Commission; Transaction in Interstate Commerce

* * * * *

(c) *Agreements, contracts, and transactions in foreign currency, government securities, and certain other commodities.*

* * * * *

(2) *Commission jurisdiction.*

* * * * *

(E) *Prohibition.*

(i) *Definition of Federal regulatory agency.* In this subparagraph, the term “Federal regulatory agency” means—

- (I) the Commission;
- (II) the Securities and Exchange Commission;
- (III) an appropriate Federal banking agency;
- (IV) the National Credit Union Association; and
- (V) the Farm Credit Administration.

(ii) *Prohibition.*

(I) *In general.* Except as provided in subclause (II), a person described in subparagraph (B)(i)(II) for which there is a Federal regulatory agency shall not offer to, or enter into with, a person that is not an eligible contract participant, any agreement, contract, or transaction in foreign currency described in subparagraph (B)(i)(I) except pursuant to a rule or regulation of a Federal regulatory agency allowing the agreement, contract, or transaction under such terms and conditions as the Federal regulatory agency shall prescribe.

(II) *Effective date.* With regard to persons described in subparagraph

(B)(i)(II) for which a Federal regulatory agency has issued a proposed rule concerning agreements, contracts, or transactions in foreign currency described in subparagraph (B)(i)(I) prior to July 21, 2010, subclause (I) shall take effect 90 days after July 21, 2010.

(iii) *Requirements of rules and regulations.*

(I) *In general.* The rules and regulations described in clause (ii) shall prescribe appropriate requirements with respect to—

- (aa) disclosure;
- (bb) recordkeeping;
- (cc) capital and margin;
- (dd) reporting;
- (ee) business conduct;
- (ff) documentation; and
- (gg) such other standards or requirements as the Federal regulatory agency shall determine to be necessary.

(II) *Treatment.* The rules or regulations described in clause (ii) shall treat all agreements, contracts, and transactions in foreign currency described in subparagraph (B)(i)(I), and all agreements, contracts, and transactions in foreign currency that are functionally or economically similar to agreements, contracts, or transactions described in subparagraph (B)(i)(I), similarly.

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[7 USC 2.]

FEDERAL RESERVE ACT

See section 9 at 1-054 *et seq.* and section 11 at 1-091 *et seq.*

BANK HOLDING COMPANY ACT OF 1956

See section 5 at 4-083.

INTERNATIONAL BANKING ACT OF
1978

See section 9 at 1-573.1 and section 13a at
1-574 *et seq.*

FEDERAL DEPOSIT INSURANCE
ACT

See section 3(q) at 1-336 and section 8 at
1-355 *et seq.*