

Corporate & Financial Weekly Digest

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CFTC Adopts Final Rules for Retail Forex Transactions

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The Commodity Futures Trading Commission has adopted final rules regarding over-the-counter foreign currency (forex) transactions with retail customers. The new rules are substantially similar to the rules proposed by the CFTC in January, and reflect the first body of final rules adopted by the CFTC in connection with its implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The rules institute a variety of requirements in connection with retail forex transactions, including registration, disclosure, recordkeeping, financial reporting, minimum capital and other standards and requirements.

Subject to certain exceptions for “otherwise regulated” entities, the new rules will generally require entities offering forex contracts to retail customers to register with the CFTC as either futures commission merchants (FCMs) or registered foreign exchange dealers (RFEDs), depending upon the nature of the business conducted by those entities. Persons who solicit orders, exercise discretionary trading authority and/or operate pools with respect to retail forex generally will be required to register as introducing brokers, commodity trading advisors, commodity pool operators or as associated persons of such entities, as appropriate.

The new rules also implement a minimum net capital requirement for RFEDs and FCMs offering retail forex transactions equal to \$20 million plus 5% of the amount (if any) by which such registrant’s liabilities to its retail forex customers exceeds \$10 million. Significantly, the rules do not include the “10-to-1” leverage limitation for retail forex transactions that was included in the original proposal. Instead, the rules establish initial minimum security deposit requirements for retail forex contracts equal to 2% of the notional value for major currencies and 5% of the notional value for non-major currencies, and delegate authority to the National Futures Association to set higher security deposit requirements and to make changes in the designation of particular currencies as “major” currencies.

The CFTC press release announcing the new rules, which includes links to the final rules and a CFTC Q&A regarding the new rules, is available [here](#).