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FDIC Board Approves Proposed Rule on Retail Foreign Exchange Transactions

On May 10, the Board of Directors of the Federal Deposit Insurance Corporation (FDIC) approved a proposed rule to adopt requirements for FDIC-supervised institutions that may engage in certain foreign exchange transactions with retail customers which fall under the provisions of Section 742 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. As amended by the Dodd-Frank Act, the Commodity Exchange Act (CEA) provides that a U.S. financial institution for which there is a federal regulatory agency shall not enter into, or offer to enter into, a transaction described in Section 2(c)(2)(B)(i)(I) of the CEA with a retail customer except pursuant to a rule or regulation of a federal regulatory agency allowing the transaction under such terms and conditions as the federal regulatory agency shall prescribe ("retail forex rule"). The Dodd-Frank Act does not require that retail forex rules be issued jointly, or on a coordinated basis, with any other federal regulatory agency. While each federal banking agency is issuing a separate proposed rule, the federal banking agencies are coordinating their efforts. According to the FDIC, its notice of proposed rulemaking is substantially similar to the OCC's notice of proposed rulemaking regarding retail foreign currency transactions published on April 22 and regulations adopted by the Commodity Futures Trading Commission in September 2010.

The requirements in this proposed rule may overlap with applicable expectations contained in the Interagency Statement on Retail Sales of Nondeposit Investment Products (NDIP Policy Statement). After the effective date of the final version of this proposed rule, the FDIC will expect FDIC-supervised insured depository institutions engaging in or offering retail forex transactions to also comply with the NDIP Policy Statement to the extent such compliance does not conflict with the requirements of the FDIC's final retail forex rule.

The proposed rule applies only to transactions with retail customers who are not Eligible Contract Participants, and only to futures, options and similar transactions, such as rolling spot trades. It does not cover forward contracts or spot contracts. The proposed rule focuses on the safety and soundness of the underlying transactions through enhanced margin requirements and consumer protection through enhanced disclosure requirements among other elements. It establishes requirements dealing with disclosure, recordkeeping, capital and margin, reporting, business conduct and documentation.

While some small businesses may be considered retail customers under the proposed rule, the rule would not apply to foreign exchange forward contracts or spot contracts, which those businesses may use to manage their foreign exchange risks. In addition, the rule would not apply to transactions in the interbank forex market because participants in those markets are not retail customers. The comment period for the proposed rule will be for 30 days after its publication in the *Federal Register*.

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Katten Muchin Rosenman LLP
Charlotte Chicago Irving London Los Angeles New York Washington, DC