

PART 240—RETAIL FOREIGN EXCHANGE TRANSACTIONS (REGULATION NN)

Sec.

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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.

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§ 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 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 regula-

tions 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.

§ 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 (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.*).

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(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

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(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.

§ 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.

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(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.

§ 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 received 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