

§ 48.6

12 CFR Ch. I (1–1–25 Edition)

(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 national bank must 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, to the extent the national bank allows retail forex customers to use other methods of offsetting retail forex transactions, the offsetting transaction must be applied as directed by a retail forex customer's specific instructions. These instructions may not be made by the national bank or an IAP of the national bank.

§ 48.6 Disclosure.

(a) *Risk disclosure statement required.* No national bank may open or maintain open an account that will engage in retail forex transactions for a retail forex customer unless the national bank 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) and (f) of this section.

(b) *Acknowledgment of risk disclosure statement required.* The national bank must receive from the retail forex customer a written acknowledgment 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 is as follows:

RISK DISCLOSURE STATEMENT

Retail forex transactions involve the leveraged trading of contracts denominated in foreign currency with [name of entity] as your counterparty. Because of the leverage and the other risks disclosed here, you can

rapidly lose all of the funds or property you pledge to [name of entity] as margin for retail forex trading. You may lose more than you pledge as margin.

If your margin falls below the required amount, and you fail to provide the required additional margin, [name of entity] is required to liquidate your retail forex transactions. [Name of entity] cannot apply your retail forex losses to any of your assets or liabilities at [name of entity] other than funds or property that you have pledged as margin for retail forex transactions. However, if you lose more money than you have pledged as margin, [name of entity] may seek to recover that deficiency in an appropriate forum, such as a court of law.

You should be aware of and carefully consider the following points before determining whether retail forex trading is appropriate for you.

(1) Trading is not on a regulated market or exchange—[name of entity] 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 as a designated contract market by the Commodity Futures Trading Commission. The foreign currency trades you transact are trades with [name of entity] as the counterparty. When you sell, [name of entity] is the buyer. When you buy, [name of entity] is the seller. As a result, when you lose money trading, [name of entity] is making money on such trades, in addition to any fees, commissions, or spreads [name of entity] may charge.

(2) An electronic trading platform for retail foreign currency transactions is not an exchange. It is an electronic connection for accessing [name of entity]. The terms of availability of such a platform are governed only by your contract with [name of entity]. Any trading platform that you may use to enter into off-exchange foreign currency transactions is only connected to [name of entity]. You are accessing that trading platform only to transact with [name of entity]. You are not trading with any other entities or customers of [name of entity] 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 [name of entity].

(3) You may be able to offset or liquidate any trading positions only through [name of national bank] because the transactions are not made on an exchange or regulated contract market, and [name of entity] may set its own prices. Your ability to close your transactions or offset positions is limited to what [name of entity] will offer to you, as there is no other market for these transactions. [Name of entity] may offer any

prices it wishes, including prices derived from outside sources or not in its discretion. [Name of entity] 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. [Name of entity] 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 obligations [name of entity] 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 [name of entity] 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. [Name of entity] 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 [name of entity] 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, [name of entity].

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

Finally, you should thoroughly investigate any statements by [name of entity] that minimize the importance of, or contradict, any of the terms of this risk disclosure. These 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 [name of entity].

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 must include, for each of the most recent four calendar quarters during which the na-

tional bank maintained retail forex customer accounts:

(i) The total number of retail forex customer accounts maintained by the national bank over which the national bank 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) The national bank's statement of profitable trades must include the following legend: "Past performance is not necessarily indicative of future results." Each national bank must provide, upon request, to any retail forex customer or prospective retail forex customer the total number of retail forex accounts maintained by the national bank for which the national bank 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 national bank 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 must include:

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

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

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

(g) *Future disclosure requirements.* If, with regard to a retail forex customer, the national bank changes any fee, charge, or commission required to be disclosed under paragraph (f) of this section, then the national bank must mail or deliver to the retail forex customer a notice of the changes at least

§ 48.7

12 CFR Ch. I (1–1–25 Edition)

15 days prior to the effective date of the change.

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

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

[76 FR 41384, July 14, 2011, as amended at 76 FR 56096, Sept. 12, 2011]

§ 48.7 Recordkeeping.

(a) *General rule.* A national bank engaging in retail forex transactions must keep full, complete, and systematic records, together with all pertinent data and memoranda, pertaining to its retail forex business, including the following 6 types of records:

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

(i) The name and address of the person for whom the 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 that has solicited and is responsible for the account;

(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 all charges against and credits to the account, including deposits, withdrawals, and transfers, 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 national bank received the order;

(ii) The price at which the national bank 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; and

(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 customer 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