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Transmittal – See OCC 2020-11

OCC Bulletin 2012-35| October 31, 2012

Retail Foreign Exchange Transactions: Notice of Proposed Rulemaking

Summary

The Office of the Comptroller of the Currency (OCC) proposes to amend its retail foreign exchange rule for transactions with collective investment funds (CIF) and insurance company separate accounts. The OCC also proposes in this rule to incorporate recent guidance from the U.S. Commodity Futures Trading Commission (CFTC) and U.S. Securities and Exchange Commission (SEC) and make technical corrections. The proposal was published in the *Federal Register* on October 12, 2012.

Background

National banks, federal branches and agencies of foreign banks, and federal savings associations (collectively, federal depository institutions) may engage in certain off-exchange transactions in foreign currency with retail customers (retail forex transactions) only pursuant to the OCC's retail forex rule, 12 CFR 48. As of December 31, 2012, a CFTC and SEC rule under the Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010¹ changes who is considered a retail customer for purposes of the retail forex rule. Certain investment pools are to be considered retail customers if any of their investors are retail customers. Some investment pools, including mutual funds, pension plans, and certain hedge funds are not affected.

The treatment of CIFs and insurance company separate accounts, however, is not clear. The OCC preliminarily believes that CIFs and separate accounts should not be treated as retail customers because these funds are prudentially regulated, have prudentially regulated sponsors (namely, federal depository institutions or insurance companies), and do not cater to retail investors. The OCC is therefore proposing to treat CIFs and separate accounts as if they were not retail customers under the retail forex rule. The OCC believes doing so mitigates disruption to federal depository institutions' forex business with CIFs and separate accounts.

In addition, the CFTC and SEC rule contains relevant guidance that the OCC proposes to incorporate into its retail forex rule. First, the rule offers guidance regarding how a regulated entity can determine whether a given counterparty is a retail customer. The guidance generally allows the entity to rely on the counterparty's representation that it is not a retail customer. Second, the rule offers guidance on how a regulated entity can determine whether a foreign fund is a retail customer. The guidance, in general, states that a foreign fund should not be treated as a retail customer if it is operated by a non-U.S. person and all of its investors are non-U.S. persons.

To

Chief Executive Officers of All National Banks, Federal Savings Associations, and Federal Branches and Agencies of Foreign Banks; Department and Division Heads, All Examining Personnel, and Other Interested Parties

Further Information

Please contact Securities and Corporate Practices Division, at (202) 649-6360.

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¹“Further Definition of ‘Swap Dealer,’ ‘Security-Based Swap Dealer,’ ‘Major Swap Participant,’ ‘Major Security-Based Swap Participant’ and ‘Eligible Contract Participant,’” 77 FR 30596, 30743 (May 23, 2012) (to be codified at 17 CFR 1.3(m)).

Related Link:

- [Notice of Proposed Rulemaking \(PDF\)](#)

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