



Federal Deposit Insurance Corporation
550 17th Street NW, Washington, D.C. 20429-9990

Financial Institution Letter
FIL-36-2011
May 12, 2011

Retail Foreign Exchange Transactions

Summary: The FDIC is issuing a Notice of Proposed Rulemaking (NPR) that would impose requirements on insured depository institutions (IDIs) supervised by the FDIC that engage in certain retail foreign currency transactions with retail customers. The NPR is being issued pursuant to section 742(c)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The FDIC requests public comment on the NPR generally, including regarding whether the proposal contains all appropriate consumer protections. Comments will be solicited on this NPR for 30 days after publication in the *Federal Register*.

Statement of Applicability to Institutions with Total Assets under \$1 Billion: The FDIC believes no FDIC-supervised banks in this size category are affected by the proposed rule; since the proposal does not cover traditional spot and forward contracts, only institutions planning to engage in foreign currency futures, options, or rolling spot contracts would be affected.

Distribution:

FDIC-Supervised Banks (Commercial and Savings)

Suggested Routing:

Chief Executive Officer
Chief Financial Officer
Chief Risk Officer
Chief Compliance Officer

Attachment:

[Notice of Proposed Rulemaking](#)

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Note:

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Highlights:

The proposed rule would apply to foreign currency futures, options on futures, and options as these terms are used in the Commodity Exchange Act. The rule would also apply to transactions that are "functionally or economically similar" to futures and options, such as "rolling spot" trades. Under the proposed rule:

- FDIC-supervised IDIs entering into trades covered by the proposed rule would be subject to requirements in six areas: disclosure, recordkeeping, capital and margin, reporting, business conduct, and documentation. The requirements focus on safety and soundness and consumer protection.
- Traditional spot and forward contracts would not be covered by this rule.
- The rule would only apply to covered transactions with a retail customer. For purposes of the proposed rule, a retail customer may include certain small businesses. It may also include an individual with \$10 million or less invested on a discretionary basis and who is not using the trades to reduce risks associated with other investments.
- FDIC-supervised IDIs engaged in or that wish to engage in transactions covered by the proposed rule would be required to submit a detailed business plan and demonstrate board approval of the activity, among other requirements, and obtain written approval from the FDIC to provide such products.
- FDIC-supervised IDIs engaged in this or any sales or marketing of any investment products should continue to meet the expectations set out in the *1994 Interagency Statement on Retail Sales of Nondeposit Investment Products* to the extent such expectations do not conflict with the requirements of the proposed rule. See FIL-9-94 (Feb. 17, 1994).