FDIC

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

Financial Institution Letter
FIL-55-2011
July 8, 2011

Retail Foreign Exchange Transactions

Summary: The FDIC is issuing a final rule that imposes requirements on insured depository institutions (IDIs) supervised by the FDIC that engage in certain retail foreign currency transactions with retail customers. The rule is being issued pursuant to section 742(c)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and will take effect July 15, 2011.

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 final rule. The rule does not cover traditional spot and forward contracts; therefore, 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:
Final Rule - Retail Foreign Exchange Transactions

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Note:
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Highlights:

The final rule applies 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 rule:

- FDIC-supervised IDIs entering into trades covered by the 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 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 rule would be required to submit a detailed business plan, demonstrate board approval of the activity, and obtain written approval from the FDIC to provide such products, among other requirements.
- 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 final rule. See FIL-9-94 (February 17, 1994).