CATHAY BANK

June 16, 2011

Via Electronic Mail (comments@fdic.com)

Mr. Robert E. Feldman
Executive Secretary
550 17th Street, NW.,
Washington, DC 20429
Attention: Comments Federal Deposit Insurance Corporation

Re: Retail Foreign Exchange Transactions, RIN 3064-AD81
12 CFR Part 349

Dear Mr. Feldman:

Cathay Bank, a California banking corporation ("Cathay"), hereby respectfully submit the following comments to the Federal Deposit Insurance Corporation's ("FDIC") proposed rules on Part 349 -- Retail Foreign Exchange Transactions published in Federal Register Volume 76, Number 95, May 17, 2011.

Proposed Rule Summary and Section 349.2 – Definitions.

Under the Notice of Proposed Rulemaking (NPR), the rule Summary states that *"[t]he regulations would not apply to traditional foreign currency forwards or spot transactions that a depository institution engages in with business customers to hedge foreign exchange risk."* However, Supplementary Information: I. Background, Paragraph 2, states *"The restrictions is the Proposed Rule do not apply to . . . (2) transactions that are spot contracts or forward contracts irrespective of whether the customer is or is not an ECP."* We are therefore requesting clarification whether the rule does or does not apply to "traditional foreign currency forwards or spot transactions" engaged in with a person that is not a business customer or an eligible contract participant (ECP).

We are also requesting clarification regarding the rule to address whether a non-deliverable forex forward contract (NDF) is considered a "traditional foreign currency forward" and therefore not covered by the rule. A NDF is an outright, cash-settled forward in which contractual parties are obligated to settle on the settlement date. A NDF is generally used to hedge exchange-rate risk and many times used as a result of currency restrictions[1] in the forward market. In a NDF, instead of taking physical delivery of the underlying foreign currency upon settlement, settlement is made in U.S. dollars based on the difference between the contracted forward rate and fixing rate.

Proposed Rule Section 349.7(a)(5) – Recordkeeping.

As part of its recordkeeping requirements in connection with engaging in retail foreign transactions, Section 349.7(a)(5), states "...immediately upon the written or verbal receipt of a retail forex transaction

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[1] An example of an NDF is Chinese Yuan Non-Deliverable Forward Contract ("CNY NDF"). Due to currency restrictions enforced by the China government in the forward market, no physical delivery of the Chinese Yuan will take place. Instead, the settlement currency amount will be made in U.S. dollars and based on the difference between the contracted forward rate and fixing rate of the underlying China Yuan.

order, an FDIC-supervised insured depository institution shall prepare a separate written memorandum order (order ticket) for the order (whether unfulfilled, executed, or canceled)…."

We are requesting clarification regarding the rule as to whether the use of a telephone recording system and the retention of telephone recordings would satisfy such recordkeeping requirements if details of the transaction which includes buy/sell, call/put, strike, expiry, notional amount, premium, and collateral, are confirmed with the customer over a recorded telephone line.

Proposed Rule Section 349.9 – Margin Requirements.

Section 349.9 defines the margin requirements for an FDIC-supervised insured depository institution engaging, or offering to engage, in retail forex transactions.

We are requesting clarification regarding the rule as to whether the margin requirements are only applicable in the event that the transaction is transacted on a margin basis. In other words, in the case where no margin transaction takes place (hence, the underlying transaction is 100% collateralized by the customer upfront[2]), this section would not apply.

With respect to Section 349.9(b)(1) that speaks to margin collected or pledged under 349.9(a), hence "*in excess of* [emphasis ours] the requirements", such excess margin collected or pledged must be in the form of cash or financial instruments as defined in 349.9(b)(1)(i) – 349.9(b)(1)(ix).

We are requesting clarification regarding the rule whether:

a) under Section 349.9(b)(1)(iv) "Certificates of deposit issued by an insured depository institution…." if pledged under an option agreement are FDIC-insured;
b) under Section 349.9(b)(1)(ix), a demand deposit account is considered as an acceptable financial instrument.

Section 349.9(c) states that "margin collected . . . from a retail forex customer for retail forex transactions or pledged by a retail forex customer for retail forex transactions shall be placed into a separate account containing only such margin." We are requesting clarification regarding the rule whether "a separate account" is applicable when the customer places 100% collateral into the certificate of deposit[3].

Proposed Rule 349.10 – Required Reporting to Customers.

Section 349.10(a) outlines the requirements for a customer statement "as of the close of the last business day of each month or as of any regular monthly date selected, except for accounts in which there are neither open positions at the end of the statement period nor any changes to the account balance since the prior statement period, but in any event not less frequently than once every three months . . ."

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[2] For example, the customer enters into a put or a call option sales agreement with IDI and pledges (i.e., maintains) a 100% collateral of the underlying currency in a deposit account, usually in the form of a certificate of deposit. On the option expiry date, the option agreement is either exercised or expired. In the event that the option agreement is exercised, the collateral held in the deposit account is converted to the contracted currency at a strike price at an agreed notional amount.

[3] Prior to entering into an option agreement with the customer, we require that the customer has in place at least 100% of the underlying currency needed to cover the option should it become exercisable at the expiry date. For the purpose of discussion, say the customer currently has $200,000 held in a time deposit account (TCD). The customer then decides to enter into an option agreement with the bank, in which the underlying transaction amount is $80,000 should the option become exercisable at the expiry date. As such, does the customer then have to close the existing TCD and then open a separate account ("margin account") and deposit $80,000 (100% of the underlying transaction amount) to meet the requirement or can the Bank just block out that amount in the customer's existing TCD account.

We are requesting clarification regarding the rule as to what "account" entails. As a business practice, before conducting any forex transactions, the customer will be asked to enter into a Foreign Exchange Agreement with the bank which includes the general terms and conditions of all forex products and services. The customer will also be asked to complete a suitability form and be given a general risk disclosure. By entering into this Foreign Exchange Agreement, the bank creates a customer "account" of that customer. The customer will then, from time to time, contact the bank via a recorded telephone line, to place transaction orders. In other words, the customer technically never closes his/her account with the bank once the account is created. Nevertheless, the rule seem to suggest that the bank will need to send out a periodic statement, at least every three months, even if there are no open positions and/or no changes to the account balance since the prior statement period. Further, in the case that the customer is engaged in a one-month option agreement and holds until the expiry date, it may seem somewhat redundant for the customer to receive a monthly statement.

Section 349.10(b)(2)(ii), with respect to engaging in forex option transactions, requires that the written confirmation sent to each retail forex customer for each forex option transaction include "[a] separate listing of the actual amount of the premium, as well as each mark-up thereon, if applicable, ..." We are requesting additional information and clarification regarding the rule on what "mark-up" entails.

Proposed Rule Section 349.12 – Authorization to Trade.

Section 349.12 states that "No FDIC-supervised [IDI] may directly or indirectly effect a retail forex transaction for the account of any retail forex customer unless, before the transaction occurs, the retail forex customer 'specifically authorized' the FDIC-supervised [IDI], in writing, to effect the retail forex transaction."

We generally support that an IDI should first obtain the customer's authorization before effecting each retail forex transaction. Nevertheless, to require that the IDI first obtain such authorization "in writing" before effecting the forex transaction may not be practical. As a general practice, a customer requesting to conduct forex transactions must complete a suitability form, sign a foreign exchange agreement, and is provided a risk disclosure. Thereafter, upon such time that the customer wishes to effect a transaction, the customer will contact the bank though a recorded telephone line. During this call, details of the transaction, including buy/sell, call/put, strike, expiry, notional amount, premium, and collateral, are confirmed with the customer over the recorded telephone line, and a written confirmation of the transaction is then mailed to the customer the following business day. As such, we are seeking for further guidance regarding the rule as to whether in a situation where a customer who has entered into agreement with the FDIC-supervised IDI beforehand for the bank to provide forex transactions (and that request for such forex transactions and authorization is recorded and captured over the telephone line), this would satisfy the rule.

Sincerely,

Dennis Kwok
SVP and Treasurer
Cathay Bank