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June 16, 2011

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
Attention: Comments
550 Seventeenth Street
Washington, DC. 20249

RE: *Comment on Requirements for Retail Foreign Exchange Tranactions (RIN 3064-AD81)*

Dear Mr. Feldman:

We are pleased to submit this comment on the FDIC's Proposed Regulation on Retail Foreign Exchange Transactions (the "Proposed Rule"). Citibank, N.A., a national banking association ("Citibank"), offers certain of its non-institutional customers the opportunity to engage in retail foreign exchange trading through its CitiFX Pro business. Although Citibank's CitiFX Pro business will be directly subject to OCC rules, the FDIC's Proposed Rules are important in several respects and Citibank welcomes the opportunity to submit its views.

We wish to address two general aspects of the Proposed Rule: consistency with other rules governing retail FX trading products that fall within the scope of Dodd-Frank section 742(c)(2), and treatment of client cash margin.

On the first topic, Citibank urges the FDIC to work with other interested regulators to ensure that rules applicable to retail foreign exchange trading are consistent across regulators and provide for an even playing field. Citibank has attached, for the FDIC's consideration, Citibank's comment letter to the Office of the Comptroller of the Currency on its proposed retail foreign exchange rules, and requests that the FDIC consider the applicability of Citibank's comments to the Proposed Rules.

On the second point, for the reasons discussed below, Citibank believes that FDIC-insured institutions should be able to hold client cash used to margin foreign exchange trading in a manner that results in FDIC insurance covering available margin balances.

As the Proposed Rule correctly points out, foreign exchange transactions themselves would not be insured. There is no expectation on the part of customers that federal deposit insurance would be available to make customers whole on their trades. The Proposed Rule would mandate clear disclosures that transactions subject to the Proposed Rule involve an investment on the part of the customer, that there are risks involved, and that the customer may incur losses in connection with the transaction. We believe that these are proper and appropriate disclosures.

On the other hand, there is an implication in the Proposed Rule that the margin account could not be an insured account. Further, there are requirements that any excess cash margin may only be held in certain limited types of instruments, and that a bank may not exercise a right of setoff against other deposit accounts of the customer or add the unpaid obligation to another loan or extension of credit. We believe these restrictions are unwarranted.

First, whether or not the margin account itself is an insured deposit account should be governed by the agreement and understanding of the parties involved, as well as the underlying documentation. There is certainly no reason why the funds maintained in the margin account could not be insured. The definition of a deposit is straightforward:

> the unpaid balance of money or its equivalent received or held by a bank or savings association in the usual course of business and for which it has given or is obligated to give credit, either conditionally or unconditionally, to a commercial, checking, savings, time, or thrift account, or which is evidenced by its certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar name, or a check or draft drawn against a deposit account and certified by the bank or savings association, or a letter of credit or a traveler's check on which the bank or savings association is primarily liable...12 U.S.C. 1813(l).

It would seem that a bank should have the complete flexibility to establish the margin account as an insured deposit account if it and the customer so desire. In such case, the documents would clearly reflect the nature of the account created, and indicate that the account has been pledged to satisfy the obligations of the customer with respect to the foreign exchange account created. In such case, we suggest that the funds maintained in the margin account would normally be considered "funds received by the bank in the ordinary course of business," and the depository bank would certainly be obligated to give credit to the account for the funds received. The fact that the funds serve as collateral for an investment account should not change the nature of their insured status. Customers routinely pledge deposit accounts for a variety of activities where there can be risk of principal loss, whether it be for real estate investments, commercial endeavors or securities investments.[1] Deposit accounts are likewise routinely demanded to support letters of credit, many of which back speculative or risky activities. Further, the fact that an account may be debited by a transaction undertaken by the client cannot undermine its insured status – as one minor example out of many, a depositor is permitted to establish automatic periodic withdrawals out of his/her accounts to pay expenses, and such checking or transaction accounts are certainly insured deposits.

Conversely, we also believe that the bank and the customer should have the flexibility to hold the funds in an account that is not an insured deposit account. Again, this should be done with proper documentation and disclosure.

Second, the Proposed Rule states that if the excess funds are to be held in the bank over and above the required margin, they must be held only in certain types of instruments. We believe that the customer and the bank should have the freedom to determine what form of collateral would be most acceptable to them. From the bank's perspective, the amount and type of collateral is part of the overall credit evaluation of the customer; from the customer's perspective, the choice of collateral may be a reflection of convenience and appropriateness. In either event, it seems unnecessarily restrictive to try to determine the precise forms of acceptable collateral in advance. It also appears, for instance, that if the funds are to be held in the bank itself, the only acceptable deposit instrument would be a certificate of deposit. Because of the nature of the foreign exchange accounts, with the rapid settlement of transactions, a certificate of deposit may not be feasible or

[1] We do not believe, presuming proper documentation, that were the bank to fail, that the margin account would be anything other than a deposit account, insured to the extent of applicable law. The FDIC as receiver would certainly be entitled to offset funds in the deposit account against any unpaid obligations associated with the foreign exchange account, but excess funds in the account would appear to belong to the customer.

desirable either on the part of the bank or the customer. The bank and the customer should be free to select the type of collateral or deposit instrument that best serves their respective needs.

Citibank welcomes the opportunity to discuss any of its comments in more detail and to work with the FDIC and other regulators in developing final rules.

Sincerely,

Daniel Cooper
Director
Citi FX