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June 20, 2011

Via Electronic Mail

Mr. John Walsh
Acting Comptroller of the Currency
Office of the Comptroller of the Currency
250 E Street, S.W.
Washington, D.C. 20219

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

Re: OCC Retail Foreign Exchange Transactions; Docket ID OCC-2011-0007; RIN 1557-AD42; 76 Federal Register 22633 (April 22, 2011). FDIC Retail Foreign Exchange Transactions; RIN 3064-AD81; 76 Federal Register 28358 (May 17, 2011).

Dear Mr. Walsh and Mr. Feldman:

The American Bankers Association¹ (ABA) appreciates this opportunity to comment on the Office of the Comptroller of the Currency's (OCC) and the Federal Deposit Insurance Corporation's (FDIC) proposed rules on retail foreign exchange transactions. Section 742 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) prohibits financial institutions that are regulated by a Federal regulatory agency from entering or offering to enter into certain foreign exchange transactions with retail customers (retail forex transactions) except pursuant to a rule by that Federal regulatory agency. The OCC, the Federal Deposit Insurance Corporation, and the Federal Reserve Board of Governors must each publish a rule by July 16, 2011, so that banks may continue offering and entering into these transactions with retail customers.

The proposal generally subjects banks to disclosure, recordkeeping, capital and margin, reporting, business conduct, documentation, and other requirements when offering or entering into forex transactions with non-eligible contract participants (retail customers). Under the Commodity Exchange Act rules, an eligible contract participant is generally a corporation, partnership, trust or other entity with more than \$10 million in assets, a governmental entity, or an individual with \$10 million invested on a discretionary basis. A retail foreign exchange transaction generally means an agreement, contract, or transaction in foreign currency that is (1) a future or option on such a future; (2) an option not traded on a registered national securities exchange; or (3) a leveraged or margined transaction as described in the proposal.

¹ The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's \$13 trillion banking industry and its two million employees.

Rule Should Not Apply to Foreign Branches

The OCC and FDIC releases request comments on the applicability of the proposed rule to retail forex transactions offered or entered into by foreign branches of a national bank or FDIC-supervised institution. According to the releases, the Commodity Exchange Act does not clearly define whether foreign branches of national banks or FDIC-supervised institutions may be considered United States financial institutions that can be included in the rule.

We strongly believe that even though the OCC for other purposes defines a national bank to include its foreign branches, for purposes of the prohibitions in the Commodity Exchange Act the rule should not extend to those transactions engaged in outside of the U.S. Foreign customers and U.S. persons with accounts overseas will be unnecessarily confused by the reach of the U.S. rule. This confusion is especially true when similar accounts at non-U.S. banks may not be subject to the margin rules, for example, that are included in these proposals. In addition, by including these foreign branches in its scope, the rule may inadvertently apply to products that were never intended to be covered, because they are not available or offered in the U.S.

Risk Disclosure Statement

ABA understands the importance of clear and appropriate disclosure to retail customers about the inherent risks of foreign exchange transactions. The OCC and FDIC proposals provide some helpful language that may be appropriate in many circumstances for retail customers. Nonetheless, some of our member institutions have already developed disclosure statements for retail customers that are appropriate given the particular circumstances of the customer and the products or services the customer is receiving in the forex transaction account.

These banks would like to continue providing the disclosure statements that they believe are best suited for their particular customers and products offered. Given that longer disclosure is not always more effective in conveying needed information, we believe that it would not be helpful to provide both the OCC or FDIC disclosure statement and the bank disclosure statement. Therefore, we recommend that the language provided in 12 CFR §48.6 be sample or safe harbor language for banks to use as they find appropriate.

In addition, we wish to point in particular to a provision in the proposed disclosure statement that may be misleading to bank customers. Items (5) and (6) of the statement would indicate that the transaction is neither insured by the FDIC nor a deposit. There may be circumstances in which the margin account of a customer *is in fact* an insured deposit or other account. In those cases, we certainly would want to avoid misleading the customer into believing that those accounts are not insured. A more accurate formulation of that language in those two items would need to make clear that the transaction itself, but not any related margin account, may not be FDIC-insured or considered a deposit.

Required Reporting to Customers

ABA agrees that banks engaging in these transactions with retail customers must provide timely information about the activity in the account, including all fees charged to the account. However, we believe that the rule should be revised to allow explicitly an alternative reporting structure for those banks that offer their customers online access to their accounts twenty-four hours a day over the Internet. In these cases, the customer should have the opportunity to opt out of receiving monthly statements (whether paper or electronic) and confirmation statements for each retail forex

transaction. Many customers do not want to be inundated with these statements so long as they can view their account and all the transactions that occur in the account in real time.

Authorization to Trade

Under the proposal, a bank must receive a specific authorization in writing to engage in a transaction with the retail customer. The authorization must detail the precise retail forex transaction to be effected, as well as the exact amount of the foreign currency to be purchased or sold. Many bank customers appreciate their ability to instruct the bank orally, so as to take advantage of opportune situations in the markets. To require these customers to instruct the bank in writing may impose requirements that the customer cannot always meet. We therefore request that the bank be allowed to receive a general written authorization to engage in forex transactions with subsequent oral direction on specific transactions. ABA member banks would like to preserve customer choice so that they can provide the products and services that their customers expect.

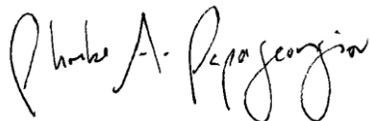
Coordination among Regulatory Agencies

There is some confusion in the industry as to regulation of foreign exchange transactions and the authority of the various regulatory agencies under Title VII of the Dodd-Frank Act. Given this confusion, we strongly urge the OCC and FDIC affirmatively to define the scope of their authority with respect to foreign exchange products and services that national banks and FDIC-supervised institutions offer. In particular, we request clarification as to which and whose rules apply when a national bank or FDIC-supervised institution engages in foreign exchange transactions that the Department of the Treasury does not exempt from the definition of a “swap” under the Commodity Exchange Act. We further encourage the banking regulators to seek confirmation from the CFTC that there are no conflicts between the two regulatory regimes.

Conclusion

ABA appreciates this opportunity to comment on the OCC and FDIC’s proposals on retail forex transactions. If you have any questions about the letter, please write the undersigned at phoebep@aba.com.

Sincerely,

A handwritten signature in black ink that reads "Phoebe A. Papageorgiou". The signature is written in a cursive style with a large, looped "P" at the beginning.

Phoebe A. Papageorgiou
Senior Counsel