

## SECTION BY SECTION ANALYSIS OF CFTC FOREX RULES

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### I. Introduction

On August 30, 2010, the CFTC issued its final rules regulating off-exchange retail foreign exchange transactions (the “Final Rules”). The CFTC’s Final Rules will go into effect on October 18, 2010. In its Final Rules, the CFTC creates a new regulatory framework that establishes requirements for, among other things, registration, disclosure, recordkeeping, financial reporting, and minimum capital standards for forex participants. This Client Update will provide a brief overview of the Final Rules followed by a more extensive section by section analysis of its major provisions.

### II. Section-by-Section Analysis

#### A. Structure and Approach

The CFTC Reauthorization Act of 2008 (“CRA”) generally requires the CFTC to register and regulate specified persons who intermediate off-exchange retail forex transactions. In this respect, the CFTC has assembled the new off-exchange retail forex provisions into a single new part of the CFTC’s Regulations, designated as Part 5.

#### B. Amendments to Existing Rules

The Final Rules involve a substantive change to existing CFTC rules, particularly in light of the fact that off-exchange retail forex trading operates much differently than futures trading.

##### 1. Part 1 of the CFTC Regulations – General Rules

Final Rule 1.1 – Fraud in, or in connection with, transactions in foreign currency subject to the Commodity Exchange Act (“CEA”). Rule 1.1 was removed from the regulations and incorporated into Final Rule 5.2, which is explained in further detail below.

Final Rule 1.3 – Definitions. First, the definition of “guarantee agreement” is amended to include IBs who may be guaranteed by retail foreign exchange dealers (“RFEDs”).<sup>1</sup> Second, the definition of “commodity interest” is amended to include off-exchange retail forex transactions over which the CFTC has jurisdiction by virtue of the CRA.<sup>2</sup> As noted by the CFTC, including off-exchange retail forex transactions within the definition of “commodity interest” permits a wide range of provisions, especially Part 4 provisions, to apply to such transactions without the need to separately revise each provision to expressly address off-

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<sup>1</sup> See Final Rule 1.3(nn).

<sup>2</sup> See Final Rule 1.3(yy).

exchange retail forex, as well as futures contracts and commodity options.<sup>3</sup>

Final Rule 1.10 – Financial reports of FCMs and IBs. Final Rule 1.10 specifies the financial reports to be filed by FCMs and IBs. It also specifies the various requirements for entering into a guarantee agreement. The Final Rule does not, however, require all IBs and all applicants for registration as IBs in connection with retail off-exchange forex transactions to enter into a guarantee agreement with a RFED or an FCM. Independent IBs that satisfy the net capital requirement will also be allowed to trade off-exchange forex.

Final Rule 1.35 – Records of cash commodity, futures, and options transactions. Each FCM, RFED, IB, and member of a contract market must keep full, complete, and systematic records of all transactions relating to its business in dealing commodity futures, retail forex transactions, commodity options, and cash commodities (including currencies).

Final Rule 1.46 – Application and closing out of offsetting long and short positions. RFEDs and FCMs engaging in off-exchange retail forex transactions are required to close out offsetting long and short positions in an off-exchange retail forex customer’s account to the oldest portion of the previously held short or long position. Upon specific instructions from the customer, however, a transaction may be offset as specified by the customer without regard to the date of acquisition of the previously held position. In addition, a RFED or FCM, if permitted by the rules of a self-regulatory organization (“SRO”) of which the RFED or FCM is a member, may offset, at the retail forex customer’s request, off-exchange retail forex transactions of the same size, even if the retail forex customer holds other transactions of a different size, but the RFED or FCM must offset a transaction against the oldest transaction of the same size.<sup>4</sup>

## **2. Part 4 of the CFTC Regulations – CPOs and CTAs**

Final Rule 4.7 – Exemption from certain Part 4 requirements for CPOs with respect to offerings to qualified eligible persons and for CTAs with respect to advising qualified eligible persons. In determining whether a person is a qualified eligible person (“QEP”) under Rule 4.7, the minimum security deposit for off-exchange retail forex transactions should be included in the calculation of the portfolio requirement.<sup>5</sup> In addition, RFEDs are included among the persons that do not have to meet the portfolio requirement to be QEPs.<sup>6</sup>

Final Rule 4.12 – Exemption from provisions of Part 4. The minimum security deposit for off-exchange retail forex transactions is included among the amounts that cannot exceed 10% of the fair market value of a pool’s assets in order for the operator to claim exemption under Rule 4.12(b).<sup>7</sup>

Final Rule 4.13 – Exemption from registration as a CPO. The minimum security deposit for off-exchange retail forex transactions is included among the amounts that cannot exceed 5%

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<sup>3</sup> See e.g., Rule 4.6 as well as various provisions of Rules 4.22 (reporting to pool participants), 4.23 and 4.33 (recordkeeping), and 4.24 and 4.34 (required disclosures).

<sup>4</sup> See Final Rule 1.46(b).

<sup>5</sup> See Final Rule 4.7(a)(1)(v)(B).

<sup>6</sup> See Final Rule 4.7(a)(2)(i)(B).

<sup>7</sup> See Final Rule 4.12(b)(i)(C).

of the liquidation value of the pool's portfolio in order for the operator to claim exemption from registration under Rule 4.13(a)(3). Again, such amounts are roughly equivalent to initial margin and option premiums.<sup>8</sup>

Final Rule 4.14 – Exemption from registration as a CTA. A RFED that provides trading advice solely in connection with its business as a RFED is exempt from registration as a CTA. This is consistent with treating RFEDs analogously to FCMs on the futures side.

Final Rules 4.24 and 4.34 – General disclosures required for CPO and CTA disclosure documents. The prescribed risk disclosure language for the front of the disclosure document must contain, among other disclosures, a warning that off-exchange retail forex transactions may not be given the same preferential treatment as commodity customer claims under the Bankruptcy Code.<sup>9</sup> If you would like further information regarding customer disclosure requirements for CPOs and CTAs, please give us a call.

### **3. Part 166 of the CFTC Regulations – Customer Protection Rules.**

Final Rule 166.5 – Dispute settlement procedures. The CFTC's customer protection rules dealing with dispute settlement procedures are amended to expressly apply where a claim or grievance arises out of a retail forex transaction, and the defined term "customer" is amended to include a retail forex customer.<sup>10</sup>

#### **C. New Part 5 of the CFTC Regulations**

##### **1. Final Rule 5.1 – Definitions**

"Retail forex account" means the account of a person who is not an eligible contract participant ("ECP"), as defined in CEA Section 1a(12), established with a RFED or FCM, in which account retail forex transactions (including options on contracts for the purchase or sale of foreign currency) with such RFED or FCM counterparty are undertaken, or which account is established in order to enter into such transactions.<sup>11</sup>

"Retail forex transaction" is defined by reference to the description in CEA sections 2(c)(2)(B) and 2(c)(2)(C). This definition expressly excludes futures and commodity option contracts traded on a designated contract market or derivatives transaction execution facility.<sup>12</sup>

"Retail foreign exchange dealer" or "RFED" is defined as anyone who offers to be or who is a counterparty to a retail forex transaction, except for those persons excluded from the definition by the CRA.<sup>13</sup>

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<sup>8</sup> See Final Rule 4.13(a)(3)(ii).

<sup>9</sup> See Final Rules 4.24(b) and 4.34(b).

<sup>10</sup> See Final Rule 166.5.

<sup>11</sup> See Final Rule 5.1(i). See also, Final Rule 5.1(k) (defining "retail forex customer").

<sup>12</sup> See Final Rule 5.1(m).

<sup>13</sup> See Final Rule 5.1(h).

“Affiliated person of a futures commission merchant” (a term not previously defined) and an AP of such a person are defined by reference to CEA section 2(c)(2)(B)(i)(II)(cc)(BB).<sup>14</sup>

“Primarily or substantially” is defined for use in determining whether a registered FCM is primarily or substantially engaged in traditional FCM activities, such that it need not also register as a RFED in order to conduct retail forex business.<sup>15</sup> Under the Final Rules, the term refers to: 1) such activities accounting for more than 50% of the FCM’s gross revenues, computed in accordance with GAAP, on an annual basis; 2) the FCM receives gross revenues, computed in accordance with GAAP, from such activities in excess of \$500,000 in any twelve month period; or 3) the FCM is a clearing member of a registered derivatives clearing organization.

## **2. Final Rule 5.2 – Prohibited Transactions: Antifraud**

Under the Final Rules, existing Rule 1.1 prohibiting fraud in connection with foreign currency transactions is removed and replaced with new Final Rule 5.2, which, in addition to prohibiting fraudulent conduct in connection with retail forex transactions, now prohibits anyone from acting as the counterparty for a retail forex transaction in an account for which that person has discretionary trading authority.

## **3. Final Rule 5.3 – Registration**

Certain intermediaries for forex and for look-alike contracts are now required to be registered. Under the Final Rules:

- Retail foreign exchange dealers are required to register as RFEDs;<sup>16</sup>
- FCMs that are not “primarily or substantially” engaged in traditional FCM business must register as RFEDs;<sup>17</sup>
- FCM-affiliated persons that serve as retail forex counterparties also must register as RFEDs;<sup>18</sup>
- Persons who solicit or accept orders for a RFED, an FCM, or an affiliate of an FCM must register as IBs;<sup>19</sup>
- Persons who exercise discretionary trading authority over forex trading accounts must register as CTAs;<sup>20</sup>
- Persons who operate or solicit funds or property for a pooled investment vehicle that includes forex must register as CPOs;<sup>21</sup> and
- Associated persons of the foregoing must register as APs.<sup>22</sup>

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<sup>14</sup> See Final Rules 5.1(a) and (c).

<sup>15</sup> See Final Rule 5.1(g)

<sup>16</sup> See Final Rule 5.3(a)(6).

<sup>17</sup> See Final Rule 5.3(a)(4).

<sup>18</sup> See Final Rule 5.3(a)(1).

<sup>19</sup> See Final Rule 5.3(a)(5).

<sup>20</sup> See Final Rule 5.3(a)(3).

<sup>21</sup> See Final Rule 5.3(a)(2).

<sup>22</sup> See generally Final Rule 5.3(a).

The CRA provides that registered FCMs who currently trade retail forex may continue to do so as FCMs, or may be required to register as RFEDs, depending on their circumstances. A traditional FCM that is “primarily or substantially” engaged in exchange-traded futures business may continue to engage in retail forex as an FCM, and need not register as a RFED. Currently-registered FCMs who solely trade in retail forex, or FCMs who are not “primarily or substantially” dealing in exchange-traded futures, will be required to register as RFEDs.

Pursuant to the CRA, certain affiliates of FCMs may continue to be proper forex counterparties if the affiliated FCM makes and keeps the risk assessment records required in CEA Section 4f(c)(2)(B) and the affiliate maintains at least \$20 million in adjusted net capital. However, under the Final Rules, the affiliates will have to register in the appropriate capacity in order to serve as a counterparty.

The CRA’s requirements generally do not apply to certain otherwise federally regulated entities (*e.g.*, broker-dealers and commercial banks), or their associated persons. Under the Commodity Exchange Act, broker-dealers, commercial banks and other federally regulated entities are not subject to the jurisdiction of the CFTC, and therefore not subject to the CRA.<sup>23</sup> Instead, broker-dealers, commercial banks and other federally regulated entities will remain subject to the jurisdiction of their respective federal regulator. As a result, these entities will be subject to rules which may be promulgated at a later date by the SEC, in the case of broker-dealers, and the Office of the Comptroller of the Currency (“OCC”), in the case of commercial banks.<sup>24</sup> Until the SEC enacts its own rules governing forex or the Financial Industry Regulatory Authority (“FINRA”) changes its requirements, broker-dealers will remain subject to FINRA’s 4 to 1 leverage restriction. At this time, we are unaware whether the SEC will adopt rules comparable to the CRA or whether FINRA may consider changing its leverage requirements, or other applicable provisions, in light of the CRA. To date, the OCC has not proposed rules governing forex and, to our knowledge, no commercial banks have been cleared to act as counterparties to retail forex transactions.

Since these forex registration rules will be effective on October 18, 2010, NFA has begun accepting registration applications from forex firms and individuals.<sup>25</sup> If a firm or individual is not currently registered, it *must* comply with all registration and forex requirements before doing *any* retail forex business. If a firm or individual is currently registered as an IB, CPO, CTA, or AP that is conducting retail forex business, this firm or individual must still apply for forex firm or forex AP approval on NFA’s online registration system. Moreover, all individuals who solicit retail off-exchange forex business or who supervise that activity must take and pass the Series 3 and Series 34 exams. The Series 34 exam is a new exam focusing exclusively on forex-related questions. Individuals who were registered as APs, sole proprietors or floor brokers on May 22, 2008 will not need to take the Series 34 exam unless there has been a two-year gap in their registration since that date.

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<sup>23</sup> §2(c)(2)(B)(II) of the CEA.

<sup>24</sup> Section 742(c) of the Dodd-Frank Act adding Section 2(c)(2)(E) of the CEA. Pursuant to the Dodd-Frank Act, other federal regulators such as the SEC and the OCC have until approximately July 22, 2011 to enact rules similar to the CRA.

<sup>25</sup> See NFA Notice to Members I-10-17 (September 1, 2010).

Every approved forex firm (*i.e.*, a RFED, FCM, IB, CPO or CTA) must have at least one principal who is registered as an AP or FB and who is approved as a forex AP. In addition, any RFED branch office must have a branch office manager who has taken the Series 30 exam and is an approved forex AP. Finally, registered firms may not conduct any business with unregistered entities requiring registration.

#### **4. Final Rule 5.4 – Operative Requirements for CPOs and CTAs**

Final Rule 5.4 applies all of the disclosure, recordkeeping, reporting and other existing requirements currently applicable to CPOs and CTAs in the context of on-exchange futures and commodity option contracts to persons defined as, and required to register as, CPOs and CTAs because those persons operate pooled investment vehicles that engage in retail forex transactions or because they provide retail forex trading advice.

#### **5. Final Rule 5.5 – Risk Disclosure by FCMs, RFEDs and IBs**

Final Rule 5.5 requires RFEDs, FCMs and IBs to provide retail forex customers with a risk disclosure statement similar to that currently required by Rule 1.55, but tailored to address the risks, conflicts of interest and unique characteristics of retail forex trading. Thus, the required risk disclosure statement must also disclose the number of non-discretionary retail forex accounts maintained by a RFED or FCM, the percentage of such accounts that were profitable for each of the four most recent quarters, and a statement that past performance is not necessarily indicative of future results.<sup>26</sup>

#### **6. Final Rules 5.6 and 5.7 – Minimum Financial Requirements**

Under Final Rule 5.7, RFEDs and FCMs engaging in retail forex trading are required to meet the \$20 million minimum net capital requirements prescribed in the CRA.<sup>27</sup> Final Rule 5.6 sets forth the “early warning” notification requirements, pursuant to which RFEDs and FCMs engaging in retail forex trading are required to notify their designated SRO and the CFTC if a RFED or an FCM engaging in retail forex trading has experienced declines in capital, has discovered a material inadequacy in internal controls or has become undercapitalized.

The amount of minimum net capital will be increased in the event that an FCM or RFED has a total retail forex obligation in excess of \$10,000,000. After that threshold, under the Final Rules the FCM or RFED must have net capital of no less than \$20,000,000 plus five percent of the total retail forex obligation in excess of \$10,000,000.<sup>28</sup>

If a registrant becomes undercapitalized, it must either liquidate or transfer all off-exchange retail forex accounts (with a transfer envisioned as a full novation of the retail forex contracts for such accounts by assignment and assumption of the contracts by another RFED or

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<sup>26</sup> See Final Rule 5.5(e).

<sup>27</sup> The CFTC believes that the higher level of \$20 million reflects Congressional intent to ensure that substantially undercapitalized “shell” FCM off-exchange retail forex dealers and their affiliates, from whom it may be impossible to recover funds in the event of customer claims, do not engage in off-exchange retail forex activity.

<sup>28</sup> See Final Rule 5.7(8).

FCM) under the direction and supervision of the CFTC or the entity's designated SRO. Although not permissible to be counted as a liquid asset for fulfilling the requirement of Rule 5.8, under the final net capital rule, the unsecured receivable resulting from a RFED or FCM offsetting currency exposure with one of several enumerated parties (regulated financial intermediaries or foreign equivalents approved by NFA) will be treated as a current asset.

#### **7. Final Rule 5.8 – Aggregate Retail Forex Assets**

Final Rule 5.8 requires RFEDs and FCMs engaging in retail forex transactions to compute the net credit balance resulting from combining all money, securities and property deposited by retail forex customers into their accounts, adjusted for realized and unrealized net profit or loss, and not including any accounts that contain net liquidating balances (the “retail forex obligation” of the RFED or FCM).<sup>29</sup>

#### **8. Final Rule 5.9 – Security Deposits for Retail Forex Transactions**

Final Rule 5.9(a) requires each RFED and FCM that engages in retail forex transactions to collect from the retail forex customer, in advance of any such transaction, a security deposit (in cash or in financial instruments that meet the requirements of Rule 1.25) equal to the applicable percentage to be set by NFA, provided that the security deposit cannot be less than: (1) 2% of the notional value of the retail forex transaction for major currency pairs and 5% of the notional value of the retail forex transaction for all other currency pairs, (2) for short options, 2% for major currency pairs and 5% for all other currency pairs of the notional value of the retail forex transaction, plus the premium received by the retail forex customer; or (3) for long options, the full premium charged and received by the FCM or RFED from the retail forex customer. Pursuant to Final Rule 5.9(c), the RFED or FCM is required to collect additional security deposit or to liquidate the retail forex customer's position if the amount of security deposit collected fails to meet the requirements of 5.9(a).

A major currency pair security deposit percentage is only applicable when both sides of a retail over-the-counter foreign exchange transaction involve major currencies. Any registered futures association whose members serve as counterparties to retail forex transactions, such as NFA, shall designate which currencies are “major currencies,” and shall review, no less frequently than annually, major currency designations and security deposit requirements, and shall adjust the designations and requirements as necessary.

#### **9. Final Rules 5.10 and 5.11 – Risk Assessment**

Final Rule 5.10 imposes risk assessment recordkeeping requirements for RFEDs, and Rule 5.11 establishes risk assessment reporting requirements for RFEDs. These sections are patterned on the corresponding existing requirements for FCMs in existing Rules 1.14 and 1.15, because the same rationale behind risk assessment procedures for FCMs applies equally to RFEDs.

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<sup>29</sup> See Final Rule 5.1(g).

## **10. Final Rule 5.12 – Financial Reporting to Regulators**

Final Rule 5.12 requires applicants for registration as RFEDs to submit their applications for registration with a Form 1-FR-FCM, the same financial reporting form that FCMs are required to file, certified by an independent public accountant. Registered RFEDs are required to file Form 1-FR-FCM monthly and annually.

## **11. Final Rule 5.13 – Reporting to Customer**

Pursuant to Rule 5.13, RFEDs and FCMs engaging in retail forex transactions are required to furnish each retail forex customer with monthly statements and confirmation statements in a manner comparable to that required of FCMs under Rule 1.33. FCMs could combine their forex monthly and/or confirmation statements with statements they may otherwise be required by Rule 1.33 to furnish, as long as the futures and commodity options information and the retail forex information are each properly identified as such. This Final Rule also provides that the required statements can be furnished electronically with the customer's (revocable) consent, and RFEDs are required to keep copies of monthly and confirmation statements in accordance with the requirements of Rule 1.31.

## **12. Final Rule 5.14 – Financial Recordkeeping**

Final Rule 5.14(a) requires RFEDs to keep the same ledgers or similar records as FCMs are required to keep under Rule 1.18, showing transactions affecting assets, liabilities, income, expense and capital accounts, classified in the manner set forth in Form 1-FR-FCM, or in categories consistent with GAAP. Final Rule 5.14(b) requires recordkeeping regarding net capital computations, comparable to existing Rule 1.18(b) for FCMs.

## **13. Final Rules 5.15 and 5.16 – Unlawful Representations and Prohibitions of Guarantees Against Loss**

RFEDs, FCMs, IBs, CPOs and CTAs subject to Part 5, as well as their principals and those who solicit for them, are prohibited by Final Rule 5.15 from representing that the CFTC or the federal government has sponsored, recommended or approved them in any way. RFEDs, FCMs and IBs are prohibited under Final Rule 5.16 from guaranteeing against or limiting customer losses, from failing to collect margin or security deposits, or from representing that they will do any of those things.

## **14. Final Rule 5.17 – Authorization to Trade**

Final Rule 5.17 requires RFEDs, FCMs, IBs and their APs to have specific authorization by the customer before effecting a retail forex transaction. For the most part, Final Rule 5.17 follows existing Rule 166.2 for on-exchange futures and commodity option transactions.

## **15. Final Rule 5.18 – Trading Standards**

Final Rule 5.18 contains provisions specific to retail forex transactions that were developed to prevent some of the deceptive or unfair practices identified by the CFTC and NFA

in recent years. Each retail forex counterparty<sup>30</sup> is required to establish and enforce internal rules, procedures and controls: 1) to prevent “front running,” where transactions in accounts of the retail forex counterparty or its related persons<sup>31</sup> are executed before a like customer order; 2) to establish settlement prices fairly and objectively; and 3) to record and maintain transaction records and make them available to customers (including time and price information, account records, trading platform price changes and volume, and any algorithm used to determine bid and ask prices).

Rule 5.18(c) prohibits a retail forex counterparty from disclosing that it holds another person’s order unless disclosure is necessary for execution. Rule 5.18(d) and (e) ensure that related persons of retail forex counterparties do not open accounts with other retail forex counterparties without the knowledge and authorization of the account surveillance personnel of the retail forex counterparties with which they are related. Rule 5.18(f) prohibits retail forex counterparties from: 1) entering a retail forex transaction to be executed at a price that is not at or near prices at which other retail forex customers have executed transactions with the retail forex counterparty during the same time period unless done pursuant to NFA rules; 2) changing prices after execution unless pursuant to NFA rules; 3) providing a customer a new bid price that is higher (or lower) than previously without providing a new asked price that is higher (or lower) as well; and 4) establishing a new position for a customer (except to offset an existing position) if the retail forex counterparty holds one or more outstanding orders of other retail forex customers for the same currency pair at a comparable price.

Moreover, Rule 5.18(g) requires each retail forex counterparty and each CPO, CTA and IB subject to Part 5 to maintain records of all communications they receive concerning possible violations of the CEA or CFTC Rules involving their retail forex business. The required records must include the complainant’s identity (if provided), the date of the transaction or contract at issue, and the name of the person who received the communication. Rule 5.18(h) requires each person who applies for registration as an IB in order to solicit or accept off-exchange retail forex orders, and each person who succeeds to the business of an IB that solicits or accepts retail forex orders to enter into a guarantee agreement with an FCM or a RFED unless it meets the capital requirements. Rule 5.18(i) requires retail forex counterparties to calculate on a quarterly basis the percentage of non-discretionary accounts that were profitable, and to maintain records of those calculations together with supporting data for five years in accordance with Rule 1.31. In addition, Rule 5.18(j) requires each retail forex counterparty to designate at least one principal to serve as its chief compliance officer. This person is required to certify annually to the CFTC and to NFA that the retail forex counterparty had in place policies and procedures reasonably designed to achieve compliance with the CEA and the CFTC’s rules, regulations, and orders.

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<sup>30</sup> “Retail forex counterparty” is defined for purposes of Rule 5.18 to include RFEDs, FCMs and affiliated persons of FCMs.

<sup>31</sup> “Related person” of a forex counterparty is defined for purposes of Rule 5.18 as a general partner, officer, director, owner of more than a ten percent interest, associated person, employee, relative or spouse of the foregoing or relative of a spouse who shares the same home.

## **16. Final Rule 5.19 – Final Dispositions of Legal Proceedings**

Final Rule 5.19 requires RFEDs, FCMs CPOs, CTAs and IBs to disclose final dispositions of legal matters and specifies the manner in which such matters are to be reported to the CFTC, as well as the criteria for determining which proceedings are required to be disclosed.

## **17. Final Rule 5.20 – Special Calls for Information**

According to the CFTC, the purpose of Rule 5.20 is to ensure that the CFTC has the authority to obtain information regarding retail forex accounts and transactions when such information is necessary to enable the CFTC to carry out its responsibilities under the CEA, and to set forth the responsibilities and duties of RFEDs, FCMs, and IBs when a special call is issued.

## **18. Final Rule 5.21 – Supervision of Retail Forex Accounts**

Final Rule 5.21 imposes the same supervision requirements set forth in existing Rule 166.3 upon CFTC registrants subject to Part 5. A separate provision for retail forex is included in order to avoid any question whether the same duties apply to persons with supervisory responsibilities in the context of retail forex trading activity.

## **19. Final Rule 5.22 – Registered Futures Association Membership**

In addition to registering with the CFTC, the CRA provides that RFEDs and persons who provide retail forex trading advice, operate retail forex pools or solicit retail forex customers or accounts must also become members of a registered futures association. Thus, Final Rule 5.22 requires registered futures association membership for RFEDs, and for each person: 1) required to register as an IB because the person accepts orders for retail forex transactions; 2) required to register as a CPO because the person operates, or solicits funds, securities or property for, a pooled investment vehicle that engages in retail forex transactions; or 3) required to register as a CTA because the person exercises discretionary trading authority, or obtains written authority over, an account in connection with retail forex transactions.

## **20. Final Rule 5.23 – Bulk Transfers and Bulk Liquidations**

Final Rule 5.23 is patterned generally upon existing Rule 1.65, but has been modified to take into account certain NFA rules approved by CFTC that govern the transfer or liquidation of the accounts of retail forex customers.<sup>32</sup>

## **21. Final Rule 5.24 – Applicability of Other Parts of the CFTC Rules**

Final Rule 5.24 states that, insofar as consistent with the requirements of Part 5, the requirements of other parts of the CFTC rules that apply to a person shall apply to that person as though those provisions were expressly set forth in Part 5.

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<sup>32</sup> See Final Rule 5.23(a)(1).

## **22. Final Rule 5.25 – Applicability of CEA**

Final Rule 5.25 incorporates various provisions of the CEA which apply generally to registrants, specifying that the provisions of those sections are to be read to include the categories of forex registrants identified in Rule 5.1, and that the provisions of those sections are to be read to include off-exchange retail forex transactions and those that engage in them.

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