
HENDERSON & LYMAN

FINANCIAL SERVICES PRACTICE GROUP CLIENT UPDATE

September 21, 2010

NFA Registration of Forex Firms and Individuals Under the CFTC's Final Rules

On August 30, 2010, the CFTC issued its final rules regulating off-exchange retail foreign exchange transactions (the "Final Rules"). The Final Rules will become effective on October 18, 2010. This Client Update will summarize key forex registration requirements under the Final Rules.

NFA is currently accepting registration applications from forex firms and individuals. If a firm or individual is not currently registered, it *must* comply with all registration and forex requirements before doing *any* retail forex business by October 18, 2010. If a firm or individual is currently registered as an IB, CPO, CTA, or AP and it is conducting retail forex business, this firm or individual *must* nonetheless apply to be a "forex firm" or "forex AP" on NFA's online registration system.

The following firms and individuals *must* be registered by October 18, 2010, or they will be prohibited from conducting *any* retail forex business:

- Any currently registered FCM, IB, CTA or CPO who is conducting forex business must also register as a "forex firm";
- Individuals who are associated persons of the foregoing must register as forex APs.
- Persons or entities who solicit or accept orders for a retail foreign exchange dealer ("RFED"), an FCM, or an affiliate of an FCM must register as IBs;¹
- Persons or entities who exercise discretionary trading authority over forex accounts must register as CTAs;
- Persons or entities who operate or solicit funds or property for a pooled investment vehicle, which invests in forex, must register as CPOs;
- Retail foreign exchange dealers are required to register as RFEDs;
- FCMs not "primarily or substantially" engaged in traditional FCM business must register as RFEDs; and
- FCM-affiliated entities that serve as retail forex counterparties must register as

¹ The Final Rules do not require forex firm IBs to be guaranteed. However, if a forex firm IB is guaranteed, the IB can only have one guarantor. Therefore, an IB cannot be guaranteed by an FCM for futures business and a different RFED for forex business.

RFEDs, subject to limited exceptions.

Moreover, all individuals who solicit retail off-exchange forex business or who supervise such 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.

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 a floor broker 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 retail forex business with unregistered firms required to be registered.

Henderson & Lyman welcomes the opportunity to assist you and your firm on a wide variety of legal matters that affect the financial services industry. To view and print the above update and other updates, please visit our website at www.henderson-lyman.com/site/epage/73331_771.htm. To discuss these or any other legal matters, please contact your Henderson & Lyman attorney, or contact the firm's office manager, Debbie Guth at (312) 986-6963.

This Client Update is published as a source of information only. The material contained herein is not to be construed as legal advice or opinion. Readers should seek specific legal advice before taking any action with respect to matters mentioned in this publication. ©2010 Henderson & Lyman. All rights reserved.