

Comptroller of the Currency, Treasury

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the manner in which all such solicitors are compensated and be very cautious in granting any person or entity authority to trade on your behalf. You should always consider obtaining dated written confirmation of any information you are relying on from [name of entity] in making any trading or account decisions.

(5) Retail forex transactions are not insured by the Federal Deposit Insurance Corporation.

(6) Retail forex transactions are not a deposit in, or guaranteed by, [name of entity].

(7) Retail forex transactions are subject to investment risks, including possible loss of all amounts invested.

Finally, you should thoroughly investigate any statements by [name of entity] that minimize the importance of, or contradict, any of the terms of this risk disclosure. These statements may indicate sales fraud.

This brief statement cannot, of course, disclose all the risks and other aspects of trading off-exchange foreign currency with [name of entity].

I hereby acknowledge that I have received and understood this risk disclosure statement.

Date

Signature of Customer

* * * * *

(e)(1) *Disclosure of profitable accounts ratio.* Immediately following the language set forth in paragraph (d) of this section, the statement required by paragraph (a) of this section must include, for each of the most recent four calendar quarters during which the national bank maintained retail forex customer accounts:

(i) The total number of retail forex customer accounts maintained by the national bank over which the national bank does not exercise investment discretion;

(ii) The percentage of such accounts that were profitable for retail forex customer accounts during the quarter; and

(iii) The percentage of such accounts that were not profitable for retail forex customer accounts during the quarter.

(2) The national bank's statement of profitable trades must include the following legend: "Past performance is not necessarily indicative of future results." Each national bank must provide, upon request, to any retail forex customer or prospective retail forex

customer the total number of retail forex accounts maintained by the national bank for which the national bank does not exercise investment discretion, the percentage of such accounts that were profitable, and the percentage of such accounts that were not profitable for each calendar quarter during the most recent five-year period during which the national bank maintained such accounts.

(f) *Disclosure of fees and other charges.* Immediately following the language required by paragraph (e) of this section, the statement required by paragraph (a) of this section must include:

(1) The amount of any fee, charge, spread, or commission that the national bank may impose on the retail forex customer in connection with a retail forex account or retail forex transaction;

(2) An explanation of how the national bank will determine the amount of such fees, charges, spreads, or commissions; and

(3) The circumstances under which the national bank may impose such fees, charges, spreads, or commissions.

(g) *Future disclosure requirements.* If, with regard to a retail forex customer, the national bank changes any fee, charge, or commission required to be disclosed under paragraph (f) of this section, then the national bank must mail or deliver to the retail forex customer a notice of the changes at least 15 days prior to the effective date of the change.

(h) *Form of disclosure requirements.* The disclosures required by this section must be clear and conspicuous and designed to call attention to the nature and significance of the information provided.

(i) *Other disclosure requirements unaffected.* This section does not relieve a national bank from any other disclosure obligation it may have under applicable law.

[76 FR 41384, July 14, 2011, as amended at 76 FR 56096, Sept. 12, 2011]

§ 48.7 Recordkeeping.

(a) *General rule.* A national bank engaging in retail forex transactions must keep full, complete, and systematic records, together with all pertinent data and memoranda, pertaining

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to its retail forex business, including the following 6 types of records:

(1) *Retail forex account records.* For each retail forex account:

(i) The name and address of the person for whom the account is carried or introduced and the principal occupation or business of the person;

(ii) The name of any other person guaranteeing the account or exercising trading control with respect to the account;

(iii) The establishment or termination of the account;

(iv) A means to identify the person that has solicited and is responsible for the account;

(v) The funds in the account, net of any commissions and fees;

(vi) The account's net profits and losses on open trades;

(vii) The funds in the account plus or minus the net profits and losses on open trades, adjusted for the net option value in the case of open options positions;

(viii) Financial ledger records that show all charges against and credits to the account, including deposits, withdrawals, and transfers, and charges or credits resulting from losses or gains on closed transactions; and

(ix) A list of all retail forex transactions executed for the account, with the details specified in paragraph (a)(2) of this section.

(2) *Retail forex transaction records.* For each retail forex transaction:

(i) The date and time the national bank received the order;

(ii) The price at which the national bank placed the order, or, in the case of an option, the premium that the retail forex customer paid;

(iii) The customer account identification information;

(iv) The currency pair;

(v) The size or quantity of the order;

(vi) Whether the order was a buy or sell order;

(vii) The type of order, if the order was not a market order;

(viii) The size and price at which the order is executed, or in the case of an option, the amount of the premium paid for each option purchased, or the amount credited for each option sold;

(ix) For options, whether the option is a put or call, expiration date, quan-

tity, underlying contract for future delivery or underlying physical, strike price, and details of the purchase price of the option, including premium, mark-up, commission, and fees; and

(x) For futures, the delivery date; and

(xi) If the order was made on a trading platform:

(A) The price quoted on the trading platform when the order was placed, or, in the case of an option, the premium quoted;

(B) The date and time the order was transmitted to the trading platform; and

(C) The date and time the order was executed.

(3) *Price changes on a trading platform.* If a trading platform is used, daily logs showing each price change on the platform, the time of the change to the nearest second, and the trading volume at that time and price.

(4) *Methods or algorithms.* Any method or algorithm used to determine the bid or asked price for any retail forex transaction or the prices at which customer orders are executed, including, but not limited to, any markups, fees, commissions or other items which affect the profitability or risk of loss of a retail forex customer's transaction.

(5) *Daily records* which show for each business day complete details of:

(i) All retail forex transactions that are futures transactions executed on that day, including the date, price, quantity, market, currency pair, delivery date, and the person for whom such transaction was made;

(ii) All retail forex transactions that are option transactions executed on that day, including the date, whether the transaction involved a put or call, the expiration date, quantity, currency pair, delivery date, strike price, details of the purchase price of the option, including premium, mark-up, commission and fees, and the person for whom the transaction was made; and

(iii) All other retail forex transactions executed on that day for such account, including the date, price, quantity, currency and the person for whom such transaction was made.

(6) *Other records.* Written acknowledgments of receipt of the risk disclosure statement required by § 48.6(b), off-set instructions pursuant to § 48.5(c),

records required under paragraphs (b) through (f) of this section, trading cards, signature cards, street books, journals, ledgers, payment records, copies of statements of purchase, and all other records, data, and memoranda that have been prepared in the course of the national bank's retail forex business.

(b) *Ratio of profitable accounts.*

(1) With respect to its active retail forex customer accounts over which it did not exercise investment discretion and that are not retail forex proprietary accounts open for any period of time during the quarter, a national bank must prepare and maintain on a quarterly basis (calendar quarter):

(i) A calculation of the percentage of such accounts that were profitable;

(ii) A calculation of the percentage of such accounts that were not profitable; and

(iii) Data supporting the calculations described in paragraphs (b)(1)(i) and (ii) of this section.

(2) In calculating whether a retail forex account was profitable or not profitable during the quarter, the national bank must compute the realized and unrealized gains or losses on all retail forex transactions carried in the retail forex account at any time during the quarter, subtract all fees, commissions, and any other charges posted to the retail forex account during the quarter, and add any interest income and other income or rebates credited to the retail forex account during the quarter. All deposits and withdrawals of funds made by the retail forex customer during the quarter must be excluded from the computation of whether the retail forex account was profitable or not profitable during the quarter. Computations that result in a zero or negative number must be considered a retail forex account that was not profitable. Computations that result in a positive number must be considered a retail forex account that was profitable.

(3) A retail forex account must be considered "active" for purposes of paragraph (b)(1) of this section if and only if for the relevant calendar quarter a retail forex transaction was executed in that account or the retail forex account contained an open posi-

tion resulting from a retail forex transaction.

(c) *Records related to violations of law.*

A national bank engaging in retail forex transactions must make a record of all communications received by the national bank or its IAPs concerning facts giving rise to possible violations of law related to the national bank's retail forex business. The record must contain: The name of the complainant, if provided; the date of the communication; the relevant agreement, contract, or transaction; the substance of the communication; the name of the person that received the communication; and the final disposition of the matter.

(d) *Records for noncash margin.* A national bank must maintain a record of all noncash margin collected pursuant to § 48.9. The record must show separately for each retail forex customer:

(1) A description of the securities or property received;

(2) The name and address of such retail forex customer;

(3) The dates when the securities or property were received;

(4) The identity of the depositories or other places where such securities or property are segregated or held, if applicable;

(5) The dates in which the national bank placed or removed such securities or property into or from such depositories; and

(6) The dates of return of such securities or property to such retail forex customer, or other disposition thereof, together with the facts and circumstances of such other disposition.

(e) *Order Tickets.*

(1) Except as provided in paragraph (e)(2) of this section, immediately upon the receipt of a retail forex transaction order, a national bank must prepare an order ticket for the order (whether unfulfilled, executed, or canceled). The order ticket must include:

(i) Account identification (account or customer name with which the retail forex transaction was effected);

(ii) Order number;

(iii) Type of order (market order, limit order, or subject to special instructions);

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(iv) Date and time, to the nearest minute, that the retail forex transaction order was received (as evidenced by time-stamp or other timing device);

(v) Time, to the nearest minute, that the retail forex transaction order was executed; and

(vi) Price at which the retail forex transaction was executed.

(2) *Post-execution allocation of bunched orders.* Specific identifiers for retail forex accounts included in bunched orders need not be recorded at time of order placement or upon report of execution as required under paragraph (e)(1) of this section if the following requirements are met:

(i) The national bank placing and directing the allocation of an order eligible for post-execution allocation has been granted written investment discretion with regard to participating customer accounts and makes the following information available to retail forex customers upon request:

(A) The general nature of the post-execution allocation methodology the national bank will use;

(B) Whether the national bank has any interest in accounts that may be included with customer accounts in bunched orders eligible for post-execution allocation; and

(C) Summary or composite data sufficient for that customer to compare the customer's results with those of other comparable customers and, if applicable, any account in which the national bank has an interest.

(ii) Post-execution allocations are made as soon as practicable after the entire transaction is executed;

(iii) Post-execution allocations are fair and equitable, with no account or group of accounts receiving consistently favorable or unfavorable treatment; and

(iv) The post-execution allocation methodology is sufficiently objective and specific to permit the OCC to verify the fairness of the allocations using that methodology.

(f) *Record of monthly statements and confirmations.* A national bank must retain a copy of each monthly statement and confirmation required by § 48.10.

(g) *Form of record and manner of maintenance.* The records required by this section must clearly and accurately re-

flect the information required and provide an adequate basis for the audit of the information. A national bank must create and maintain audio recordings of oral orders and oral offset instructions. Record maintenance may include the use of automated or electronic records provided that the records are easily retrievable and readily available for inspection.

(h) *Length of maintenance.* A national bank must keep each record required by this section for at least five years from the date the record is created.

§ 48.8 Capital requirements.

A national bank offering or entering into retail forex transactions must be well capitalized as defined by 12 CFR part 6.

§ 48.9 Margin requirements.

(a) *Margin required.* A national bank engaging, or offering to engage, in retail forex transactions must collect from each retail forex customer an amount of margin not less than:

(1) Two percent of the notional value of the retail forex transaction for major currency pairs and 5 percent of the notional value of the retail forex transaction for all other currency pairs;

(2) For short options, 2 percent for major currency pairs and 5 percent 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 national bank.

(b)(1) *Form of margin.* Margin collected under paragraph (a) of this section or pledged by a retail forex customer for retail forex transactions must be in the form of cash or the following financial instruments:

(i) Obligations of the United States and obligations fully guaranteed as to principal and interest by the United States;

(ii) General obligations of any State or of any political subdivision thereof;

(iii) General obligations issued or guaranteed by any enterprise, as defined in 12 U.S.C. 4502(10);

(iv) Certificates of deposit issued by an insured depository institution, as