AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

and any affiliate where the retail foreign exchange dealer makes payment to or on behalf of such affiliate for such transaction and then receives payment from such affiliate for such transaction within two business days from the date of the transaction.

(3) Upon receipt of such notice from a futures commission merchant offering or engaging in retail forex transactions or a retail foreign exchange dealer, the Director of the Division of Swap Dealer and Intermediary Oversight or the Director's designee may require that the futures commission merchant offering or engaging in retail forex transactions or retail foreign exchange dealer provide or cause a Material Affiliated Person (as that term is defined in §5.10(a)(2) of this part) to provide, within three business days from the date of the request or such shorter period as the Director or designee may specify, such other information as the Director or designee determines to be necessary based upon market conditions, reports provided by the retail foreign exchange dealer or futures commission merchant offering or engaging in retail forex transactions, or other available information.

(g) Whenever a person registered as a futures commission merchant offering or engaging in retail forex transactions or a retail foreign exchange dealer knows or should know that the total amount of its retail forex obligation exceeds the amount of the aggregate retail forex assets the registrant maintains in accordance with the provisions of §5.8 of this chapter, the registrant must report such deficiency immediately by telephone notice, confirmed immediately in writing by facsimile notice.

(h) Every notice and written report required to be given or filed with the Commission by this section by an applicant must be filed with the regional office of the Commission with jurisdiction over the state in which the applicant's principal place of business is located, and with the National Futures Association. Every notice and written report required to be given or filed with the Commission by this section by a registrant or self-regulatory organization must be filed with the regional office of the Commission with jurisdiction over the state in which the registrant's principal place of business is located, and with the registrant's designated self-regulatory organization. In addition, every notice and written report required to be given by this section must also be filed with the Chief Accountant of the Division of Swap Dealer and Intermediary Oversight at the Commission's principal office in Washington, DC.

(i) In lieu of filing paper copies with the Commission, all filings or other notices prepared by a futures commission merchant or retail foreign exchange dealer pursuant to this section may be submitted to the Commission in electronic form using a form of user authentication assigned in accordance with procedures established by or approved by the Commission, and otherwise in accordance with instructions issued by or approved by the Commission, if the futures commission merchant, retail foreign exchange dealer or a designated self-regulatory organization has provided the Commission with the means necessary to read and to process the information contained in such report. Any such electronic submission must clearly indicate the registrant or applicant on whose behalf such filing is made and the use of such user authentication in submitting such filing will constitute and become a substitute for the manual signature of the authorized signer.

[75 FR 55432, Sept. 10, 2010, as amended at 78 FR 22419, Apr. 16, 2013]

§5.7 Minimum financial requirements for retail foreign exchange dealers and futures commission merchants offering or engaging in retail forex transactions.

(a)(1)(i) Each futures commission merchant offering or engaging in retail forex transactions and each retail foreign exchange dealer must maintain adjusted net capital equal to or in excess of the greatest of:

(A) $20,000,000;

(B) $20,000,000 plus five percent of the futures commission merchant's or retail foreign exchange dealer's total retail forex obligation in excess of $10,000,000;

(C) any amount required under §1.17 of this chapter, as applicable; or

(D) the amount of adjusted net capital required by a registered futures association of which the futures commission merchant or retail foreign exchange dealer is a member.

(ii) Section 1.17 of this chapter shall apply to retail foreign exchange dealers as if such retail foreign exchange dealers were futures commission merchants, or as applicable, applicants or registrants, as stated in § 1.17 for the purpose of determining the adjusted net capital under this section. For the purpose of applying this section, ''applicant'' or ''registrant'' shall include retail foreign exchange dealers and futures commission merchants offering or engaging in retail forex transactions and applicants therefore.

(2) No person applying for registration as a retail foreign exchange dealer or a futures commission merchant that will engage in retail forex transactions shall be so registered unless such person affirmatively demonstrates to the satisfaction of a registered futures association that it complies with the financial requirements of this section.

(3) Each registrant must be in compliance with this section at all times and must be able to demonstrate such compliance to the satisfaction of the Commission or the registrant's designated self-regulatory organization.

(4) A registrant who is not in compliance with this section, or is unable to demonstrate such compliance as required by paragraph (a)(3) of this section, shall, as directed by and under the supervision of the Commission or the registrant's designated self-regulatory organization, either liquidate or transfer all retail forex accounts (including the novation of retail forex contracts) and refund or transfer all funds associated with such retail forex accounts and immediately cease offering or engaging in retail forex transactions until such time as the firm is able to demonstrate to the Commission or the registrant's designated self-regulatory organization such compliance: *Provided, however,* That if such registrant immediately demonstrates to the satisfaction of the Commission or the registrant's designated self-regulatory organization the ability to achieve compliance, the Commission or the registrant's designated self-regulatory organization may in its discretion allow such registrant up to a maximum of 10 business days, or such additional time as determined by the Commission, in which to achieve compliance without having to liquidate positions or transfer accounts and cease doing business as required above. Nothing in this paragraph (a)(4) shall be construed as preventing the Commission or the registrant's designated self-regulatory organization from taking action against a registrant for noncompliance with any of the provisions of this section.

(b) For the purposes of this section:

(1) Where the applicant or registrant has an asset or liability which is defined in Securities Exchange Act Rule 15c3–1 (§ 240.15c3–1 of this title) the inclusion or exclusion of all or part of such asset or liability for the computation of adjusted net capital shall be in accordance with § 240.15c3–1 of this title, unless specifically stated otherwise in this section or in § 1.17 of this chapter.

(2) The adjusted net capital of an applicant or registrant for the purpose of this section shall be determined by the application of § 1.17 pursuant to paragraph (a)(1)(ii) of this section, with the following additions:

(i) All positions in retail forex accounts and other financial positions and instruments of the applicant or registrant must be marked to market and adjusted daily by referencing to current market prices or rates of exchange.

(ii) Current assets must exclude any retail forex account which liquidates to a deficit or contains a debit ledger balance only and is not secured in accordance with § 1.17(c)(3).

(iii) Current assets must exclude any unsecured receivable accrued from any over-the-counter transaction in foreign currency, options on foreign currency or options on contracts for the purchase or sale of foreign currency, or arising from the deposit of collateral or compensating balances with respect to such transactions, unless such unsecured receivable is from a person who is an eligible contract participant that also is:

(A) A bank or trust company regulated by a United States banking regulator;

(B) A broker-dealer registered with the Securities and Exchange Commission and a member of the Financial Industry Regulatory Authority;

(C) A futures commission merchant registered with the Commission and a member of the National Futures Association;

(D) A retail foreign exchange dealer registered with the Commission and a member of the National Futures Association;

(E) An entity regulated as a foreign equivalent of any of the persons listed in paragraphs (b)(2)(iii)(A) through (D) of this section, if such person is regulated in a money center country as defined in §1.49 of this chapter and recognized by the futures commission merchant's or retail foreign exchange dealer's designated self-regulatory organization as a foreign equivalent;

(F) Any other entity approved by the futures commission merchant's or retail foreign exchange dealer's designated self-regulatory organization.

(iv) The value attributed to any retail forex transaction that is an option shall be the difference between the option's exercise value or striking value and the market value of the underlying. In the case of a call, if the market value of the underlying is less than the exercise value or striking value of such call, it shall be given no value; and, in the case of a put, if the market value of the underlying is more than the exercise value or striking value of the put, it shall be given no value.

(v)(A) In computing adjusted net capital, the capital deductions set forth in §1.17(c)(5)(ii) of this chapter shall apply to retail forex transactions other than options. The capital deductions which apply are six percent for net positions in Euros, British pounds, Canadian dollars, Japanese yen, or Swiss francs and 20 percent for net positions in all other foreign currencies, *Provided, however,* That there shall be no capital deductions for retail forex transactions covered (as defined in §1.17(j) of this chapter) by the applicant or registrant by open futures contracts to the extent such futures contracts are not otherwise designated as cover for any other net capital purposes. For purposes of this paragraph (b)(2)(v)(A), such retail forex transactions shall be treated as if they were inventory and cover were therefore applicable. A retail foreign exchange dealer or futures commission merchant may not use an affiliate (unless approved by the firm's designated self-regulatory organization) or any person that is considered unregulated under the rules of the firm's designated self-regulatory organization to cover its currency positions for purposes of this section.

(B) In computing adjusted net capital, the capital deductions set forth in §1.17(c)(5)(vi) of this chapter shall apply to all retail forex transactions that are options.

(C) For the purpose of applying capital deductions on open proprietary futures positions under §1.17(c)(5)(x) of this chapter, net or individual positions in retail forex transactions shall not constitute cover under §1.17(j) for the purpose of applying such charges.

(c) An applicant or registrant must prepare, and keep current, ledgers or other similar records which show or summarize, with appropriate references to supporting documents, each transaction affecting the applicant's or registrant's asset, liability, income, expense and capital accounts, and in which (except as otherwise permitted in writing by the Commission) all the applicant's or registrant's asset, liability and capital accounts are classified into the account classification subdivisions specified on Form 1–FR–FCM. Each applicant or registrant shall prepare and keep current such records.

(d) An applicant or registrant must make and keep as a record in accordance with §5.14 of this part formal computations of its adjusted net capital and of its minimum financial requirements pursuant to this section as of the close of business each month and on other such dates called for by the Commission, the National Futures Association, or another self-regulatory organization of which the firm is a member. Such computations must be completed and made available for inspection by any representative of the Commission, the National Futures Association, a self-regulatory organization of which the firm is a member, or

the United States Department of Justice commencing the first month-end after the date the application for registration is filed.

§ 5.8 Aggregate retail forex assets.

(a) Each retail foreign exchange dealer and futures commission merchant offering or engaging in retail forex transactions shall calculate its total retail forex obligation and shall at all times hold assets solely of the type permissible under § 1.25 of this chapter equal to or in excess of the total retail forex obligation at one or more qualifying institutions in the United States or money center countries as defined in § 1.49 of this chapter.

(b) For assets held in the United States, a qualifying institution is:

(1) A bank or trust company regulated by a United States banking regulator;

(2) A broker-dealer registered with the Securities and Exchange Commission and a member of the Financial Industry Regulatory Authority; or

(3) A futures commission merchant registered with the Commission and a member of the National Futures Association.

(c) For assets held in a money center country, a qualifying institution is:

(1) A bank or trust company regulated in a money center country, *Provided* that the bank or trust company has regulatory capital in excess of $1 billion;

(2) An entity regulated in a money center country as an equivalent of a broker-dealer or futures commission merchant as determined by the retail foreign exchange dealer's or futures commission merchant's designated self-regulatory organization, *Provided* that the entity maintains regulatory capital in excess of $100 million; or

(3) A futures commission merchant registered with the Commission and a member of the National Futures Association.

(d) Assets held in a money center country are not eligible to meet the requirements of paragraph (a) of this section unless the retail foreign exchange dealer or futures commission merchant has entered into an agreement that is acceptable to the firm's designated self-regulatory organization and that authorizes the qualifying institution to provide account information to the Commission and the firm's designated self-regulatory organization.

(e) In computing its adjusted net capital pursuant to § 5.7 of this part, a retail foreign exchange dealer or futures commission merchant may not include aggregate retail forex assets as current assets or otherwise record any property received from retail forex customers as an asset without recording a corresponding liability to the retail forex customers.

§ 5.9 Security deposits for retail forex transactions.

(a) Each futures commission merchant engaging, or offering to engage, in retail forex transactions and each retail foreign exchange dealer must collect from each retail forex customer a minimum security deposit for each retail forex transaction equal to the applicable percentage as set by the registered futures association of which they are a member; *Provided*, that the registered futures association's security deposit requirement 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 futures commission merchant or retail foreign exchange dealer from the retail forex customer.

(b) Security deposits must be made in the form of cash or other financial instruments that comply with the requirements specified in § 1.25 of this chapter.

(c) A futures commission merchant or retail foreign exchange dealer is required to collect additional security deposits from a retail forex customer, or liquidate the retail forex customer's positions, if the amount of the retail forex customer's security deposits