



October 12, 2010

Retail Off-Exchange Forex Registration

Deadline Immanent

As a result of amendments to the Commodity Exchange Act (“CEA”), the Commodity Futures Trading Commission (“CFTC”) has issued final, foreign exchange (forex) rules which become effective on October 18, 2010. Prior to the passage of the CFTC Reauthorization Act of 2008 (“CRA”), the CEA only allowed financial institutions, SEC registered broker-dealers, insurance companies, financial holding companies, investment bank holding companies and or CFTC registered futures commission merchants (“FCMs”) to engage in retail, off-exchange forex transactions. As a result of the Dodd-Frank Wall Street Reform and Customer Protection Act (Dodd-Frank Act), regulated entities wanting to continue to engage retail, off-exchange forex transactions are now required to come up with a regulatory plan within one year. However, regulatory entities that had proposed regulations pending as of July 21, 2010 had 90 days to implement their proposed rules. Therefore, the CRA will become effective on October 18, 2010. The new rules address both new registration requirements and qualification requirements.

Forex Registrations

The new rules require registration as a Retail Foreign Exchange Dealer (“RFED”) for any firm acting as a counterparty to certain retail, off-exchange forex transactions. Notwithstanding that, FCMs offering forex transactions to its retail customers, but acting primarily or substantially as traditional FCMs, are exempt from registering as an RFED; however, they must be approved as a Forex Firm and designated as a Forex Dealer Member of the National Futures Association (NFA).

Additionally, the CEA was also amended to require any individual acting as a forex solicitor, account manager or pool operator to register with the CFTC as an Introducing Broker (“IB”). Firms that are currently registered as an IB and who want to continue to engage in retail, off-exchange forex transactions through an RFED are required to register as a Forex Firm and amend their Form 7R through the National Futures Association (“NFA”) Online Registration System.

Qualifications

Individuals who solicit or supervise the sale of retail, off-exchange forex transactions must pass two examinations: the National Commodity Futures Examination (Series 3) and the Retail Off-Exchange Forex Examination (Series 34). Individuals who were registered continuously as an Associated Person (“AP”) on or before May 22, 2008 will not be required to

take the Series 34, but must amend their Form 8R through the NFA Online Registration System. As of October 18, 2010, those registered after May 22, 2008, or who were not continuously registered, must cease activities in retail, off-exchange forex transactions, until they have completed the Series 34.

Future Changes resulting from Dodd-Frank Act

Once the Dodd-Frank Act is fully implemented, insurance companies and investment bank holding companies will be eliminated from being counterparties in retail, off-exchange forex transactions and the definition of Financial Institution will be changed to US Financial Institution. Ultimately, the changes brought about by the Dodd-Frank Act will necessitate changes by the remaining regulatory bodies by July 21, 2011, and companies engaging in retail, off-exchange forex transactions through these regulated entities should expect additional changes in regulation during that period.

We hope that this information has been helpful to you. Should you have any additional questions or concerns, please feel free to contact Daniel E. LeGaye or Michael Schaps by e-mail or phone, at 281-367-2454, or consult with your legal counsel or third party consultant.

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