

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

RIN 3235-AL19

[Release No. 34-77874; File No. S7-30-11]

Retail Foreign Exchange Transactions

AGENCY: Securities and Exchange Commission.

ACTION: Notice of expiration of 17 CFR 15b12-1.

SUMMARY: 17 CFR 15b12-1 (“Rule 15b12-1”), by its terms, will expire and no longer be effective on July 31, 2016. Interested persons should be aware that as of that date, any broker or dealer, including a broker or dealer that is also dually registered as a futures commission merchant (“BD/FCM”), shall be prohibited under Section 2(c)(2)(E) of the Commodity Exchange Act (“CEA”) from offering or entering into a transaction described in Section 2(c)(2)(B)(i)(I) of the CEA with a person who is not an eligible contract participant (“retail forex transaction”).

DATE: May 26, 2016.

FOR FURTHER INFORMATION CONTACT: Paula Jenson, Deputy Chief Counsel; Catherine Moore, Senior Special Counsel; or Stephen J. Benham, Special Counsel, at (202) 551-5550 or Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-7010.

DISCUSSION: Section 2(c)(2)(E) of the CEA, as added by the Dodd-Frank Wall Street Reform and Consumer Protection Act, provides that a person for which there is a Federal regulatory agency, including a broker-dealer registered under Section 15(b) (except pursuant to paragraph

(11) thereof) or 15C of the Securities and Exchange Act of 1934 (“Exchange Act”), shall not enter into or offer to enter into a retail forex transaction, except pursuant to a rule or regulation of a Federal regulatory agency allowing the transaction under such terms and conditions as the Federal regulatory agency shall prescribe.¹

Section 2(c)(2)(E) of the CEA took effect on July 16, 2011. As of that date, broker-dealers, including broker-dealers also registered with the Commodity Futures Trading Commission as futures commission merchants, for which the Commission is the federal regulatory agency could no longer engage in retail forex transactions except pursuant to a rule adopted by the Commission.²

A retail forex transaction includes an agreement, contract, or transaction in foreign currency that is a contract of sale of a commodity for future delivery (or an option on such a contract) or an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Exchange Act) that is offered to, or entered into with, a person that is not an eligible contract participant as defined in section 1(a)(18) of the CEA.³ Certain foreign exchange transactions are not “retail forex transactions” under the CEA, even where one of the counterparties is a person that is not an eligible contract participant. These transactions include:⁴ (i) “spot forex transactions” where one currency is bought for another and

¹ 7 U.S.C. 2(c)(2)(E).

² See 7 U.S.C. 2(c)(2)(B)(i)(II)(cc) and 2(c)(2)(E). Congress expressly excludes from the CFTC’s jurisdiction retail forex transactions where the counterparty, or the person offering to be the counterparty, is a broker or dealer registered under Section 15(b) (other than paragraph (11) thereof) or 15C of the Exchange Act.

³ 7 U.S.C. 2(c)(2)(B)(i)(I).

⁴ See, generally, the discussion in Exchange Act Release No. 69964 (Jul. 11, 2013), 78 FR 42439 (Jul. 16, 2013) at 42439-40.

the two currencies are exchanged within two days;⁵ (ii) forward contracts that create an enforceable obligation to make or take delivery, provided that each counterparty has the ability to deliver and accept delivery in connection with its line of business; and (iii) options that are executed or traded on a national securities exchange registered pursuant to section 6(a) of the Exchange Act.

The term “eligible contract participant” is defined in Section 1a(18) of the CEA and, in general terms, comprises certain enumerated regulated persons, entities that meet a specified total asset test or an alternative monetary test coupled with a nonmonetary component, certain employee benefit plans, and certain government entities and individuals that meet defined thresholds.⁶ An individual is an eligible contract participant if the individual has aggregate amounts invested on a discretionary basis of more than \$10 million or more than \$5 million if such individual enters into the transaction to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred by such individual.⁷

The Commission adopted Rule 15b12-1 on a time-limited basis to permit a registered

⁵ In August 2012, the CFTC issued an interpretation in a joint rulemaking with the Commission that “conversion trades” – trades in which a foreign exchange transaction facilitates the settlement of a foreign security transaction – are spot transactions and, therefore, are not subject to the prohibition under the CEA. See Exchange Act Release No. 67453 (Jul. 18, 2012), 77 FR 48207 (Aug. 13, 2012).

⁶ See 7 U.S.C. 1a(18). The Commission and the CFTC adopted rules under the CEA that further define “eligible contract participant” with respect to transactions with major swap participants, swap dealers, major security-based swap participants, security-based swap dealers, and commodity pools. See Exchange Act Release No. 66868 (Apr. 27, 2012), 77 FR 30596 (May 23, 2012).

⁷ 7 U.S.C. 1a(18)(A)(xi).

broker-dealer to engage in a retail forex business.⁸ The Commission is taking no further action, and pursuant to Rule 15b12-1(d), Rule 15b12-1 will expire and no longer be effective on July 31, 2016. Upon expiration of the rule on July 31, 2016, a broker-dealer registered pursuant to Section 15(b) of the Exchange Act, including an entity that is registered as both a broker-dealer and a futures commission merchant, shall be prohibited from offering or entering into a retail forex transaction pursuant to Section 2(c)(2)(E) of the CEA.

By the Commission.

Brent J. Fields
Secretary

May 20, 2016

⁸ See Exchange Act Release No. 69964 (Jul. 11, 2013), 77 FR 42439 (Jul. 16, 2013). By its terms, Rule 15b12-1 expires on July 31, 2016. The Commission previously adopted Rule 15b12-1 as an interim final temporary rule, and extended it once on July 11, 2012. See Exchange Act Release Nos. 64874 (Jul. 13, 2011), 76 FR 41676 (Jul. 15, 2011) and 67405 (Jul. 11, 2012), 77 FR 41671 (Jul. 16, 2012).