

i Location of regulations:

<http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2010-456a.pdf>

1. Why all this regulation, suddenly?

- a) Legal uncertainty about who should regulate retail forex. This begs the question, why regulate it at all?
- b) Because there have been unbelievably horrible scams and schemes and terrible, terrible brokers.
- c) It's about consumer protection. Of course a trader can bring a case of fraud against a dishonest dealer - but that is expensive. These agencies and rules are intended to head off these types of scams before they become scams.

Resources on Scams and Litigation Cited in Regs:

CFTC v. Erskine (particularly fascinating to read this case):

<http://65.181.148.190/renewableenergyinfo/includes/resource-files/08a0008p-06.pdf>

CFTC v. Zelener:

<http://ftp.resource.org/courts.gov/c/F3/373/373.F3d.861.03-4245.html>

**Most of the problems - CFTC lawsuits covering 26,000 customers and judgments of \$1+ Billion, were about solicitation. Yep, you read that right. The big problem: dishonest practices regarding how customers are brought in.**

2. If you don't process exchange traded futures, then you must register with the CFTC as a Retail Forex Exchange Dealer (RFED).

IBs, CTAs, etc will also have to register with the CFTC.

Minimum capital requirements (\$20M + volume based threshold)

- a) Does this replace NFA registrations? No!
- b) Will there be tests?
- c) Will all IBs go out of business?

3. What are the Rules? The most important elements:

First, adjustments to current rules:

- a) IBs must be guaranteed - (Reg. 1.10)
- b) No hedging and Fifo - (Reg. 1.46)
- c) Regs about CTAs, CPOs

Next, a new part 5 of the regulations for retail forex:

- a) Definitions (5.1)
- b) Antifraud (5.2) - Can't be a counterparty and MM at the same time. Duh!
- c) Registration (5.3)
- d) Operative requirements for CTAs and CPOs (5.4)
- e) New Risk Disclosures (5.5) - RFEDs must disclose % of profitable traders, last 4 quarters
  - Includes a massive disclaimer that you are not trading with anyone except the dealer (finally!)
  - What of no-dealing desk brokers? Did the CFTC miss them entirely, or is the CFTC saying that doesn't matter?
  - **There should be an additional section which requires dealers to prove they are offsetting trades (HOW?)**

**READ THIS SECTION IN THE WEBINAR (page 33)**

- f) Capital requirements (5.6 and 5.7)
- g) More financial requirements (5.8) - liquid assets in case of failure
  - Why can't the CFTC protect customer accounts through separation/segregation?
  - It's a bankruptcy code issue, not a CFTC issue. We need to lobby to change the bankruptcy code.
- h) **Makes all of these regulations unnecessary - LEVERAGE 10:1 (5.9)**
  - Futures brokers want retail forex gone
- i) Risk assessment recordkeeping for dealers (5.10-5.11)
  - Requires hedging information (the public should be able to see this)
- j) Financial reporting (5.12) - monthly and annual (and on demand reports)
- k) Monthly statements to customers (5.13)
- l) More financial recordkeeping for dealers (5.14)
- m) Prohibition on Guarantees Against Loss / Other false statements (5.15-5.16)
  - from 5.16: "RFEDs, FCMs and IBs are prohibited under proposed Regulation 5.16 from guaranteeing against or limiting customer losses" - **How does this protect YOU? How is the CFTC here protecting you? Explain that to me.**
- n) Authorization before trading (5.17)
- o) Trading standards (5.18) - No frontrunning, fair settlement procedures, and make the order book public. This is fair and open and responsible, and it's about time that something like this is done. Algorithms used to determine bid and ask prices (I'd like to see this from Oanda). Publish four most recent quarters the percentage of non-discretionary accounts that were profitable.
- p) Disclosure of legal matters (5.19)
- q) Special calls for information (5.20) - commission can just ask for information
- r) Supervision of accounts (5.21)
- s) Registration requirements for IBs, CPOs, CTAs (5.22)
- t) Bulk transfer of accounts (5.23)
- u) Everything that isn't here really is here in section 5 (5.24)
- v) Applicability of Act (5.25)

Regulations then descend into a maddening description of why these regulations comply with current law

Most important is the Cost-Benefit Analysis:

1. Protection of market participants and public: irrelevant, because all accounts will be closed.
2. Efficiency and competition: the rules favor futures brokers and off-shore brokers. Duh.
3. Financial integrity of futures markets and price discovery: they just completely ignore this.
4. Sound risk management: protects us by requiring firms to have a lot of money on hand.
5. Other public interest considerations: they justify the rules by saying "well, there hasn't been any regulation before," or at least not enough. This is the only additional consideration. Whatever! What about:

- a) Loss of jobs
- b) Capital moving overseas to less-regulated brokers
- c) The fact that if people leave the US, then all of this is for nothing: how's that for cost-benefit?

