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CFTC Clarifies that FX Window Forwards are Not "Swaps"

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On April 9, 2025, the Markets Participants Division and the Division of Market Oversight (collectively, the "Divisions") of the Commodity Futures Trading Commission (the "CFTC") published a Staff Letter (the "Staff Letter") clarifying the Divisions' views on the regulatory treatment of certain foreign exchange products. The Divisions clarified that certain foreign exchange window forwards ("Window FX Forwards") should be considered "foreign exchange forwards" under the CFTC's regulations and, as a result, exempt from most CFTC regulations relating to swaps. The Divisions also clarified that package foreign exchange spot transactions that settle within T+2 are to be treated as "spot" transactions and outside the scope of most of the CFTC's swap regulations.

Background

All "swaps" as defined in the Commodities Exchange Act and the CFTC's regulations are subject to regulation by the CFTC. There are a number of products that either fall outside the scope of, or are otherwise exempted from, the definition of "swap" and therefore exempted from most CFTC regulations as they relate to swaps. These include "spot" transactions and "foreign exchange forwards", among others. A spot transaction is an agreement to physically exchange currencies within the customary timeline for the relevant spot market (generally T+2). A "foreign exchange forward" is an agreement to exchange currencies at an agreed price on a specific future date.

Window FX Forwards

Window FX Forwards are transactions where the parties enter into an agreement to exchange two currencies at an agreed price on one or more dates during a set period or "window", sometimes specific identified dates and sometimes any date within the specified window. The Window FX forward will settle on the last day of the window if the electing party does not elect an earlier date for settlement.

Market participants have been uncertain as to the regulatory treatment of Window FX Forwards because the definition of “foreign exchange forward” requires that the transaction be settled on a “specific future date.” Some market participants have been treating Window FX Forwards as “swaps” subject to CFTC regulations and others treating them as exempted “foreign exchange forwards.” The Staff Letter clarified that the Divisions interpret “specific future date” to mean a “clearly identified future date.” Since the exchange under a Window FX Forward will take place on one or more dates clearly identified upon entering into the transaction, they fall within the definition of “foreign exchange forward” and are exempt from the definition of “swap.” As a result, most regulatory requirements applicable to “swaps”, including the exchange of regulatory margin, will not apply to these transactions.

Package FX Spot Transactions

Package foreign exchange spot transactions (“Package FX Spot Transactions”) are two transactions where, in the first transaction, the parties agree to physically exchange two currencies on the next business day after the trade date (T+1) and, in the second transaction, agree to exchange the same two currencies in the opposite direction on the second following business day after the trade date (T+2). There can be variations where the parties exchange currencies on the same day they agree to the trade (T+0) under the first transaction and the next business day (T+1) for the second transaction, or a “roll” where the parties agree to exchanges over a series of consecutive days. While each transaction is documented separately, they are entered into as a “package”, meaning both parties agreeing to the first transaction is contingent on both parties agreeing to the second transaction and both transactions are priced together as a “package.” However, because each transaction is documented separately, they are separate legal obligations and performance under the second transaction is not linked to, or dependent upon, performance under the first transaction. The Staff Letter clarifies that these Package FX Spot Transactions should be treated as individual spot transactions outside the scope of the definition of “swap” and applicable CFTC regulations, provided that they are executed, confirmed and settled as individual transactions within the customary timeline for the relevant spot market (generally T+2).

What does this mean for Window FX Forwards and Package FX Spot Transactions?

As a result of being exempted or excluded from the definition of “swap” Window FX Forwards and Package FX Spot Transactions are not subject to most of the CFTC’s swap regulations. These products are not required to be traded on a registered exchange or cleared through a registered clearinghouse. Swap Dealers are not required to post or collect regulatory margin on these products, making them more affordable to market participants. It is important to note that foreign exchange forwards, and therefore Window FX Forwards, remain subject to certain trade reporting requirements and business conduct standards.

Related Professionals

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