



Guidance Note: Forward Foreign Exchange Transactions

13 September 2010

The Jersey Financial Services Commission (**JFSC**) are of the opinion that some forward foreign exchange activities are caught within the Financial Services (Jersey) Law 1998.

Under the heading 'Futures', (paragraph 7 of the First Schedule) it states:-

'Rights under a contract for the sale of a commodity, or property of any other description which is entered into for investment, not commercial purposes, and under which delivery is to be made at a future date and at a price agreed upon when the contract is made.'

Notes:

(1) A contract shall be regarded as made for investment purposes if it is made or traded on an investment exchange, or made otherwise but expressed to be as traded on such an exchange or on the same terms as those on which an equivalent contract would be made on such an exchange.

(2) A contract not falling within Note (1) shall be regarded as made for commercial purposes if under the terms of the contract delivery is to be made within seven days'

Therefore, in the opinion of the JFSC, any forward foreign exchange transaction, which has a proposed or actual settlement date of seven days or more and is for speculative purposes, falls within the definitions of regulated activity under the Law.

1 Guidelines

- 1.1 The JFSC policy is to follow the United Kingdom guidelines in respect of Foreign Exchange activities and a full description of those guidelines can be found in the Financial Services Authority guidance publications. These are available by post, or can be accessed on the FSA website at www.fsa.gov.uk
- 1.2 In order to assist Jersey regulated entities become aware of what is required from them in the conduct of such business, please find below some key points:-
- 1.3 'Spot' value foreign exchange transactions do not fall within the definitions of activity regulated under the Financial Services (Jersey) Law 1998
- 1.4 An 'Execution only' forward foreign exchange transaction is a transaction which falls within the meaning of the Law if it has a proposed or actual settlement date of seven days or more and is for speculative purposes

- 1.5 A Registered person who transacts 'execution only' instructions must establish whether the proposed transaction is for commercial purposes (not within the meaning of the Law) or for speculative purposes (within the meaning of the Law).
- 1.6 Commercial transactions would be those that would constitute a transaction that has been executed to settle for a pre-defined reason but not for the possible gain of exchange rate movements, for example, for the settlement of a commercial invoice.
- 1.7 If it is discovered either by written or verbal communication that the transaction falls under the 'speculative' area then the execution of the instruction must be done by a suitably qualified individual.
- 1.8 The person who deals is seen by the JFSC as the person who commits the legal entity by whom he/she is employed, to the counter party risk with a third party.
- 1.9 The person who gives advice on the merits of transacting in particular currencies with a settlement of seven days or over, is required to be registered as an investment employee and qualified accordingly.

2 Qualifications

- 2.1 The required qualifications of an investment employee engaged in Foreign Exchange dealing within the meaning of the Law, may vary depending on the core investment role he or she undertakes. If, however, the main role is purely acting within a foreign exchange environment then the ACI Dealing Certificate examination is the minimum qualification standard.
- 2.2 As from the 1st January 2001 the following qualification standards will apply to those staff whose main investment role is involved with foreign exchange activities caught within the Law:-
- 2.3 The minimum requirement to conduct forward forex is the ACI Dealing Certificate
- 2.4 New entrants (the first two years) should at all times work under the supervision of a properly qualified senior and should pass the ACI Dealing Certificate during their first year of employment
- 2.5 For execution only, the minimum requirement is the dealing certificate plus two years experience in an active trading environment
- 2.6 For the giving of investment advice to the merits of buying or selling a particular currency, the minimum requirement is the ACI Dealing Certificate plus five years experience in an active trading environment.
- 2.7 The views expressed above are given without responsibility on the part of the JFSC and it must be pointed out that interpretation of any statute will ultimately be for the courts to decide. If you require a reasoned interpretation of the Law, subordinate legislation or Codes of Practice we suggest you seek legal opinion from your legal adviser.