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December 14, 2012

Via Mail and Electronic Submission

Mr. David Stawick
Secretary
Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations: (RIN3038-AD88)

Dear Mr. Stawick:

Forex Capital Markets LLC ("FXCM") is a retail foreign exchange dealer ("RFED") and Forex Dealer Member of the National Futures Association ("NFA"). FXCM has been registered with the Commodity Futures Trading Commission ("CFTC") as a Futures Commission Merchant ("FCM") since 2001 and is one of the leading U.S. firms offering off-exchange forex trading to retail clients around the world. FXCM is proud of its position as an industry leader in retail FX both in the United States and globally. FXCM has been a staunch advocate for increased regulation for the U.S. forex industry and the protection of retail forex customers. FXCM submits these comments in response to the Commission's November 14, 2012 rulemaking proposal (the "November 14th Proposal") concerning "Enhancing Protections Afforded Customers and Customer Funds held by Futures Commission Merchants and Derivatives Clearing Organizations."

FXCM believes that in light of the bankruptcies of MF Global and PFG Best the regulations contained in the November 14th Proposal are necessary. However, we are concerned they do not go far enough in protecting the trading public and would therefore like to propose additional protections. Since the financial crisis of 2008, many FCMs and RFEDs have been struggling financially as the traditional business model for FCMs and RFEDs has come under enormous pressure. FCMs earn commissions on each trade their customers make; however, electronic trading has caused a price competition among FCMs that has resulted in falling commissions throughout the industry. RFEDs earn revenue on the bid/ask spread but tightening spreads in the industry have pressured RFED bottom lines as well.

Additionally, interest rates have plummeted depriving FCMs and RFEDs of a large portion of revenue derived from the interest collected on customer deposits. Furthermore, decreased volatility throughout all financial markets has lowered the amount of trading in general. This constant pressure on revenues can result in a firm making aggressive, losing bets with client funds (MF Global) or in outright fraud (PFG Best).

It is precisely because of this challenging business climate that we believe the following two proposals be given serious consideration.

Require all FCMs and RFEDs to employ a Top Ten Accounting Firm

One of the many reasons that Russ Wasendorf Sr. was able to get away with his Ponzi scheme for so long was that PFG Best had very poor internal accounting procedures. While no accounting firm is perfect, there should be much higher accounting standards for FCMs and RFEDs. The Platt Group publishes an annual ranking of public accounting firms that could be used by FCMs and RFEDs. Whether it is top 10 or top 25, FCMs and RFEDs should use a nationally recognized and respected accounting firm that will apply the same accounting standards that publicly traded companies must meet.

Require All FCMs and RFEDs to Publish a Consolidated Balance Sheet and Income Statement Once a Quarter

Futures Commission Merchants are very unique in the world of finance. They hold customer funds that are supposed to be in segregated accounts but they have no insurance in the event the firm goes bankrupt. The entire system revolves around trust. But with that trust violated something more must be offered to ease the investing public's mind, specifically, a complete, fully audited, and publicly disclosed consolidated balance sheet and income statement.

Currently, the CFTC publishes monthly "Net Capital" reports that disclose to the public how much money a FCM or RFED has set aside in capital. However, that report provides very little insight into how well the company is doing financially. By requiring FCMs and RFEDs to publish a quarterly, consolidated balance sheet and income statement the trading public will know how much risk they are taking with each firm since investors will be able to weigh the liabilities along with the excess capital that a firm has.

Furthermore, the published balance sheet and income statement should include everything (i.e. holding company's financials) since what happens to other subsidiaries of the company can easily effect the regulated entity. Each company should be required to provide a link to these financial statements on its own homepage so that the public can conduct proper due diligence.

Too often, those FCMs and RFEDs that are on the edge of insolvency lure customers in by marketing unsustainable offers (low commissions, account opening bonuses) that temporarily puts off the inevitable. If traders have access to such a firm's income statement they will be able to see for themselves that these kinds of marketing gimmicks may not be producing revenue for the firm (or even leading to losses) and this will allow the trader to make a safer choice and also discourage firms from engaging in uneconomical business practices. One customer found this out the hard way:

http://www.huffingtonpost.com/2012/07/17/pfgbest-peregrine-customer-losses_n_1679825.html

> "But Khan was not worried about risk or diversification when he moved his money to PFG Best, he said. He had been aggressively saving for years and wanted to venture into commodities, which can produce high returns though with increased risk, to further grow his $380,000 nest egg.
>
> In December, Khan transferred all his money from a Charles Schwab account to PFG Best, attracted by low fees that were half the cost of Schwab's and the faster trading platform."

Had customers like Khan known the poor state of the finances of firms like PFG (who routinely hard sell these illusory discounts) then such a tragedy could have been avoided.

In addition, by requiring this additional disclosure customers will be able to watch out for firms who take excessive risks and have abnormally high volatility in their earnings, and other warning signs they may not be aware of. This would require firms to be more vigilant with the risks they are taking.

PFG Best highlights the need for putting the public interest ahead of the desire of many FCMs and RFEDs to keep their financials private. FCMs and RFEDs hold customer funds in trust. If a FCM or RFED goes out of business the collateral damage to the firm's customers and to the confidence of market participants is far worse than with your average business, which is why the standards need to be much higher. In short, any FCM or RFED that holds customer funds in trust needs to accept the costs that come along with that trust.

FXCM appreciates the opportunity to offer these comments to the Commission on the November 14th Proposal.

Sincerely,

Drew Niv
Chief Executive Officer
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