

**From:** John Webb <webbjw1@bigpond.com>  
**Sent:** Friday, January 22, 2010 7:06 PM  
**To:** secretary <secretary@CFTC.gov>  
**Subject:** Public Comment on Proposed Regulations - Retail FOREX Transactions

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Dear Secretary,  
I have pleasure submitting my comments for your consideration. Thank you.  
John Winston Webb

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## "CFTC seeks public comment on proposed regulations regarding retail Forex transactions".

Submitted by John Winston Webb to [Secretary@cftc.gov](mailto:Secretary@cftc.gov)  
Date: January 22 2010

John W Webb

John Webb was the founder and managing director of MMD, Australia's first independent interbank, corporate cash, and short dated securities broking company. He was given approval more than 30 years ago by The Reserve Bank of Australia, and The Australian Federal Treasury to establish the very first onshore interbank foreign exchange broking desk in Australia.

The New Zealand Government regulators also gave him a similar approval to establish New Zealand's first onshore interbank foreign exchange broking company. Both these companies are now part of the ICAP Group - the world's premier inter-dealer broker. John has been involved in the financial markets in UK, South East Asia, Australia, and New Zealand at different times over the past 45 years, having started his career in the London Stock Exchange as a trainee stockjobber with Durlacher & Co.

**He holds very strong views about the potential conflicts of interests in the dealing, and trading of financial instruments.**

**John Webb maintains that companies dealing in the cash and securities markets must be either a broker, or a dealer - he claims it is impossible to be scrupulously fair to clients by being both at the same time.**

He has written about the topic in newspaper articles, published nationally.

John Webb has held directorships of:-

Hong Kong Bank of Australia Ltd (HSBC);

First Leasing and Finance Ltd (a wholly owned subsidiary of The First National Bank of Boston);

Australian Ratings Pty. Ltd (now Standard and Poor's);

National Mortgage Market Corporation Ltd;

and several private companies.

He has acted as a financial consultant to a Treasurer of the State of Victoria, and served on both Australian Federal and State Government committees concerned with financial markets structures.

He is currently a Member of Lloyd's of London.

Dear Secretary

I am responding to the invitation to comment regarding the proposed regulations regarding retail FOREX transactions.

My involvement in the industry is précised above.

As you may have already noted I have very strong views about the operations of ‘**brokers**’ versus ‘**dealers**’.

Definitions of each are set out below:-

**Broker**

A person or entity who for a commission or a fee, brings together buyers and sellers of property or services and, while acting as the agent of one or both of the parties, helps them negotiate contracts.  
A broker never has title to the property.

**Dealer**

Any person or company that buys or sells securities for his or her own account.  
The dealer realizes profit or loss from the difference between the price paid and the price sold.  
A dealer is in contrast to a broker, who trades on behalf of someone else.  
A dealer always has title to the property, the broker never does.

**MANDATED MINIMUM CAPITAL REQUIREMENTS**

It is my very firm contention that ‘broker’ and ‘dealer’ should have very different quantum’s set to rules and regulations applied.

The proposed regulations should take into consideration the risk exposure, and the fundamental operations of each.

They are vastly different, and that consequently is reflected in the commercial risk profiles of each operation.

For example a **pure broker** operating a ‘No dealing Desk/No requote’ retail forex platform has a fraction of the exposure that would apply to a dealer operating a retail forex platform as a principal.

The first facilitates the showing of unrelated market makers prices to unrelated price takers. The platform operator is providing a pure broking service, and consequently has no sudden price movement risk as it is not operating as a **dealer/principal**.

However, the ‘dealer’ operator is taking a ‘view’ on a possible price movement, and is either consequently ‘long’ or ‘short’ on their book.

At the same time that operator may be trying to give the impression of making a fair, impartial, and just market to the retail customer.

But that not the case. This operator is a wolf in sheep’s clothing!

I would like to see in large letters, prominently displayed, the fact that the operator of this type of platform is acting as a principal, and is therefore making prices on their own account, and therefore for their own benefit.

This would go a long way to protecting retail customers from this type of platform operator possibly using customers ‘forward sell orders’ and ‘stop loss orders’ against the interests of the customer.

In relation to capital adequacy ratios the amount applied should be at least a minimum 10 times greater for the dealer operator against that required for a pure broker operator.

This differential should begin to recognise the commercial risk relationship between the

two types, which are as different as 'chalk' and 'cheese'.

(Refer: mandated minimum capital requirements for entities serving as counterparties to retail off-exchange foreign currency transactions – release 5772-10 – Dated Jan 13, 2010)

## **REGISTRATION OF OFF-EXCHANGE FOREX MARKET PARTICIPANT ENTITIES/PEOPLE (RFEDs)**

I have attached information from the website of ASIC (Australia Securities & Investments Commission) which gives the dot points for current legislation operating in Australia in relation to the licensing of operator company's/firms, and the representatives, and staff.

All company's/firms, and representatives working in the financial markets are required to be licensed, and malefactors are severely dealt with.

Further, all individuals providing advice or financial product information to retail customers must be \*RG146 qualified, and registered.

ASIC - \*Regulatory Guide 146: Licensing: Training of financial product advisers (RG 146). RG 146 sets out the minimum training standards for financial product advisers and explains how advisers can meet these training standards.

I believe the Australian Regulators have set firm, but workable standards since their overhaul of rules and regulations in March 2004

## **Australian Government - ASIC information website Standards for financial services**

*Since March 2004 the law in Australia has imposed higher standards that protect you whenever you deal with banks, building societies, credit unions, insurance companies, superannuation and managed funds or with people like stockbrokers, financial planners and insurance brokers.*

### ***Every business must hold a licence***

*All businesses that offer 'financial services' must hold an Australian financial services licence. You'll hear some people call these an 'AFS licence'. **Run a free check** on our website to see if a business you're thinking of dealing with is licensed.*

*All licensed businesses must:*

*operate efficiently, honestly and fairly*

*ensure staff and representatives are properly trained and supervised*

*have proper complaints handling procedures in case anything goes wrong and must belong to an independent complaints scheme that you may use at no cost*

***.How to complain about a financial product or service***

*have arrangements in place to compensate you if they break the law and as a result you lose money.*

*More about compensation arrangements [link to new URL on PI Insurance]*

*The only important exception applies to businesses that offer only lending products, such as credit cards, loans, and hire purchase agreements. They operate under State and territory laws. However, ASIC does make sure that firms don't give misleading information about loans when they advertise.*

### ***Every business must tell you what you need to know***

Anyone advising you on or selling you financial products must give you key documents about their services, advice and the products:

<b>Service or product</b>	<b>What the document must tell you</b>
<b>What financial service are you getting?</b>	<p>Your financial services guide tells you: the services they offer how they operate how they get paid (including any commissions) how they deal with customer complaints about their compensation arrangements any interests, associations or relationships that could influence them.</p> <p><b><u>More information about financial services guides</u></b></p>
<b>What personal financial advice are you getting?</b>	<p>Your statement of advice tells you: the advice they've given you the information on which it's based <b>how they get paid (including any commissions)</b>, and any interests, associations or relationships that could influence them.</p> <p><b><u>More information about statements of advice</u></b></p>
<b>What financial product are you buying?</b>	<p>Your product disclosure statement tells you: features of the product fees that apply the benefits and risks of investing commissions that may affect your returns, and information about complaints handling and cooling off rights other information that is material to your decision to invest.</p> <p><b><u>More information about product disclosure statements</u></b></p> <p><b><u>More information about compensation arrangements and Australian financial services businesses</u></b></p>

## **Other obligations**

Financial businesses also have other obligations to you about:  
handling your money when you apply for a financial product  
advertising for financial products and services  
confirming transactions  
cooling off periods for the return of certain financial products  
specific rules control how salespersons can approach you when you have not specifically asked for information.

## **Shop around**

Please shop around for the right advice and most suitable products at a price you can afford. ASIC sets minimum standards, but you may not be happy with just the minimum. Successful consumers always shop around

## **Australian financial services licence**

*Under the law, any business that offers or advises you about financial products must hold an Australian Financial Services Licence (AFS) or be authorised to represent a licence holder.*

*'Financial products' include deposit accounts, life and general insurance, superannuation and investments in managed funds, shares, debentures, and other more complex financial investments. (Loans and direct investments in real estate are regulated under State laws, and are excluded from ASIC licensing.)*

*An Australian Financial Services Licence offers you various legal protections if something goes wrong. No licence means no protection, so check licence details for any financial services business you're thinking of dealing with.*

***Search our Australian Financial Services Licence register free of charge*** to find important information about the business you may be dealing with. (These licences may be called 'AFS Licences' even 'AFSLs' for short.)

*Here's a guide to the results you'll get.*

<b>What you'll see on our register</b>	<b>How this information can help you</b>
<b>Licence number</b>	<p><i>Helps identify the right business from others with similar names.</i></p> <p><i>(This number must appear on the licensee's Financial Services Guide, Statements of Advice and Product Disclosure Statements.)</i></p>
<b>Name</b>	<p><i>The exact registered name of the company that holds the licence. Some businesses may use a different business name for different products or services.</i></p> <p><i>(If you want to know more about the company itself, do a company search using this name.)</i></p>
<b>Status</b>	<p><i>'Current' means they can deal with you. 'Ceased' means they can no longer deal. Deal only with a 'current' licence holder.</i></p>
<b>ABN</b>	<p><i>Australian Business Number, used for GST purposes.</i></p>
<b>Comm. Date</b>	<p><i>Commencement date, when their licence first began.</i></p> <p><i>All licences will begin at some time after March 2000.</i></p>
<b>Previous licence details</b>	<p><i>Some types of businesses were licensed by ASIC before March 2000.</i></p> <p><i>Other types of financial services businesses did not need the previous ASIC licence, for example superannuation, life and general insurance companies.</i></p>
<b>Role</b>	<p><i>Previous licences were divided into separate roles. Most licence holders were 'securities dealers'.</i></p>
<b>Licence no</b>	<p><i>The previous licence number</i></p>
<b>Comm. Date</b>	<p><i>Commencement date, when the previous licence started.</i></p>

<b>Principal business address</b>	<i>The licensee's principal business address in Australia.</i>
<b>Comm. Date</b>	<i>Commencement date, when they started at that address.</i>
<b>Service address</b>	<i>Where to serve official legal documents.</i>
<b>Comm. Date</b>	<i>Commencement date, when that service address started.</i>
<b>Auditor of FSR licensee</b>	<i>Who audits the licensee's financial statements and who must report to ASIC any breaches of licence conditions?</i>
<b>For authorised representatives for this licensee, Authorised Representatives</b>	<i>This link opens our register of Authorised Representatives, and shows you the name and other details of any separate business whom this licensee has authorised as its representatives.</i>  <i>If you are dealing with an authorised representative, you are still protected as though you were dealing directly with the licensee itself.</i>
<b>For Licence Conditions for this Licensee, Licence Authorisation Conditions</b>	<i>This link shows you what financial products and services the licence allows this licensee to offer. In general, if a financial product or service is not actually mentioned, then the licensee is not authorised to offer it. This should match what's in the licensee's Financial Services Guide.</i>  <i>If you are dealing with an authorised representative, they may offer only the products and services that their licensee is allowed to offer.</i>

Also see [Check that people or companies are licensed](#)

## **Regulatory issues arising from the financial crisis for ASIC and for market participants**

**Speech by**

**Tony D'Aloisio, Chairman**

**Australian Securities and Investments Commission**

Extract.....

\* **OTC markets:** "OTC markets are fundamentally important to Australia's financial markets and economy. ASIC is working with industry to improve efficiency and transparency of Australian OTC derivatives market. This includes encouraging: standardisation of contract terms; the increased use of electronic trading platforms, and the provision of data to regulators about trading activity, pricing, and size and location of exposures.

*We will continue to explore ways to ensure that participants can confidently participate in Australian OTC markets and assess and manage their counterparty exposures.*

*• **Balance sheet strength:** I spoke last year on ASIC examining balance sheet strength and risks of market participants. This is a specific focus for us and initially we are looking at the larger market participants to ensure they have sound processes for managing and measuring financial and trading book risk. This is part of a broader review of capital liquidity requirements for non-APRA regulated licence holders.*

*This means looking beyond the reported financial information to the nature of financial risks being taken and how they are managed. For example, we will look at principal positions and how they are used to facilitate client business from straight client facilitation through stock lending to writing options, swaps and warrants.*

*• **Risk-based Compliance:** In a similar vein we'll be taking a more active and ongoing look at operational and business risks and how these are managed. In the next eighteen months we will engage market participants in assessing their compliance and risk management frameworks to see whether they are suitable for the size and nature of the businesses.*

*• **White label brokers:** We know that many of you are concerned that, there are now a large number of licence holders that provide advice on exchange traded products with access to trading through a market participant. The compliance structure of these entities may not be to the same standard as that of market participants. Since our restructure became effective in September we have been active in this area. We have conducted surveillance on a number of entities and this has resulted in some of those licence holders making significant changes to their compliance and risk management structure. We have included these licence holders in our risk-based compliance approach within the market participants team and we are recruiting additional staff for this purpose*

*• **Retail broker issues:** We are going to conduct a survey of retail stockbroking clients to see how they value the services you are providing.*

*The focus of the survey will be on the quality and nature of financial services provided to retail clients of stockbrokers. We want to see how well the current model is working. The areas we are looking into include general and personal advice, and how it is provided; and we will examine managed discretionary accounts, point of sale disclosure on complex product features including partly paid securities and whether advice is useful and understandable”.*

## **OFF-EXCHANGE FOREIGN CURRENCY TRANSACTIONS**

### **Anti fraud – anti terrorist funding – money laundering issues**

Firstly, I believe the main issues are centred on two factors:-

(a) the customer 100 point qualification being strictly implemented, and spot checked by the Authorities with external random audits being conducted on operators customer lists. Just the threat of a random audit, with penalties ranging from suspension or modification of the operating license should have a fear factor that displays the determination of the Regulators to keep the industry ‘clean’

.....and

(b) the clear differentiation of the types of transactions into:-

**Deliverable Foreign Currency transactions** - where total value of the currencies dealt in

a transaction are transferred from principal to principal  
(E.g. the Physical Market)

and

**Non deliverable Foreign Currency transactions** - where contracts generically known as derivatives, are settled by the payment of the 'dealing differences' between two parties.  
(E.g Derivatives Market)

The physical market is the province of the international banks and my experience shows that they are very conscious of Government provisions relating to international currency flows.

The derivatives market does not involve the notional amount of the foreign currency transaction changing hands. The only way I know where money can be transferred across country boundaries would be by a customer lodging an account deposit in one country and withdrawing it in another country. I would think that if a Retail Platform operator executed that type of transaction for a customer there would be a genuine bonafide reason such as the customer changing residence from one country to another. And any such amounts are likely to be so small as to be totally insignificant in relation to current daily turnovers of USD4 trillion in the Physical market, and USD\$2 trillion in the derivative market.

## **LEVERAGE/GEARING**

In conclusion I wish to comment on the proposal to de leverage 'across the board' the derivative Forex market to 10:1

I think this would be an enormously retrograde step.

If gearing reduction must be introduced, for reasons I cannot fathom, then I suggest the reductions are applied to the 'principal/dealers', and not to the 'broker' operators.

What objective is trying to be achieved by the reduction of gearing levels? Is it to protect customers from themselves?

The worst aspect of the whole proposal is that there is a real danger of creating a sub class of financier who will jam themselves in between the customer, and the Retail Platform Operator. And that could create enormous problems. It has already happened in other markets with third party margin lending and the outcomes in Australia have been disastrous E.g. Opes Prime.

The customer must be afforded the right to operate within their own choice of gearing, and the Platform Operator must also have the same right to grant/deny/regulate the gearing to the customers.

Gearing is a personal issue and I believe it is a customers right to determine the amount of risk/reward that they want.

No authority governs the size of personal indebtedness via credit card facilities etc and the same rules MUST apply here.



The main responsibility of every participant is to aggressively disseminate a full and fair disclosure of information to the customer, and to get every customer to verify in writing (or by computer recognition) the fact that they are aware of the math that applies to gearing, both positively and negatively.

Knowledge, and more knowledge, education, and more education programs for the participants is much more important than any attempt at prohibition, which history shows has never succeeded.

As a member of Lloyd's of London I am fully aware of gearing as the Syndicates I have participated in are geared in many cases to exactly the same degree as that currently available in the OTC Off-Market Retail Foreign Exchange currency transactions.

And finally I request that you consider the fact that the Retail Forex Markets have opened up long overdue benefits for non speculators, and many of these benefits would be taken away if the 100:1 gearing is reduced.

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