

From: Sharon Glen <sharonglen5@bigpond.com>
Sent: Sunday, January 24, 2010 5:34 PM
To: secretary <secretary@CFTC.gov>
Subject: Regulation of Retail Forex

Ref: RIN 3038-AC61
Federal Register 75 FR 3281

Mr David Stawick
Secretary
Commodity Futures Trading Commission
1155 21st Street, NW.
Washington, DC 20581

January 25, 2010

Dear Mr Stawick,

Thank you for the opportunity to comment on the proposed changes to retail Forex. The Commission is to be congratulated on the many excellent initiatives to address consumer protections.

For the purposes of comment, this paper will address only two of the proposed changes. The paper will however, also raise additional matters of importance to retail forex consumers. These additional matters are consumer protection initiatives that the Commission may wish to consider further and include in the proposed legislation.

1. Proposed Regulation 5.9 - Security Deposits for Retail Forex, in particular, Proposed Regulation 5.9 (a) which requires each RFED and FCM to collect from the customer a security deposit equal to ten percent of the notional value of the retail forex transaction, effectively limiting leverage across the board to 10:1.

Comment: The proposed tightening of leverage to this extent reaches well beyond what is required to adequately address consumer protections. It will instead, very likely be wholly counter-productive to industry viability, giving rise to unintended consequences (as already stated by the FXDC members) in sending significant volumes of US business and taxation revenue off-shore.

From the trader's perspective, 10:1 across the board fails to recognize the varying levels of skill and knowledge already present among more experienced traders; it discourages entrepreneurship; it disenfranchises small accounts from participation; it fails to acknowledge the root causes of traders taking excessive risk; it fails to take into account the impact of the Commission's own regulatory initiatives (particularly regarding new disclosure provisions, capitalization and registration requirements) in this same document (if implemented), many of which will assist to address the exposure to risk issues for traders operating in the off-exchange arena; it is premature (and potentially unnecessary) given the need to allow sufficient time for proper assessment of the recent NFA rule changes to reduce leverage from 400:1 to 100:1.

In reviewing the Commissions' supporting argument in favor of reducing leverage to 10:1, it appears that the Commission is particularly concerned about ensuring solvency of dealers (a legitimate concern), without necessarily taking into full account the impact of a further widespread blanket reduction in leverage upon traders and the industry as a whole.

Nevertheless, recognition by the Commission of the potential perils for new traders (in particular) to engage in excessive risk taking is an entirely valid and shared concern. It is therefore proposed that leverage be moderated as follows -

10:1 for the first 3 months of live trading

25:1 in the next 9-12 months
50:1 for traders up to 2 years
100:1 for traders with more than 2 years

This structure enables the CFTC to put some brakes into the system early on (which is where most of the damage occurs for new traders). Traders who prefer higher levels of leverage would still be able to utilize that capacity but must demonstrate sufficient experience to be fully cognizant of the risk. Moreover, if graduated levels of leverage are linked to improved online education (see # 5 below), such a structure provides traders with considerable incentive to improve both their knowledge base and performance. This is a potential win/win outcome for dealers and traders alike. Successful traders are long-time repeat business. It also provides a measured, balanced response by the Commission to meet its obligation to protect consumers at the point at which they are most vulnerable to exploitation (due to the new traders' lack of experience and knowledge) yet also importantly recognizes that more knowledgeable and experienced traders are sufficiently competent and capable of making their own risk management decisions and are entitled to have those freedoms at their disposal.

2. Proposed Regulation 5.2 Prohibited Transactions - Anti-fraud. Regulation 5.2, which, in addition to prohibiting fraudulent conduct in connection with retail forex transactions, now prohibits anyone from acting as the counterparty for a retail forex transaction in an account for which that person has discretionary trading authority.

Comment: This regulation, addressing counterparty conflict of interest where discretionary trading authority has been granted, speaks also to the wider conflict of interest issue surrounding dealing desk operations. This regulation needs to be expanded (or re-written to incorporate a separate regulation) that requires the elimination of all dealing desk transactions in favour of STP or ECN transactions only. From the consumer perspective, it is manifestly inappropriate that one's broker is currently allowed to be taking the other side of the trade. This pollutes the broker's duty of care to customers, rendering market advice, trade signals and opinion offered by said brokers as highly unreliable. New traders seldom understand the importance of this separation of functions, or the way in which they can be manipulated by the dissemination of mis-information by brokers sitting on the other side of the trade.

Additional Consumer Protection Matters:

3. Proposed New Regulation: Creation of a Forex Retail Traders' Consumer Advice Bureau

Concept: Establishment of an independent consumer run FX Retail Traders Consumer Advice Bureau and Resource Centre, funded by a very small industry levy (e.g. 0.1% of revenue) taken from dealer's profits (similar to the UK banking/finance industry initiative recently implemented).

Comment: A Consumer Advice Bureau would enable traders to access fully independent high quality advice. Such an organisation could additionally act as a central resource point, collating and providing information on any and all matters associated with retail Forex, in effect, a one-stop-shop and first point of call for all new traders. Further, such an organization could meet a current need for the undertaking of quantitative and qualitative research on consumer experience of the retail forex market (an adequate research base is yet to be established, but is urgently required to accurately quantify the issues and properly inform debate).

Consumers presently lack voice equity in the industry. There is no official body to speak for traders, no official body for traders to liaise with regulators or industry providers, nor indeed, an official body for regulators or industry to consult with on a regular basis. The CFTC has a fiduciary obligation to grant consumers a seat at the table from which the industry as a whole feeds.

4. Proposed New Regulation: Charter for the CAB (Consumer Advice Bureau) to establish Industry Benchmarks and issue Quality Seals.

Concept: Benchmarks and quality seals would be applicable and available to all industry providers (on a voluntary basis) who meet the standards.

Comment: This initiative provides consumers with an independent means of comparing performance and offerings between dealers and all other industry service providers. Traders tend to listen to the recommendations of other traders above any other source. Fraudulent and exploitive behaviours from less reputable operators towards the more naive inexperienced traders up to this point in time has generated a climate of mistrust and suspicion for all (regardless of whether or not such mistrust is warranted.) Voluntary accreditation of Forex service providers (brokers, IB's, mentors, educators, websites, trade signal services etc.) meeting high standards of integrity and service provision would provide a means to set a standard, and for service providers to make their own choices about meeting those standards. This in turn would provide consumers with important guide-posts to quality industry outlets and providers.

5. Proposed New Regulation - Specific Disclosure Requirements - Education.

Concept: A mandatory no-cost Forex 101 Education Module written by a team of experienced retail traders (minus commercial agendas of their own), delivered online through brokers, prior to new traders opening a live account. Leverage increases linked to successful completion of further online tutorials.

Comment: New traders are frequently drowned in a sea of completely irrelevant information, including many of the online tutorials offered by brokers free of cost to new traders. The overload of irrelevant information can divert trader attention from the trading knowledge that matters most, contributing to losses in absentia of being properly informed from the outset. While many brokers are presently making significant efforts to address trader education, the content of those courses needs scrutiny and external rigor free of any conflict of interest. The role of education, of proper and full information prior to entering the retail Forex market, together with the generating of a retail environment conducive to continued learning in the first 2 years of the trader's market experience, cannot be emphasized enough.

Summary

This moment in time is an important opportunity for the CFTC to set this industry on a sound footing for the long term. Consumers need to be partnered into all industry relationships. The business advantages to dealers are considerable (given that consumers listen to the advice of other consumers ahead of any other source), as are the advantages to the Commission in meeting its obligation to watchdog consumer protections by ensuring fair trading practices. The regulatory changes being proposed by the Commission are for the most part, valuable additions, however they are only part of the consumer protection equation. The other part of the equation is elevating consumers themselves to a place where they can have full and fair equity at the industry table.

Thank you for the opportunity to submit comment on the CFTC's work.

S. Glen
Forex Retail Trader
Equities, Options and Futures Trader
Former Independent Forex Analyst, Market Educator, Online Author
B. App. Sc., Master of Public Administration, Master of Teaching ('10)