

From: J.Barrington Jackson <barrnton@gmail.com>
Sent: Sunday, January 24, 2010 6:47 PM
To: secretary <secretary@CFTC.gov>
Subject: Regulation of Retail Forex

Re: RIN 3038-AC61

Greetings,

This letter is written in opposition to the proposed regulation requiring security deposits sufficient to reduce the leverage in retail forex transactions to 10:1. The leverage should be retained as 100:1 for major currencies and 25:1 on non-major currencies.

I am a retail trader in forex.

Retail traders do not need the "protection" offered by the proposed regulations for the following reasons:

1. The intent behind these transactions are speculative, and the retail trader understands that only risk capital, money that the trader can afford to lose, is to be used in such transactions. Increasing the security deposit is not rationally related to the objective of protecting vulnerable populations from fraudulent marketing practices, since higher net worth doesn't mean greater sophistication.
2. The exposure to loss beyond the amount placed in the forex account is minimal to nil. For practical purposes collecting such losses from the customer thru legal process costs more than the amount owed, and in any event modern electronic trading and high forex liquidity allows for swift position liquidation prior to the creation of a negative account balance. Given the dealer's own self interest to avoid customer negative account balances, the electronic nature of the trading, and the high liquidity in major currencies, leverage higher than 10:1 can be easily dealer managed to avoid loss in excess of the account balance. Access to currencies with lower liquidity can be shut off if necessary.
3. I note that previous regulation with respect to stop loss orders has actually made it more difficult for the US based trader to manage risk of loss. Where was the Commission's concern for customer losses then?
4. Counterparty risk is not a risk that would be alleviated by increasing the security deposit requirements. Counterparty risk is the credit risk of the counterparty, and is addressed primarily by the capital requirements required of the dealer. Practically speaking, the dealers often do not even hedge their retail counterparty exposure since at any given time most of the retail open positions end up on the wrong side of the market. To suggest that the proposed reduced leverage alleviates counterparty risk is simply a fabrication.
5. Requiring additional capital in the customer account in order to cover customer funds in the case of failure of the dealer is nonsensical. The additional capital requirement would only mean that should liquidation occur, the customer will have more in the account to lose. Requiring a liquidation risk premium, the additional funds required because of the

reduced leverage, simply creates a tax on the capital transaction, and makes United States based accounts less competitive with similar accounts in foreign countries.

6. What "current industry practices" did the Commission consider? Is the Commission more concerned with protecting currency futures contracts and other products that compete with the forex market? Price discovery of the exchange rate between two currencies used in worldwide trade is much more efficient and transparent than the Chicago proprietary futures products which only approximate a basket of exchange rates and which trade in a smaller market; and by definition a smaller market is more susceptible to price manipulation.

Generally we are at the "after the credit bust" point in the business cycle where regulators are called upon to prevent the credit abuses of the immediate past. The danger is always over regulation and mistargeted regulation. Capital is attracted to the United States because of a sound economy and the safety provided in part by regulation. The U. S. economy is however based upon incentives to put capital at risk. Risk capital is the mother of invention. And speculators provide a counterparty to business transactions that lower the cost of doing business. But mistargeted regulation creates disincentives to transact business and pushes capital elsewhere.

The fact is that the world no longer needs the blessing of US regulators for capital transactions such as Forex. Witness the US attempts to regulate internet gambling and other moral legislation. The result has been that most of the world's internet traffic no longer passes through US based internet hubs. Protectionist measures are invariably futile — this proposed reduced leverage will not protect Chicago's currency futures contracts. Those contracts will have to be redesigned to incorporate forex pricing and marketed based upon their ability to hedge to a specific future date, required for business management of currency risk.

Innovate, not regulate.

Respectfully submitted,

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