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To: secretary <secretary@CFTC.gov>
Subject: Regulation of Retail Forex

Legal Challenges to the New CFTC Proposal

The CFTC's new proposal clearly violates the Regulatory Flexibility Act (RFA), which requires that agencies, in proposing new rules, consider the impact of those rules on small businesses. The new rules would also violate a series of WTO treaties that the US signed in 1999.

Obviously the burden of regulatory compliance and regular audits by multiple agencies (despite the intermediary's home country or regulation) would be too much burden for the typical small introducing broker or independent service provider. Plus, the new rules say that the broker must "guarantee" their intermediary legally and financially. Besides going against the very concept of free markets, no broker in their right mind would put their business at risk by becoming responsible for someone else's.

And, without these intermediaries, who stands between the trader and their financial institution to act as an advocate on their behalf?

On March 1, 1999, countries accounting for more than 90% of the global financial services market signed onto the World Trade Organization's Financial Services Agreement (FSA). By signing the FSA, they committed to deregulate their financial markets.

By signing the FSA, the U.S. agreed not to break up "too big to fails", for example. The U.S. also promised to repeal Glass-Steagall, and did so 8 months after signing the FSA.

Indeed, in signing the FSA and other WTO agreements, the U.S. has legally bound itself as follows:

. No new regulation: The United States agreed to a standstill provision that requires that they not create new regulations (or reverse liberalization) for the list of financial services bound to comply with WTO rules. The United States has made broad WTO financial services commitments and is thus forbidden by this provision from imposing new regulations in many areas.

. Removal of regulation: The United States agreed to try to eliminate domestic financial service regulatory policies, even ones which meet GATS (General Agreement on Trade in Services) rules, which may adversely affect the ability of financial service suppliers of any other (WTO) Member to operate, compete, or enter the market.

. No bans on new financial service products: The United States is also bound to ensure that foreign financial service suppliers are permitted to offer in its territory any new financial service, a direct conflict with the various proposals to limit various investment instruments, such as certain types of derivatives.

. Certain forms of regulation banned outright: The United States agreed that it would not set limits on the size, corporate form or other characteristics of foreign firms.

. Treating foreign and domestic firms alike is not sufficient: The GATS market-access limits on U.S. domestic regulation apply in absolute terms; that is to say, even if a policy applies to domestic and foreign firms alike, if it goes beyond what WTO rules permit, it is forbidden. And, forms of regulation not outright banned by the market-access requirements must not inadvertently modify the conditions of competition in favor of services or service suppliers of the United States, even if they apply identically to foreign and domestic firms.

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