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COMMENT
CL-08509

From: Grace laCorte <grace.lacorte@tradition-na.com>
Sent: Thursday, March 18, 2010 3:32 PM
To: secretary <secretary@CFTC.gov>
Cc: Gensler, Gary <GGensler@CFTC.gov>; Chilton, Bart <BChilton@CFTC.gov>; Dunn, Michael <mdunn@cftc.gov>; O'Malia, Scott <SO'Malia@CFTC.gov>; Sommers, Jill <JSommers@CFTC.gov>; msgreen@pattonboggs.com
Subject: Regulation of Retail Forex - RIN 3038-AC61
Attach: CFTC ltr. 3-18-2010.pdf

Enclosed please find letter dated March 18, 2010. Hard copy to follow via regular mail.

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FXDD

March 18, 2010

BY ELECTRONIC MAIL

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

Re: Regulation of Retail Forex – RIN 3038-AC61

Dear Mr. Stawick:

FXDirectDealer, LLC ("FXDD") is a leading online Foreign Exchange firm dedicated to providing customers a reliable, efficient, liquid and transparent environment for their trading in the spot foreign exchange market. FXDD is pleased to submit this letter in response to the request for comments of the Commodity Futures Trading Commission ("CFTC" or "Commission") on the Proposed Rule published on January 20, 2010, on the Regulation of Off-Exchange Retail Foreign Exchange Transactions and Intermediaries (RIN 3038-AC61, the "Proposed Rule"). Given the significant role that FXDD plays in providing fast and efficient trading facilities for small investors in the foreign currency markets, we thought our perspective would be relevant and useful to the Commission.

We appreciate the work done by the CFTC to propose regulations implementing the regulatory reform provisions of the 2008 Farm Bill related to Forex trading. FXDD embraces the CFTC's regulatory oversight because we believe strongly that creating a consistent and higher standard for the industry is appropriate to protect the interests of the investor and to promote the U.S. market as a safe harbor for OTC trading. The CFTC, in conjunction with our self-regulatory organization, the National Futures Association ("NFA"), has been instrumental in reducing risk and protecting consumers, while also being sensitive to the industry's needs to compete in a global market.

FXDD believes that the overall approach of the Proposed Rule is consistent with these important goals and objectives, with one significant exception. That one exception is a provision entitled "Proposed Regulation 5.9 – Security Deposits for Retail Forex Transactions" (the "Provision"), if adopted, will have devastating consequences for both U.S.-registered Forex dealers and present and future U.S. retail Forex traders.

The Provision would restrict leverage on retail Forex transactions to a level of 10:1. This is a 90% reduction from the 100:1 level permitted for major currencies under Section 12 of the NFA's recently enacted Financial Requirements, the accepted standard for the industry. If the Proposed Rule is passed with this Provision, the Proposed Rule will effectively put the American Forex industry out of business and destroy a vibrant market while not providing any meaningful customer protection benefits.

If leverage is reduced to 10:1, U.S.-registered Forex dealers will be unable to compete with legitimate and regulated foreign-registered Forex dealers in the United Kingdom and the greater European Union, where no leverage standards have been imposed by the FSA or other regulatory authorities. In these jurisdictions most dealers leverage at a rate of 200:1. Furthermore, the CFTC's proposed leverage restriction would only affect Registered Foreign Exchange Dealers, allowing other categories of exempt entities to continue to offer 100:1 leverage. If required to post significantly higher collateral up front, most investors will opt to move to a foreign-registered Forex dealer, creating an insurmountable competitive disadvantage for CFTC-registered Forex dealers. U.S.-registered Forex dealers will be forced to go out of business or move abroad. The United States will lose a growing business which generates economic activity and jobs, and provides investment opportunities to consumers both from the United States and abroad. Although some may believe a draconian reduction in leverage in the spot market will compel traders to move to the exchange traded futures market, the evidence simply does not support such a conclusion.

Further, the 10:1 leverage provision is contrary to the stated policy objectives of the CFTC. Rather than providing meaningful customer protection benefits, the Provision will effectively force consumers to trade on other platforms that may not be required to conform to the CFTC's standards and regulations. Even if the Provision does not force all domestically registered firms out of the marketplace, it will leave most small investors unable to afford to trade. The Forex market's efficiency leads to razor thin spreads: leverage of greater than 10:1 is a necessary economic feature of these transactions to make them economically viable for most customers. The Provision would require customers to increase their collateral deposit tenfold, and at that rate, most customers would simply not have the working capital to trade in the United States. These customers will have a choice: either discontinue their trading activities, which is unlikely, or move to another platform that is not regulated by the CFTC. Regardless, trading activity on CFTC-regulated Forex markets will diminish significantly.

Presently, U.S.-regulated Forex dealers, under the guidance of the CFTC and the NFA, provide a safe, sophisticated web-based trading environment where leverage is monitored and automatic liquidation is triggered when available margin is exhausted, thereby effectively limiting a customer's potential loss to the amount securing their margin. Leverage levels are fully disclosed to customers and FXDD has a robust risk management system in place that ensures all customers are prevented from losing more than they are willing to risk. At the end of November 2009, after careful study, the NFA implemented a reasonable standard for the industry, 100:1, which has provided adequate safeguards for the industry and investors. These measures already work to curb fraud and protect customers. The proposed rule would not provide additional protection, but rather undermine this working system by driving customers out of the regulated portion of the market.

Once domestically registered firms have been forced out of the marketplace, it will become more difficult for the trading public to easily identify scams and con-artists. Last year, the major Forex dealers spent over $100 million to build up global brand name recognition to distinguish themselves as legitimate business entities. Each website had prominent links directing customers to the CFTC or NFA to conduct background checks. Without this brand name recognition, the public will be forced to sort through the remaining dealers themselves, leaving them much more vulnerable to fraud and scams.

FXDD appreciates the opportunity to comment on the Proposed Rule. We support the Commission's efforts to improve the quality of the retail foreign exchange market, and believe that the CFTC's regulations have been greatly beneficial to the industry as a whole. As the CFTC moves forward on the Proposed Rule, however, we urge the Commission to consider removing Provision 5.9 to avoid these potentially devastating consequences. It will be futile for the CFTC to create a working regulatory framework for customers who will opt to use foreign platforms, effectively forcing the U.S. Forex industry out of business.

We would be pleased to discuss our comments further with the Commission and/or its staff.

Sincerely,

Emil Assentato
Chairman
FXDirectDealer, LLC

cc: Gary Gensler, Chairman
Bart Chilton, Commissioner
Michael Dunn, Commissioner
Scott O'Malia, Commissioner
Jill Sommers, Commissioner
Micah Green, Patton Boggs LLP