

From: Dave Lemont <dave@lemontconsulting.com>
Sent: Friday, March 19, 2010 4:54 PM
To: secretary <secretary@CFTC.gov>
Subject: Regulation of Retail Forex" and the ID number RIN 3038-AC61
Attach: CurrenseeCFTC20100319.pdf

Dear Mr. Stawick,

Currensee is pleased to present our comment letter to the CFTC for review. I have attached our formal comments in PDF format.

Thank you for your careful consideration.

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Trade Together



March 19, 2010

Via E-Mail

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

Re: RIN 3038-AC61

Dear Mr. Stawick:

Currensee Inc. ("*Currensee*") welcomes the opportunity to submit this comment letter to the Commodity Futures Trading Commission ("*CFTC*" or "*Commission*") on its proposed rules for "Regulation of Off-Exchange Retail Foreign Exchange Transactions and Intermediaries," 75 FR 3282 (Jan. 20, 2010). Currensee is also a signatory to a comment letter dated March 11, 2010 submitted jointly with several other registered introducing brokers, each of which has referral arrangements with multiple forex dealers ("*Joint Letter*"). Our comments in this letter address additional issues of concern to Currensee.

I. BACKGROUND ON CURRENSEE

Currensee has been registered with the CFTC as an introducing broker ("*IB*") and a member of the National Futures Association ("*NFA*") since May 21, 2009. Currensee provides various information services and products to forex traders who are members of the Currensee trader network. The Currensee trader network is comprised primarily of individuals who are already actively engaged in trading forex before joining the network, many of whom consider themselves to be experienced traders. Initially, Currensee has focused its introducing broker business on referring traders to forex dealers through website links to the dealers, without our additional involvement in the account opening process at the dealer. This is still a major part of our IB business.

Increasingly, Currensee also works closely with traders to evaluate potential forex dealers with which to open a forex trading account. We believe we provide an important service to traders in matching them to the right forex dealer. As we grow this part of our IB business, we anticipate taking on a greater interactive role between the traders and the forex dealers to assist traders in resolving issues or disputes that may arise with their forex dealers.

In the future, Currensee plans to offer automated portfolio trading services to forex traders, which will allow a trader to build his own customized program to generate and automatically send orders for his account to his forex dealer. The trader will select one or more programs made available through Currensee, and will decide how to tailor each program he selects by setting his own trading parameters, including currency pairs, permissible deviation in executable price from the last trade price, time of day, etc., and the level of funding to allocate to his trading.

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Currensee will run the software programs on our servers for the traders, but the trader will control all decisions on customizing the automated program to his specifications.

II. THE JOINT LETTER

Currensee endorses all of the recommendations in the Joint Letter. Of particular concern, we urge the Commission to eliminate the guaranteed IB requirement. As explained more fully in the Joint Letter, that requirement is anathema to our business and will harm customers, in that it will essentially force us to refer customers to a single forex dealer, denying them the valuable service we perform in helping them make informed investment decisions on where to trade. A forex IB should have the same choice as a futures IB to operate as an independent IB, subject to the same capital requirement, or as a guaranteed IB. There is no reason for applying a different regulatory approach to forex IBs than to futures IBs, especially when the existing framework has proven to work well in protecting customers. More generally, we believe, the Commission should apply consistent standards to forex registrants and futures registrants, to the extent possible.

For reasons more fully explained in the Joint Letter, we are also concerned that the CFTC's rulemaking proposal is predicated upon an inaccurate and incomplete understanding of the retail forex markets, including who trades in those markets, their trading practices, and their levels of trading skill and experience. For example, the CFTC has stated that "relatively few ... trade profitably,"¹ based on its apparent views that virtually all forex traders are unsophisticated and unsuitable to be trading forex. The Commission's characterizations of retail forex traders are inaccurate. Based on our analysis of the trading performance of the members of Currensee's trader network, approximately 30% of our members trade forex profitably. To assure that its rulemaking is based on a sound factual foundation, we recommend that the Commission undertake a study or direct NFA to undertake a study to develop an accurate empirically-based understanding of the retail forex markets.

III. SPECIFIC COMMENTS

A. *Automated Trading Issue*

Currensee developed its automated portfolio trading services because a growing number of forex traders use automated trading programs. These may be proprietary systems that the traders have developed, or third party systems that they license. In either case, the trader controls the decisions on when to run the program, what trading parameters to enter and the funding level to allocate. The program automatically generates orders based on the trader's tailoring of the

¹ 75 FR 3289.

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program, including calculation of the size of the orders to place. As a service to their customers, some IBs and forex dealers, as well as technology providers, will run the software on their servers for the traders.

We have a concern regarding how proposed Regulation 5.17 would apply when forex customers use automated trading programs. The regulation would prohibit a CFTC-regulated forex dealer, a forex IB or an associated person of the foregoing from "directly or indirectly" effecting transactions for a retail customer without the specific authorization of the customer or the customer's designated account controller. The regulation states that "specifically authorized" means the customer or account controller "specifies: (a) The precise retail forex transaction to be effected; (b) The exact amount of the foreign currency to be purchased or sold; and (c) In the case of an option, the identify of the foreign currency or contract that underlies the option."

We are concerned that the standards for what constitutes specific authorization could be read to require a forex customer to enter each order on an individual, manual basis. That interpretation would be disruptive to the common use of automated trading programs. We ask the Commission to revise proposed Regulation 5.17 to clarify that orders transmitted by a customer using an automated trading program that he controls are deemed to be specifically authorized by the customer.

We also request confirmation that when a customer uses another party to run his automated trading software for him, the party running the software is simply performing a technology service, and is not exercising trading discretion over the trader's account simply because its servers run the software that generates the customer's automated orders. This will clarify that the third party is not acting as a forex commodity trading advisor.

B. Proposed Revisions to Regulation 1.40

Under proposed revisions to CFTC Regulation 1.40, CFTC-regulated forex dealers and forex IBs will be required to provide the CFTC upon request with "a true copy of any letter, circular, telegram, or report published or given general circulation" by the firm which concerns "market information or conditions that affect or tend to affect the price of any commodity or exchange rate, and the true source or authority for the information contained therein." We ask the CFTC to clarify that the proposed requirements do not apply to content posted by third parties on a trader network. We understand the need to monitor such content. We believe that NFA's interpretative notice on NFA Compliance Rule 2-29, Communications with the Public and Promotional Material, appropriately addresses an NFA member's obligations in that regard, under the provisions that NFA recently added to that notice on "Use of On-Line Social Networking Groups to Communicate with the Public."

C. Proposed Definition of "Retail Forex Transaction"



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The definition of the term "retail forex transaction" in proposed Regulation 3.1(m) covers "accounts." We do not understand the reason for this, and find that it makes the definition confusing and nonsensical. We ask that the Commission delete the reference to accounts in the definition.

D. Proposed Regulation 3.15

Proposed Regulation 3.15 would make it unlawful for anyone registered under the Part 3 Regulations to "represent or imply in any manner whatsoever that such person has been sponsored, recommended or approved, or that its abilities or qualifications have been reviewed or evaluated, by the Commission, the Federal government or any agency thereof." We agree that no CFTC registrant should make any statement implying that its services have been endorsed by the CFTC or any other federal agency. However, we are concerned that the proposed regulation is overbroad and could be construed to preclude us from making the factually correct and straightforward statements that the firm and its associated persons are registered with the CFTC, and the registration (and NFA membership) process included fitness screening of the firm, its associated persons and individuals who are principals of the firm. We ask the Commission to confirm that neutral factual statements such as the foregoing are permissible, as we understand such statements to be on the futures side.

Currensee appreciates the Commission's consideration of our comments, both in this letter and in the Joint Letter. We would be happy to discuss any questions that the CFTC may have on any of our comments.

Respectfully submitted,

David Lemant, CEO
Currensee, Inc.