

COMMENT



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OFFICE OF THE SECRETARIAT

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

**Received CFTC
Records Section**
2/16/2010

Re: Proposed Regulation of Off-Exchange
Retail Foreign Exchange Transactions
and Intermediaries, RIN 3038- AC61

Gentlemen:

I am the President and Chief Executive Officer of Forex Club Financial Company, Inc. (“Forex Club”), a New York based firm which has been engaged in the retail forex business, and appropriately registered as a futures commission merchant and a member of the National Futures Association, since January 2006. Forex Club believes that the proposed regulatory scheme referenced above is misguided in that it is overly intrusive and aimed at curtailing, rather than regulating, the retail forex industry. Notwithstanding this, and understanding that reasonable and appropriately targeted regulation of the retail forex industry is both necessary and desirable, Forex Club would like to take this opportunity to comment on what it sees as the two most damaging provisions of the proposed regulatory scheme – (i) proposed Regulation 5.9 (a) which, among other things, would require retail forex firms, like Forex Club, to collect a 10% security deposit from their customers, and (ii) proposed Regulation 5.5 which, among other things, would require retail forex firms, like Forex Club, to disclose to potential customers the number of non-discretionary retail forex accounts maintained and the percentage of such accounts that were profitable for each of the four most recent quarters.



Before commenting further on these two specific provisions and why Forex Club believes they are inappropriate and potentially harmful, some background information regarding Forex Club and its operations is in order. Forex Club has been in the business of maintaining retail forex accounts since May 2006. In connection therewith, Forex Club has and continues to provide its customers with state of the art online trading facilities, as well as in depth educational and trading tools, practice accounts, simulated trading and personalized support. As required, Forex Club is presently capitalized in excess of \$20 million, while maintaining approximately \$1 million of customer funds, the preponderance of which is from foreign customers. Forex Club acts as counterparty to its customers' transactions, thereby assuring those customers no deficit balances in connection with their transactions. The amount of leverage utilized is determined by the customer, with a maximum limit of 100:1.

With the foregoing in mind, we will now turn to the two specific provisions which we believe need to be eliminated from the proposed regulatory scheme.

1. Proposed Regulation 5.9 (a) – As indicated, this provision would require retail forex firms to collect a 10% security deposit with respect to each transaction, thereby capping leverage at 10:1. This leverage is substantially below that which has been available and commonly employed in foreign exchange trading, and in fact is below the level available in certain other investment and trading vehicles, e.g. futures trading. More significantly, it is below the level generally desired by customers, particularly overseas customers who have been trading foreign exchange for some time. The adoption of this provision would have the undesirable effect of driving



customers away from domestic, regulated and well capitalized firms to offshore, and likely unscrupulous, operators. This will negatively impact the customer, domestic forex firms and not insignificantly, the U.S. economy. Well run firms like Forex Club have done a good job of bringing foreign exchange trading activities within the regulatory confines and the borders of the United States. This provision would go a long way, quite possibly all the way, to driving that business back to foreign shores, thereby leaving customers to deal with the exploits of totally unregulated entities. Moreover, the deletion of proposed Regulation 5.9 (a) will not eliminate the availability of 10:1 leverage. If that is what a customer desires, that is what will be employed. We, at Forex Club, simply believe that the determination should be made by the customer. There is little doubt that the overwhelming majority of customers, particularly those offshore, are seeking leverage greater than 10:1. This is particularly true because of the counterparty nature of the transaction which limits risk to a predetermined amount.

For all of the foregoing reasons, Forex Club respectfully requests the elimination of proposed Regulation 5.9 (a). Alternatively, if it is determined not to eliminate proposed Regulation 5.9 (a), its applicability should be limited to domestic customers, and not to foreign customers who have not been so constricted in the past, and likely will reject it. In addition, the reduction in leverage, if implemented at all, should be done incrementally eventually reaching the 10:1 level. This will allow both customers and firms the time necessary to adjust to these new



limitations. This approach would be similar to that taken with respect to the increase in capital requirements which was imposed over time.

2. Proposed Regulation 5.5 – As indicated, this provision would require retail forex firms to disclose to potential customers (i) the number of non-discretionary retail forex accounts maintained, and (ii) the percentage of such accounts that were profitable for each of the four most recent quarters.

The application of proposed Regulation 5.5 would be extremely detrimental to the foreign exchange business in general and futures commission merchants in particular, without providing any relevant information to prospective customers. The disclosure requirement regarding the number of accounts is apparently intended to make customers aware of the degree to which a firm's capital must be spread and is therefore at risk. This, however, is deceptive because the size of a typical retail forex account is smaller, often significantly so, than that of other trading vehicles, such as equities and futures. Thus, the impression given will be distorted and likely not an accurate reflection of a particular firm's economic strength.

More significant, and even more detrimental to foreign exchange firms and equally irrelevant to potential customers, is the proposed requirement that foreign exchange futures commission merchants disclose the percentage of their non-discretionary accounts that were profitable. This seems like a blatant attempt to turn potential customers away from foreign exchange trading. No similar requirement exists with respect to any other trading vehicle. Broker dealers are not required to



disclose trading results in non-discretionary customer equity accounts. Even the results of non-discretionary futures trading accounts need not be disclosed by futures commission merchants. This is at is should be. When a customer is making his or her own trading decisions, it is clear and simple logic that how he or she fares is in no way reflective or indicative of how some other customer will do in the market.

For all of the foregoing reasons, Forex Club respectfully requests the elimination of those portions of proposed Regulation 5.5 which require the disclosure of the number of non-discretionary retail forex accounts and the percentage of such accounts that were profitable.

We believe that failure to eliminate those portions of proposed Regulations 5.5 and 5.9 referred to above would have the effect of driving potential customers abroad. To compete, domestic foreign exchange firms would likely have no alternative but to abandon the United States themselves and operate from overseas, free from the overly restrictive nature of these regulations.



In conclusion, we thank you for the opportunity to weigh in on the proposed regulatory scheme and hope you will find our comments helpful and informative. We thank you for your consideration and will make ourselves available to further discuss with you any aspect of the foregoing.

Very truly yours,

Michael J. Felice, Jr.

A handwritten signature in black ink, appearing to read "Michael J. Felice, Jr.", is written over a printed name. The signature is fluid and cursive.

President and Chief Executive Officer