MF Global

By Electronic Mail

January 4, 2010

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street NE
Washington DC 20549-1090

Re: File Number SR-FINRA-2009-40

Dear Ms. Murphy:

MF Global Inc.[1] ("MF Global") respectfully submits this letter in response to the Securities and Exchange Commission's ("SEC's") request for comment on Amendment No. 2 to the Financial Industry Regulatory Authority, Inc.'s ("FINRA's") proposed Rule 2380 (Leverage Limitation for Retail Forex). 74 Fed.Reg. 64776 (December 8, 2009). Under this rule, a FINRA member would be prohibited from offering to retail customers[2] OTC foreign currency contracts with a leverage ratio of greater than 4 to 1 and permitting retail customers to withdraw money from an open forex position that would cause the leverage ratio for such position to be greater than 4 to 1. The rule will apply to all broker-dealers including those that are dually registered with and regulated by the Commodity Futures Trading Commission ("CFTC") and the National Futures Association ("NFA") as futures commission merchants ("FCMs"). Given the stark departure of FINRA's requirements from those

[1] MF Global Inc. is an SEC registered broker-dealer and CFTC registered futures commission merchant and a wholly owned subsidiary of MF Global Holdings Ltd. which, through its various affiliates, is a leading broker of exchange-listed futures and options with offices in New York, London, Chicago, Paris, Mumbai, Singapore, Sydney, Toronto, Tokyo, Hong Kong, Taipei and Dubai. We provide execution and clearing services for exchange-traded and over-the-counter derivative products as well as for non-derivative foreign exchange products and securities in the cash market. MF Global operates across a broad range of trading markets, including interest rates, equities, currencies, energy, metals, agricultural and other commodities. MF Global operates in 12 countries on more than 70 exchanges, providing access to the world's largest and fastest growing financial markets.

[2] Defined as individuals that are not "eligible contract participants" as defined in the Commodity Exchange Act ("CEA") (7U.S.C. § 1a(13).

MF Global Inc.

440 South LaSalle Street
20th Floor
Chicago, Illinois 60605
Tel 312-663-7500
Fax 312-663-7524
www.mfglobal.com

that are standard in the forex business, it appears that FINRA seeks to impose a rule that all but avowedly has as its purpose prohibiting retail OTC forex transactions at every broker-dealer.

MF Global strongly opposes this rule for several reasons.

Anti-Competitive

As the record of this rulemaking makes clear, the retail forex market is now conducted by banks, FCMs and other financial institutions at leverage ratios of 10 to 1 to 100 to 1. These other regulated entities will continue to offer these much greater ratios. NFA rules, for example, permit ratios of 100 to 1 for major currencies and 25 to 1 for others. The effect of the rule, therefore, will be to prohibit all broker-dealers from participating in a business activity in which they may now engage and which will continue to be offered by (certain) FCMs, banks and other financial institutions. The competitive harm to broker-dealers that are dually registered as FCMs is more acute. Not only will such firms be prohibited from offering customers a product that will be available to customers from other FCMs, but they will be competing for futures business with FCMs that will be offering this additional leveraged product to customers (or potential customers) who trade futures. A customer seeking to invest in both futures and OTC forex may likely choose a single firm that can accommodate both business lines. Like other commentators, MF Global fails to see how a rule with such draconian consequences squares with FINRA's statutory duty to avoid imposing unnecessary and inappropriate burdens on competition. Section 15A(b)(9) of the Exchange Act.

Ignoring Congress

Barring broker-dealers (including those that are FCMs) from OTC retail forex also has the effect of superseding Congress's careful (even painstaking) designation of who may be a permissible counterparty. In the Commodity Futures Modernization Act of 2000 Congress specifically identified broker-dealers and certain of their associated persons, along with futures commission merchants and certain of their associated persons, banks and other financial institutions as entities that may engage in OTC forex transactions with retail customers. When Congress amended the CEA in 2008 to strengthen CFTC authority over the offer and sale of OTC forex to retail customers, it made no substantive change to the provisions permitting broker-dealers to engage in such transactions. The Congress twice, therefore, affirmed that broker-dealers may engage in these transactions. Of course it is the responsibility of a self-regulatory organization to regulate. We submit it is quite another matter, however, for an SRO to wholly trump a statute through rulemaking.

Corporate Restructuring

Many broker-dealers, of course, will not react to FINRA Rule 2380 by foregoing OTC retail forex. Rather, they will create separate, NFA registered affiliates to which customers may be referred. FINRA acknowledges this possibility in observing that "broker-dealer forex activities, including referral and introducing activities, would be subject to FINRA Rule 2010." (just and equitable principles of trade) (74 Fed. Reg. at 32025) Accordingly, FINRA Rule 2380 will simply result in expensive and otherwise unnecessary corporate restructuring. This is hardly a sensible regulatory result when the SEC and CFTC are aggressively following President Obama's directive to harmonize their respective regulatory approaches.

Coordination with the CFTC

As previously suggested by the FIA, coordinating retail forex issues with the CFTC also would be consistent with the March 11, 2008 Memorandum of Understanding between the SEC and CFTC. We note in particular Article III of the MOU wherein the agencies identified "as an issue for consultation and coordination" "[g]eneral supervisory developments and decisions taken by either party that affect operations across both jurisdictions." A FINRA rule that will create such dramatically disparate treatment of CFTC registered firms must surely be an appropriate subject for such consultation.

NFA's Alternative

FINRA should not be imposing these leverage limitations on any broker-dealers but certainly not on those that are dually registered as FCMs. Since 2002, the NFA has administered comprehensive regulatory requirements for its members who deal exclusively or primarily in OTC retail forex. The NFA is prepared to expand the application and enforcement of those requirements to all FCMs. This would include, of course, those FCMs that are dually registered as broker-dealers. As NFA members, all FCMs would then compete on a level playing field and they would do so under a regime administered by a regulator well experienced in the offer and sale of leveraged products (futures, options and forex) to retail investors. At the very least, therefore, FINRA should accommodate its rule to the NFA's alternative regulation and provide an exemption from Rule 2380 for dually registered firms. An FCM should not be excluded from this business because it is also registered as a broker-dealer.

Conclusion

MF Global respectfully requests that the SEC not permit FINRA Rule 2380 to go into effect because it is anti-competitive, it will cause expensive and unnecessary corporate restructuring, it ignores the judgment of Congress and it deals with issues that should properly be coordinated with the CFTC. Alternatively, the rule should be amended to exempt from its application dually registered broker-dealers so that they may freely compete with other registered FCMs.

If you have any comments or questions you may contact me at 212 935 3750 or at dklejna@mfglobal.com.

Sincerely,

Dennis A. Klejna
Senior Vice President
Assistant General Counsel