

INTERACTIVE BROKERS LLC

A Member of the Interactive Brokers Group

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David M. Batran  
Vice President & General Counsel

January 4, 2010

Elizabeth M. Murphy, Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090

Re: ***File No. SR-FINRA-2009-040 (Release No. 34-60172); Amendment to Proposed Rule 2380 to Limit the Leverage Ratio offered by Broker-Dealers for Certain Forex Transactions***

Dear Ms. Murphy,

Interactive Brokers LLC submits these comments regarding FINRA's amended proposal to impose a leverage ratio of 4-to-1 (equivalent to the 25% maintenance margin requirement for individual equity securities) on foreign exchange transactions between a FINRA member and any "retail" customer<sup>1</sup>.

**Summary**

Interactive Brokers strongly opposes the proposed rule change in its current form. When Congress amended the Commodity Exchange Act in 2008, it specifically stated that regulated U.S. financial institutions including banks, broker-dealers and FCMs all could offer forex trading to U.S. retail customers. See Section 2(c)(2)(B) of the Commodity Exchange Act. Thus, U.S. banks (and foreign banks), U.S. broker-dealers, futures commission merchants ("FCMs") and futures exchanges all offer foreign currency trading to U.S. retail customers at leverage rates ranging from 20:1 to 50:1 or higher. This is the commercial standard for forex trading -- including on regulated U.S. futures exchanges -- given that currencies are far less volatile than individual equity securities. ***The 4:1 FINRA leverage limitation is thus five to twenty times stricter than the commercial standard*** and will place broker-dealers at a fatal competitive disadvantage to the U.S. and foreign banks, FCMs and futures exchanges that will continue to be able to offer forex without being subject to the strict FINRA leverage limit.

It is difficult to understand how the FINRA leverage limitation will protect retail investors, who, on the very day the FINRA rule goes into effect, will remain free to trade forex easily and conveniently online at 25:1 or 50:1 or 100:1 through federally-regulated forex providers like Citibank ([www.citifxpro.com](http://www.citifxpro.com)), Interbank FX ([www.interbankfx.com](http://www.interbankfx.com)), Forex.com, OANDA ([www.fxtrade.com](http://www.fxtrade.com)) and dozens of others, as well as foreign banks like Deutsche Bank ([www.dbfx.com](http://www.dbfx.com)), Saxo Bank (<http://us.saxobank.com/en>) and many more<sup>2</sup>. The only real result of the rule will be to deprive broker-

<sup>1</sup> Defined as a customer that is not an Eligible Contract Participant ("ECP") under Section 1a(12) of the Commodity Exchange Act.

<sup>2</sup> See Exhibit 1 for a sample of promotional materials (and leverage rates) from various dealers providing forex trading to U.S. retail customers.

dealers of the ability to compete in a business that Congress specifically has authorized them to engage in.

**At the very least, we urge the Commission and FINRA to amend the rule to create an exemption from the leverage limitation for jointly registered broker-dealer/futures commission merchants (“BD/FCMs”) who are regulated in their forex activities by the National Futures Association (“NFA”) and who don’t carry customer forex positions in the SIPC protected securities account:**

- The FINRA rule is especially harsh as applied to jointly registered BD/FCMs, who, in their capacity as CFTC and NFA regulated FCMs, otherwise would be able to offer forex to their customers on commercially attractive terms.
- NFA has experience and a comprehensive regime in place to regulate leveraged products such as futures and forex, and NFA has agreed to supervise forex trading by BD/FCMs contingent on FINRA creating the exemption we suggest here.
- Companies like Interactive Brokers have chosen to register jointly as BD/FCMs to maintain a transparent and simple corporate structure for their customers and their regulators, and to conduct all of their business through a single, highly capitalized entity rather than create a complicated web of affiliates for different business lines (e.g., Lehman Brothers). As applied to jointly registered BD/FCMs like Interactive Brokers, the FINRA rule will accomplish no purpose other than to force us to engage in pointless corporate restructuring so as to offer forex in a separate standalone entity that will have *less* capital and be subject to *less* supervision than our current BD/FCM, and will have the potential to create confusion for our customers.
- The exemption we urge would thus further the interests of regulatory harmonization between U.S. securities regulators and U.S. futures regulators. It would encourage firms that offer securities and futures and forex products to maintain simple corporate structures, while at the same time recognizing that while the Commission and FINRA have jurisdiction over securities products, the CFTC and NFA have experience and a comprehensive regulatory regime for more highly leveraged products like futures and forex.

We discuss these matters in more detail below.

## **Discussion**

### **I. The Proposed Rule Should Be Amended To Create An Exemption From The Leverage Limitation For Jointly Registered BD/FCMs Who Are Regulated In Their Forex Activities By the NFA And Who Do Not Carry Forex Positions In SIPC-Protected Securities Accounts.**

The proposed rule is especially paradoxical and unfair as applied to dually-registered BD/FCMs like Interactive Brokers. When Congress amended the Commodity Exchange Act in 2008, it specifically stated that regulated U.S. financial institutions including banks, broker-dealers and FCMs all could

offer forex trading to U.S. customers. See Section 2(c)(2)(B) of the Commodity Exchange Act. Thus, dozens of FCMs offer forex trading to retail customers at the same leverage levels as banks and regulated futures exchanges (*i.e.*, ranging from 20:1 to 100:1 depending on the currency and other factors).

Interactive Brokers is dually-registered with the SEC and CFTC as a broker-dealer and an FCM so that it can maintain a simple corporate structure that is transparent and easy to understand for our regulators and our customers. Interactive Brokers customers can trade domestic and foreign stocks, bonds, mutual funds, options, futures and forex all through a single, well-capitalized entity (as of its November 30, 2009 FOCUS report, Interactive Brokers had *\$774 million in net capital and over \$685 million in excess net capital*). Rather than dealing with multiple systems, firms, counterparties and account statements, Interactive Brokers customers can see one integrated portfolio and one total margin requirement and can easily see and manage their risk based on this integrated view.

As a registered BD/FCM, Interactive Brokers offers both “retail” (non-ECP) and institutional customers the ability to engage in self-directed foreign exchange transactions at a required margin of 2.5% (40:1) to 10% (10:1), which is more conservative than most of our competitor banks and FCMs charge. Yet under the FINRA rule proposal, even though Interactive Brokers may legally offer foreign exchange trading *as an FCM* at these roughly competitive leverage levels, our choice to dually-register as a broker-dealer and FINRA member would deprive us of the ability to offer forex on commercially competitive terms. Our customers would be deprived of the convenience of trading stocks, bonds, mutual funds, options, futures and foreign currencies on our single integrated platform and through one single, highly-capitalized firm.

*An exemption from FINRA’s leverage limitation for BD/FCMs, combined with NFA extending its forex regulations to these entities will yield a common sense and sound public policy result:*

- *BD/FCMs will be able to offer forex -- not using customer securities accounts-- on terms that are commercially competitive with banks and standalone FCMs;*
- *NFA will regulate these trades just as NFA regulates leveraged futures and forex trading that takes place outside securities accounts;*
- *No forex dealer will be able to avoid regulation of its forex activities; and*
- *BD/FCMs like Interactive Brokers will continue to be able to maintain a simple, transparent, easy-to-understand corporate entity through which they can offer securities, futures and forex.*

A. The National Futures Association Has Agreed To Supervise Forex Trading By BD/FCMs Contingent On FINRA Creating The Exemption We Suggest Here.

Both Interactive Brokers and FINRA staff members have had discussions with senior management of NFA, and NFA has expressed its willingness and has taken action to apply its comprehensive regulatory regime for forex trading to jointly registered BD/FCMs – contingent on FINRA Rule 2380 being amended to exempt jointly-registered BD/FCMs from the leverage limit as we suggest herein.

Specifically, under current NFA Bylaw 306 and Compliance Rule 2-39, jointly registered BD/FCMs are exempt from NFA’s forex regulations. However, in December 2009, NFA’s Board approved a rule

change that would extend NFA's forex regulations to BD/FCMs, contingent on FINRA amending its proposed rule 2380 to exempt BD/FCMs from the forex leverage limitation for forex positions not carried in SIPC-protected securities accounts.

B. NFA Has a Comprehensive Regime for Regulation of Forex Trading and Has Experience and Knowledge Regulating Leveraged Products Offered by FCMs.

As the long-standing self-regulatory organization for CFTC-registered FCMs, NFA has experience and detailed regulations regarding leveraged products. Over the past few years, NFA has developed comprehensive rules governing FCMs' offer of forex trading, including specific capital requirements for forex dealers, disclosure requirements, margin requirements, credit and risk management control requirements, requirements for confirmations and account statements, prohibitions on unfairly adjusting prices of forex trades, anti-fraud prohibitions, system control requirements and many other provisions. See Exhibit 2 hereto for a summary of NFA's forex regulations.

C. An Exemption from the Leverage Limitation for BD/FCMs Who Carry Forex Positions Outside the Securities Account Is in the Interest of Regulatory Harmonization Between Securities and Futures Regulators and Will Maintain a Level Playing Field Between BD/FCMs and Standalone FCMs

At a time when the Commission and the CFTC repeatedly have stated their desire to harmonize their regulations and prevent regulatory disparities, our proposal here provides an opportunity actually to do this. The exemption we suggest will allow BD/FCMs to offer forex on commercially competitive terms that will keep them on a level playing field with standalone FCMs – avoiding an unfair regulatory disparity between SEC/FINRA regulated firms and CFTC/NFA regulated firms. Since forex positions will be carried outside the SIPC-protected securities account, and since NFA will regulate BD/FCMs' forex activities, and since forex is more akin to the leveraged futures products regulated by the CFTC and NFA, it makes perfect sense for FINRA and the Commission to recognize NFA as an appropriate regulator of this activity for jointly registered firms.

D. The Exemption from FINRA's Leverage Limitation Would Only Apply to Jointly Registered BD/FCMs Who Will Be Subject to NFA's Regulations. The Exemption Would Not Allow Any Firm to Avoid Regulation.

The exemption that we propose here will not create any regulatory gaps. To the extent that FINRA's motive in proposing Rule 2380 and the leverage limitation was FINRA's concern that unscrupulous and thinly capitalized forex dealers have registered solely as broker-dealers in an attempt to exploit gaps in existing regulatory coverage, the exemption we propose would address this concern, because to qualify for the dual registration exemption the FINRA member would by definition be subject to comprehensive oversight of their forex activities by NFA.

E. An Exemption from the Leverage Limitation for BD/FCMs Who Carry Forex Positions Outside the Securities Account Will Prevent Confusing and Pointless Corporate Restructuring.

If Rule 2380 and the leverage limitation is approved in its current form, firms like Interactive Brokers and others will have to restructure their operations to document forex trading accounts with a newly-created standalone FCM entity or an unregulated entity. These forex-only dealers will be less regulated and less capitalized than the BD/FCMs that are currently offering forex trading along with securities and futures trading.

Customers want to be able to trade stocks, bonds, mutual funds, options, futures and forex through a single broker on an integrated, easy-to-understand platform. Likewise, regulators should not want financial services firms to develop complex and opaque structures whose capital and risk is difficult or impossible to monitor and supervise. *Rules like 2380 that create glaring regulatory disparities and encourage firms to segment their operations and move certain businesses into new entities or unregulated entities are exactly the wrong approach and lead to the creation of the “multi-headed-hydra” entities like Lehman and its ilk that created such problems during the global financial crisis.*

II. If The Proposed Rule Is Not Amended To Exempt Jointly Registered BD/FCMs, The Rule Should Be Disapproved In Its Entirety.

FINRA is legitimately concerned that some forex dealers are unscrupulous or thinly capitalized and might engage in practices that are harmful to customers. To address this concern, however, FINRA should not impose a *de facto* ban on member forex trading through a commercially prohibitive leverage limitation. Instead, FINRA should adopt an enhanced minimum net capital requirement for FINRA members who wish to offer forex trading, and use its existing rules to police abuses in the forex market.

A. FINRA’s Proposed Leverage Requirement Is Commercially Unreasonable And Amounts To A De Facto Ban On Broker-Dealers From Offering Forex Trading Compared To Other U.S. Regulated Entities

- U.S. Banks: U.S. banks like Citibank offer forex trading platforms to ordinary, online retail customers at margin rates of 2% (50:1) to 4% (25:1) for dozens of currencies. See Exhibit 1.
- Offshore Banks and Brokers: U.S. customers can legally and easily open online accounts with large, reputable European banks and brokerage firms like Deutsche Bank, which impose margin requirements of 1% (100:1) or 2% (50:1) for retail customers on most currencies. *Id.*
- Regulated Futures Exchanges like the CME (open to U.S. retail customers) charge as little as 2.5% margin (40:1) (e.g., British pounds) to around 4 or 5% (20:1) on less liquid currencies (e.g., Czech koruna). *Thus, FINRA’s forex margin requirement is 5-10 times higher (more strict) than CME’s highest margin requirement for currencies.*

- Regulated FCMs: CFTC and NFA regulated FCMs offer retail OTC forex trading at 1% (100:1) for major currencies and 4% (25:1) for minor currencies. *Id.*

For example, if the Commission approves FINRA's proposal in its current form:

- an ordinary, retail, online U.S. Citibank customer ([www.citifxpro.com](http://www.citifxpro.com)) will have to put up \$2,000 to buy \$100,000 in British pounds;
- an ordinary, retail, online customer trading a British pound futures contract on the Chicago Mercantile Exchange will have to put up \$2,500;
- an ordinary, retail, online U.S. customer of CFTC and NFA-regulated U.S. FCM [www.ibfx.com](http://www.ibfx.com) will have to put up \$1,000;
- an ordinary, retail, online U.S. customer of Deutsche Bank ([www.dbfx.com](http://www.dbfx.com)), will have to put up \$2,000;
- ***and a customer of Interactive Brokers or another FINRA member will have to put up \$25,000*** to buy \$100,000 in British pounds.

B. Congress Repeatedly Has Confirmed that Broker-Dealers – Like FCMs, Banks and Other U.S. Regulated Entities -- May Offer Forex Trading to Their Customers on Competitive Terms.

As recently as 2008, Congress amended the Commodity Exchange Act and specifically stated that regulated U.S. financial institutions including banks, broker-dealers and FCMs all could offer forex trading to U.S. customers. See Section 2(c)(2)(B) of the Commodity Exchange Act. Congress specifically imposed enhanced registration, anti-fraud and capital requirements on certain financial institutions offering foreign exchange transactions. ***But Congress did not enact any leverage limitations or margin requirements, nor did it suggest or provide specific authority for the Federal Reserve or the Commission or the CFTC or FINRA to do so.*** Regulation T contains no margin requirement for foreign exchange transactions. Nor does any other law or rule of any federal agency.

There is no suggestion in any federal law or regulation that one class of competitors should be preferred or advantaged over another in their ability to offer foreign exchange trading. FINRA says that "Congress was well aware [in 2008] of the differing regulatory regimes in the eligible entities." But we are not complaining of reasonable differences in regulatory regimes. A ***\$25,000*** margin requirement for transactions effected through a federally-regulated broker-dealer versus a ***\$2,000*** margin requirement for a transaction effected by a federally-regulated bank or FCM or futures exchange goes well-beyond a "differing regulatory regime." It is a *de facto* ban.

C. It Is Not an Appropriate Exercise of SRO Rulemaking Power to Effectively Ban an Entire Line of Member Business

***"A power to regulate is not a power to destroy."*** *Reagan v. Farmers' Loan & Trust Co.*, 154 U.S. 362, 398 (1894). Self-regulatory organizations like FINRA exist to enforce the laws and regulations and policy decisions of Congress and the SEC. Not to decide, of their own accord, that their members should not engage in Congressionally-approved business lines that the SRO does not prefer.

Of course it is legitimate for FINRA to pass a wide-range of rules to ensure that the manner in which its members conduct their various business activities is appropriate and protective of the public (e.g., Manning Rules for equity trading, or TRACE reporting for bonds). But in this case FINRA is attempting to enact a “regulation” that it knows is economically prohibitive. The FINRA rule will destroy an entire legitimate business line of its members – at their expense and at the benefit of other U.S.-regulated financial services providers.

D. If Leverage Requirements Are to Be Set for Forex Transactions, They Should Be Set by the SEC, the CFTC and the Federal Reserve Acting in Concert, Based on Actual Economic Analysis of the Forex Market, Not by a Single SRO Acting in a Vacuum

In its own initial call for comments on its forex leverage proposal, and in the public documents it has filed with the Commission, FINRA has not cited a single piece of data, or any economic analysis or policy review or any other type of actual objective or quantitative or comparative evidence in support of its leverage requirement. Nor has it cited a single piece of data or analysis or evidence justifying the particular leverage requirement of 4:1 compared to any other leverage requirement. If leverage requirements are to be set for forex transactions, they should be set by the SEC, the CFTC, and the Federal Reserve acting in concert after careful study of the forex market, not by a single SRO.

E. There is Widespread Opposition to the FINRA Proposal from Broker-Dealers and Members of the Public Who Will Actually Be Affected By It

In addition to the lack of objective economic data or analysis in support of the rule, there is widespread opposition to it.

- FINRA received 109 comment letters when it first published the proposal on its website. 108 comment letters opposed the rule. 1 letter was neutral.
- *FINRA did not receive a single comment letter in support of the proposal.*
- *Likewise, since the Commission published the proposed FINRA rule for comment, not a single comment letter has been received in support of the rule.*
- Every broker-dealer that has commented on the rule -- either when it was first published on the FINRA website or since it has been published by the Commission – has strongly opposed it -- including Interactive Brokers, TD Ameritrade, TradeStation, Think or Swim, Knight Capital Group, MG Securities and Roberts & Ryan.
- SIFMA and the very large broker-dealers it mostly represents neither supported nor opposed the rule. This is because most of these large broker-dealers offer forex trading at 40:1 or 50:1 to their customers through their bank affiliates if they wish, so they don't care. Indeed, the FINRA rule is a competitive advantage for the huge financial service conglomerates because their forex offering remains completely unfettered, while firms that are not owned by banks are knocked out of the business or forced to restructure to stay in business.

- ***The Foreign Exchange Committee of the New York Fed opposes the rule.*** This industry group operating under the auspices of the New York Federal Reserve Bank is probably the most knowledgeable regarding foreign exchange trading and rightly observes that FINRA will not accomplish anything with its margin requirement on broker-dealers except to create a huge commercial and regulatory disparity for broker-dealers to the advantage of other U.S. regulated financial services institutions. The Foreign Exchange Committee consists of S Banco Itau S.A., Bank of America, Bank of Montreal, Bank of Tokyo Mitsubishi-UFJ, Calyon, Citigroup, Credit Suisse, Deutsche Bank AG, Goldman, Sachs & Co., ICAP North America, JP Morgan Chase, Morgan Stanley & Co., RBS, Reuters, Barclays, Standard Chartered Bank, State Street Corporation, TD Bank, TFS Brokers, The Bank of New York, Mellon, UBS, UniCredit, and Wells Fargo.
- ***The Futures Industry Association ("FIA") opposes the rule.*** FIA is the principal public policy advocacy group for the commodity futures and options industry. FIA's regular membership is comprised of approximately 30 of the largest futures commission merchants ("FCMs") in the United States.
- It is significant that both the FIA and the Foreign Exchange Committee of the New York Fed oppose the rule. Their members – FCMs and banks respectively – will be unaffected by the rule, yet these groups oppose the rule because –as they note in their comment letters -- creating huge regulatory disparities among similarly-situated federally regulated entities is simply bad public policy.
- In its response to comment letters that it filed with the Commission, FINRA stated that the opposition of Interactive Brokers, TD Ameritrade, Knight, Tradestation and others was not credible because of our "pecuniary" interest in the rule. Of course we have a pecuniary interest. But opposing the rule is not favoring our pecuniary interests over the interests of **investors** -- because **investors** will be wholly unaffected by the rule and will remain 100% able to engage in forex trading at 40:1 or 50:1 or 100:1 through Citibank, Deutsche Bank, CME, and every U.S. bank or FCM who chooses to offer it. Rather, our comments are inspired by our pecuniary interest versus those of all of these **competitors** of ours, who will continue to engage in unrestricted offer of leveraged forex.
- Finally, it is disingenuous for FINRA to argue, as they have in their response to the comments to the Commission, that support for the rule filing by members of the public has increased now that the public "understands" the proposal (as evidenced by a slight reduction in negative comment letters in the SEC comment process as opposed to the FINRA comment process). Many of the individuals and groups who commented on the rule initially with FINRA feel as if: a) they already filed comment letters (with FINRA) that stated their objections; and b) approval of the rule is a *fait d'accompli* (we hope that this latter perception is not true).
- Approval of the rule would call the notice and comment rulemaking process seriously into question given that the rule is: a) unsupported by factual evidence or analysis; b) widely if not uniformly opposed; and c) creates huge regulatory disparities among similarly situated U.S. entities.

- F. As An Alternative to the Leverage Limitation, In Order To Address Its Concerns About Unscrupulous Forex Dealer Members FINRA Should Consider Imposing an Enhanced Minimum Net Capital Requirement of \$100 MM (or More) on Members Who Offer Forex.

FINRA is legitimately concerned that some forex dealers are unscrupulous or thinly capitalized and might engage in practices that are harmful to customers. To address this concern, FINRA should adopt an enhanced minimum net capital requirement for FINRA members who wish to offer forex trading. This would eliminate fraudulent or dangerously undercapitalized forex dealers, but would still allow legitimate and well-capitalized broker-dealers to compete with banks and FCMs.

Given that forex transactions are done over the counter and are not subject to the protections of a central clearinghouse, it would not be unreasonable for FINRA to require minimum net capital of \$100 MM or more for members to engage in forex trading. In coordination with banking regulators and the CFTC, FINRA and the Commission could also tie leverage limits to the member firm's net capital – e.g., 50:1 for firms with capital levels similar to banks, down to 4:1 for firms with under \$20 MM.

- G. In Addition to An Enhanced Minimum Net Capital Requirement, FINRA Can Use Its Existing Rules to Address Any Abusive Practices by FINRA Members in the Forex Market

Regrettably, there are abusive practices in every product offered by broker-dealers -- from mutual funds to municipal bonds to small cap stocks to ETFs. Effectively banning a product class through prohibitive margin regulation is not an appropriate approach to regulation. Rather, FINRA should use existing rules or narrowly-tailored new rules to address the specific issues of concern in the forex market.

Indeed, the various types of abuses and sharp practices that disreputable forex dealers engage in are no different than those of disreputable players in the equity or bond markets. In fact, FINRA already issued a Notice to Members (08-66) making clear that existing FINRA rules already apply to forex dealers:

- *Misappropriating or mishandling customer funds;*
- *Failing to disclose that the firm is acting as counterparty to a transaction;*
- *Failing to adequately disclose the risks associated with forex trading;*
- *Using, selling or leasing electronic trading platforms that allow "slippage" of trade executions in a manner that disproportionately or unfairly affects the customer;*
- *Manipulating or displaying false quotes;*
- *Offering mock, or "demonstration," accounts that do not accurately reflect the risks of forex trading;*
- *Issuing to customers false reports or account statements that represent false profits or that conceal misappropriations or losses;*
- *Making post-execution price adjustments that are inappropriate and unfavorable to the customer;*

- *Creating false books and records;*
- *Failing to adequately disclose to customers the risks and terms of leveraged trading;*
- *Soliciting business for and introducing customers to a forex dealer without doing adequate due diligence about the forex dealer, or in a way that misleads the customer about the forex dealer or forex trading, including how customer funds will be held;*
- *Failing to conduct due diligence into any solicitors that introduce forex customers to the firm, and failing to supervise any unregistered solicitors that are employees or agents of the firm; and*
- *Accepting forex-related trades from an entity or individual that solicits retail forex business on behalf of the firm in a misleading or deceptive way.*

\* \* \*

In sum, we urge the Commission and FINRA to amend the rule to create an exemption from the leverage limitation for jointly registered broker-dealer/futures commission merchants (“BD/FCMs”) who are regulated in their forex activities by the National Futures Association (“NFA”) and who don’t carry customer forex positions in the SIPC protected securities account. In the alternative, we ask that the Commission disapprove the rule altogether.

Interactive Brokers sincerely appreciates the Commission’s consideration of our comments and we would be happy to provide any further information that you would find useful.

Sincerely,



David M. Battan

cc: Hon. Mary L. Schapiro  
Hon. Kathleen L. Casey  
Hon. Elisse B. Walter  
Hon. Luis A. Aguilar  
Hon. Troy A. Paredes  
Robert W. Cook  
Dawn Jessen  
Smeeta Ramarathnam  
Matt Daiglar  
Justin Daly  
Haimera Workie

# EXHIBIT 1

*Interactive Brokers LLC Comment Letter Re: File No. SR-FINRA-2009-040 (Release No. 34-60172); Amendment to Proposed Rule 2380 to Limit the Leverage Ratio offered by Broker-Dealers for Certain Forex Transactions*

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#### Sample Spreads

Currency Cross	Max Auto-Execute Amount	Target Spread	Margin Requirement*
AUDUSD	AUD 10,000,000	4	3.0 / 2.0 / 2.0 %
EURGBP	EUR 15,000,000	3	2.0 / 2.0 / 2.0 %
EURJPY	EUR 15,000,000	5	2.0 / 2.0 / 2.0 %
EURUSD	EUR 30,000,000	2	2.0 / 2.0 / 2.0 %
GBPUSD	GBP 10,000,000	4	2.0 / 2.0 / 2.0 %
USDCAD	USD 8,000,000	4	2.0 / 2.0 / 2.0 %
USDCHE	USD 20,000,000	4	2.0 / 2.0 / 2.0 %
USDJPY	USD 20,000,000	3	2.0 / 2.0 / 2.0 %
USDMXN	USD 2,000,000	55	4.0 / 4.0 / 4.0 %
USDZAR	USD 2,000,000	55	4.0 / 4.0 / 4.0 %

\*Initial/Weekdays/Weekends

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Email

Phone

Country of residence

Password

Confirm password

\*Min. Passwords must be at least 8 characters in length and contain at least one number and one capital letter.

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50:1  
25:1

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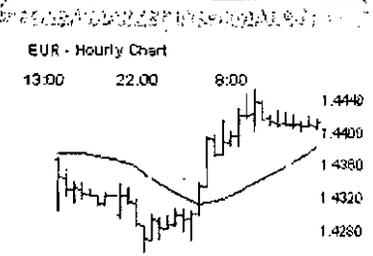


CHART DATA DELAYED BY 15 MIN.

Pair	Last	High/Low	Change
EUR/USD	1.4439	1.4432 / 1.4398	0.0007 ▲
USD/JPY	92.32	92.64 / 92.30	0.02 ▼
GBP/USD	1.6121	1.6123 / 1.6073	0.0048 ▲
USD/CAD	1.0997	1.0431 / 1.0393	0.0004 ▼
XAU/USD	1123.40	1123.40 / 1119.80	3.60 ▲

**New York Session Recap**

01.04.10 - 05:48PM - The US dollar recovered somewhat from the overnight bloodbath as better US economic data prompted a modest rally in the greenback...

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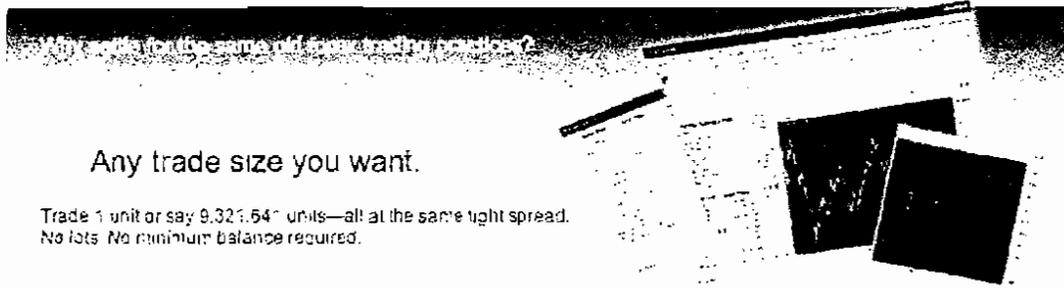
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FOREX.com is a division of GAIN Capital Group, a dedicated partner to professional FX traders and fund managers worldwide. Institutional services include IB programs, white label solutions, and asset management. Individual forex traders can take advantage of the market expertise and financial strength of GAIN Capital Group and access an institutional FX trading platform, FOREXTrader, along with our powerful real-time forex charts, professional forex market research, and suite of advanced forex trading tools. For traders new to the currency trading, FOREX.com offers forex training programs, forex minis, and information about trading the foreign currency market.



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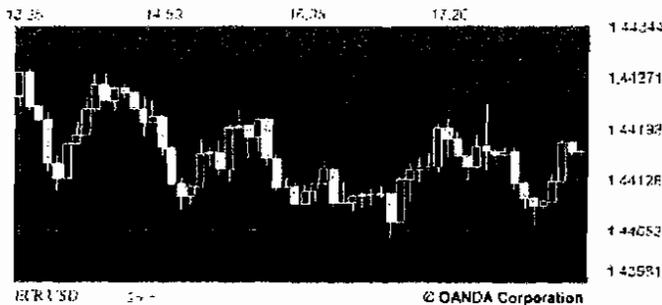
Any trade size you want.

Trade 1 unit or say 9,321,641 units—all at the same tight spread.  
No lots. No minimum balance required.

### See Today's Forex Rates

FXTrade	Dealable Rates	Spread
EUR-USD	1.4412 - 54	1.2
AUD-USD	0.91239 - 98	1.6
EUR-CHF	1.45432 - 66	2.3
EUR-JPY	133.321 - 49	2.8
GBP-USD	1.81125 - 26	1.0
GBP-JPY	148.972 - 3011	3.9
NZD-USD	0.74300 - 29	2.9
USD-CAD	1.41221 - 73	5.3
USD-CHF	0.82619 - 97	2.1
USD-JPY	144.721 - 53	1.1
XAG-USD	11.58000 - 61000	300.0
XAU-USD	1121.500 - 2.300	50.0

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- "Best Trading Platform"** - [Bank Finance's Forex Awards 2009](#)
- "The One to Watch"** - [Treasury Today's Acam Smith Awards 2009](#)
- "Best Global Foreign Exchange House"** - [Euromoney's Awards for Excellence 2008 \(shortlisted\)](#)
- FXGlobalTransfer** - [Transfer money worldwide with forex trader rates.](#)

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- Dubai:** OANDA is redefining forex trading in the Middle East.
- Singapore:** OANDA is leading change in Asia Pacific forex trading.

## OANDA's Margin Policies

### What is Margin?

The OANDA FXTrade platform supports **margin trading**, which means you can enter into positions larger than your actual Account Balance. One advantage of margin-based trading is that you can strongly leverage the funds in your account and potentially generate large profits relative to the amount invested. The downside is that you can also potentially incur significant losses in your margin capital very quickly.

To ensure you can cover any losses you might incur on your positions, OANDA requires sufficient collateral. This collateral is typically referred to as **margin**. Although there is no minimum margin deposit required to open an FXTrade account with OANDA, the margin available in your account will limit the size of the positions you can open and will affect when you receive a margin call. A **margin call** is the situation when the FXTrade Platform automatically closes all of your open positions and may be necessary to ensure that you cannot lose more than the amount of collateral in your Account.

The term **leverage** is often used to describe the margin requirements. A leverage of 50:1 corresponds to a margin requirement of 2% (1 divided by 50 is 0.02 or 2%). A 2% margin requirement means that, if you wish to open a new position, then you must have 2% of the size of that position available as margin. Another way of saying the same thing: for each dollar margin available you can make a 50 dollar trade.

OANDA offers a maximum leverage of 50:1. We also enables OANDA clients to cap their leverage at 40:1, 30:1, 20:1, or 10:1—we recommend 20:1 or lower. Other companies may offer 100:1 leverage, or even 200:1, but OANDA believes these levels are far too risky and could cause clients to lose all their funds very quickly. Serious professionals seldom trade at these levels of risk.

### OANDA's Margin Requirements

*(These margin rules apply to trades opened on or after November 30, 2003. For trades opened prior to that date, OANDA's old FXTrade margin rules continue to apply.)*

OANDA FXTrade requires a minimum margin of 2% (or maximum leverage of 50:1) when both currencies/commodities in a currency pair are in the following list:

AUD, CAD, CHF, EUR, GBP, JPY, USD

NZD, NOK, SEK, DKK

XAG, XAU  
List 1.

If one or both of the currencies/commodities in a currency pair are not in List 1 above, OANDA FXTrade requires a minimum margin of 4% (or maximum leverage of 25:1). This is an NFA requirement.

The following table shows FXTrade margin requirements for OANDA's available leverages.

Leverage	10:1	20:1	30:1	40:1	50:1
Margin Requirement (if both currencies are in List 1)	10%	5%	3.3333%	2.5%	2%
Margin requirement (if one currency is not in Table 1)	10%	5%	4%	4%	4%

10:1 → 50:1

### Trading Practices

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Deutsche Bank's dbFX online platform provides a secure and reliable platform for individuals and small institutions. As the world's leading FX liquidity provider, Deutsche Bank brings the benefits of the foreign exchange market to you with state-of-the-art trading platform tailored to your needs.

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Enjoy 2% leverage. Depend on 30 years of trading experience.
- Full Control over FX Trading Positions**  
A advanced hedging capabilities and flexibility to choose which trades to close instead of first in, first out (FIFO).
- Multi-Language Platform**  
Available in English, Chinese, Arabic, German, Spanish, French, Russian and Japanese.
- Superior Client Services**  
24/7 multilingual customer support, email and instant messaging.

Live Currency Rates

PAIR	LAST	HIGH	LOW
EUR/USD	1.4408	1.4422	1.4411
USD/JPY	92.419	92.54	92.473
GBP/USD	1.6089	1.6098	1.608
USD/CHF	1.03	1.0302	1.0295
USD/CAD	1.0416	1.0418	1.0416
EUR/JPY	133.17	133.40	133.28

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MAY BE FOREIGN  
BUT YOUR ACCOUNT  
SHOULDN'T BE**

1 2 3 4

### WHY TRADE FOREX WITH US?

- Professional Charting
- Multi-bank Liquidity Feed
- Spreads as low as 1 Pip
- Nano, Micro, Mini & Standard Lots
- 100% Automated Execution
- Smart Routing to Leading Banks
- Anonymous Order Execution

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- Interbank FX UK Announces Opening of Office
- Interbank FX Tightens Spreads
- Interbank FX Crowned Best Foreign Exchange Broker by Shares Magazine
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- Interbank FX Named Best Trading Platform by Middle East Forex Awards

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\* Online Forex Trading is one of the riskiest forms of investment available, and is not suitable for all traders. Read the [Forex Risk Disclosure](#) before trading Forex online.

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## Frequently Asked Questions

### What is Forex?

The off-exchange retail foreign currency market, also referred to as the 'Forex' or 'FX' market, is one of the largest financial and investment markets in the world. Forex is the simultaneous buying of one currency and selling of another. The world's currencies are on a floating exchange rate and are always traded in pairs, for example Euro/Dollar or Dollar/Yen. Forex investors use various methods of analysis (both technical and fundamental) in an effort to predict future price movement and thus profit from well timed transactions. \*Trading currencies is a very risky form of investing. Any funds used when speculating on the values of currency prices should be considered as risk capital.

### Where is the Central Location of the FX Market?

FX Trading is not centralized on an exchange; rather it is a true network of global banks, FCMs (Futures Commissions Merchants, or brokers similar to IBFX) and private traders like yourself. As is the case with the stock and futures markets, the FX market is considered an Over the Counter (OTC) market. Transactions are conducted between two counterparts over the telephone or via an electronic network.

### Who are the Participants in the FX Market?

The Forex market is called an 'Interbank' market due to the fact that historically it has been dominated by banks; including central banks, commercial banks, and investment banks. However, the percentage of other market participants is rapidly growing, and now includes large multinational corporations, global money managers, registered dealers, international money brokers, futures and options traders, and private speculators.

### When is the FX Market open for trading?

A true 24-hour market, Forex trading begins each day in Sydney, and moves around the globe as the business day begins in each financial center; first to Tokyo, then London, and finally New York. Unlike any other financial market, investors can respond to currency fluctuations caused by economic, social and political events at the time they occur - day or night. Most Forex brokerages allow clients to begin trading late in the day Sunday afternoon (US Sunday afternoon is Japan Monday market open) until late in the day Friday afternoon. Retail trading is typically suspended from the time of Friday close until Sunday open, creating a two day weekend. Each broker's dealing hours may vary slightly. IBFX is open for trading from 6 PM EST on Sunday until 4 PM EST on Friday.

### What are the Most Commonly Traded Currencies in the FX markets?

The most often traded or 'liquid' currencies are those of countries with stable governments, respected central banks, and low levels of inflation. Today, most of all daily transactions involve trading of the major currencies, which include the US Dollar, Japanese Yen, Euro, British Pound, Swiss Franc, Canadian Dollar and the Australian Dollar.

### What is Margin?

The amount of cash that Interbank FX requires a customer to deposit or maintain in the Customer's Account in connection with the Customer's trading activity. Interbank FX's initial margin requirement is 1% for mini and standard accounts. The system performs an automatic pre-deal check for margin availability, and will only execute trades if the client has sufficient margin funds in his or her account. Additional margin is required when a client's initial margin drops in value by 50% based on the value of any open positions. Interbank FX reserves the right to liquidate any open positions should a client's initial margin drop below 50%. This is an important risk management strategy for both Interbank FX and our clients.

100:1



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OPEN LIVE ACCOUNT

LANGUAGE ENGLISH

COUNTRY GLOBAL

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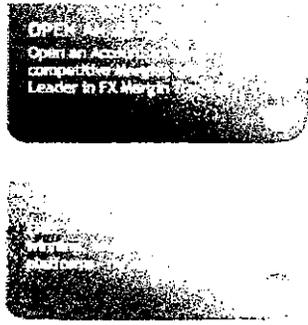
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FOREX TRADING

FOREX OPTIONS

TRADEMAKER

FX CHOICE

2939 ↓ -0.00036 EURGBP 0.89189 ↓ -0.00056 EURJPY 133.275 ↓ -0.038 EURCHF 1.18410 ↓ -0.00007 CHFJPY 89.779 ↓ -0.021 EURUSD

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## **EXHIBIT 2**

*Interactive Brokers LLC Comment Letter Re: File No. SR-FINRA-2009-040 (Release No. 34-60172); Amendment to Proposed Rule 2380 to Limit the Leverage Ratio offered by Broker-Dealers for Certain Forex Transactions*

## Summary of NFA Forex Bylaws, Rules and Interpretative Notices

1. **Fraud Prohibitions** (Compliance Rule 2-36)
  - a. Must observe high standards of commercial honor and just and equitable principals of trade.
  - b. Prohibits fraud; false records; disseminating false or misleading information; submitting false or misleading information regarding a forex transaction to NFA; knowingly disseminating an inaccurate report that affects the price of a foreign currency; manipulation; and embezzlement, theft or conversion of money or securities received in connection with a forex transaction.
2. **Disclosure Requirements** (Interpretative Notices 9053 and 9060; Compliance Rule 2-36)
  - a. Requires provision of disclosure of the characteristics and risks of forex trading that must include mandated language stating that funds may not receive the same bankruptcy protections as funds used to margin exchange-traded products. Disclosure must be provided at or before the time a customer first engages in a forex transaction.
  - b. Requires separately-acknowledged disclosure of the nature of forex transactions (either mandated language or language approved by NFA).
  - c. Requires disclosure of how the firm will be compensated for the services it provides to the customer at or before a customer first engages in a forex transaction.
  - d. Requires that the firm provide both the bid and the offer when a customer enters an order.
  - e. Requires disclosure of the factors that could be expected to materially affect the performance of the firm's electronic trading system, the means for contacting the firm during a system outage or slow-down and alternative ways to enter orders when the system goes down or reaches unacceptable performance levels.
  - f. Requires the provision of written information regarding BASIC.
3. **Security Deposit Requirements** (NFA Financial Requirements, Section 12; Interpretative Notice 9053).
  - a. Must collect security deposits equal to 1% of the notional value of transactions in specified foreign currencies (British pound, Swiss franc, Canadian dollar, Japanese yen, Euro, Australian dollar, New Zealand dollar, the Swedish krona, Norwegian krone, and Danish krone) and 4% in other currencies.
  - b. For short options, must collect this amount plus the premium.
  - c. For long options, must collect the entire premium.
  - d. Where the two (2) currencies are in different categories, must collect the higher amount.
  - e. If the transaction pairs a foreign currency with the US dollar, the security deposit is based upon the foreign currency.
4. **Capital Requirements** (NFA Financial Requirements, Section 11; Interpretative Notice 9053; NFA Forex Regulatory Guide)
  - a. Requires that the firm maintain capital in the following amount: the greater of: (i) 20 million; (ii) if the firm does not use straight-through processing for all customer transactions: 20 million plus 5% of all liabilities owed to customers over \$10 million; or, (iii) if applicable to the FCM, the amounts in NFA Financial Requirements Section 1. (Straight through processing includes platforms that automatically, without human intervention and without exception, enter into identical, but opposite transactions with another counterparty, creating an offsetting position in the firm's own name).
  - b. Requires that firm compute adjusted net capital (in accordance with CFTC Rule 1.17) and its minimum financial requirements on a monthly basis.
  - c. Requires notice to CFTC and DSRO if the firm falls below its financial requirements.
    - a. Prohibits inclusion of assets held by affiliates (unless approved by NFA) or unregulated persons in the firm's current assets for purposes of determining its adjusted net capital.
    - b. Prohibits the use of an affiliate (unless approved by NFA) or an unregulated person to cover currency positions for purposes of CFTC Rule 1.17.
    - c. Requires monthly filing of certain financial statements on CFTC Form 1-FR.
    - d. Financial statements must be prepared according to GAAP, unless CFTC Rule 1.17 is more restrictive (in which case, follow Rule 1.17).
    - e. Requires that an independent public accountant certify the firm's year-end financial statement.
    - f. Requires written procedures for calculating rollover or interest charges or payments that include the factors that are considered and the sources for those factors. Must document the underlying factors reviewed in completing the calculation, including any related transactions entered into by the firm, so the calculation can be replicated.

5. **Assets Covering Liabilities to Retail Forex Dealers** (NFA Financial Requirements, Section 14)
  - a. Requires that the firm calculate the amount owed to US customers for forex transactions and hold assets equal to or in excess of that amount at one or more qualifying institutions in the US or money center countries (as defined in CFTC Rule 1.49). The formula for calculating this amount is set forth in Section 14.
  - b. Assets held in money center countries are not eligible unless the firm and the qualifying institution have entered into a signed agreement, acceptable and provided to the NFA, authorizing the institution to provide the NFA and the CFTC with information regarding the firm's accounts and to provide that information directly to the NFA or the CFTC, upon request.
6. **Credit and Risk-Management Controls** (Interpretative Notice 9060).
  - a. If handle customer orders, requires procedures to prevent customers from entering into trades that create undue financial risk for the firm or the firm's other customers.
  - b. Requires that electronic trading systems be designed to allow the firm to set limits for each customer based upon the amount of equity in the account or the currency, quantity, and type of order and to block orders that exceed pre-set limits and requires that the firm use these controls.
  - c. If the electronic trading platform automatically liquidates positions, the firm must set liquidation limits high enough so that the position will be closed out at prices that will prevent the account from going into a deficit position, except under extraordinary market conditions.
  - d. Requires periodic system reviews to assess the reliability of the firm's credit and risk management controls.
7. **Weekly Financial Reports** (NFA Financial Requirements, Section 13)
  - a. Requires the filing of weekly electronic reports showing liabilities to customers and other financial information required by NFA. Must be filed by a supervisory employee that is under the ultimate supervision of a listed principal who is also an NFA associate.
8. **Financial Internal Controls** (NFA Financial Requirements, Section 15)
  - a. Prior to conducting business, must provide NFA with an internal report prepared and certified by an independent public accountant registered under Section 102 of the Sarbanes-Oxley Act.
  - b. The report must include a detailed explanation of the examination; a representation that the accountant examined and tested the firm's internal controls to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements in accordance with GAAP; and that the firm's system of financial controls has no material weaknesses and is adequate for establishing and maintaining internal control over the firm's financial reporting.
9. **Requirements for Confirmations and Daily and Monthly/Quarterly Statements** (Compliance Rule 2-44; Interpretative Notice 9053).
  - a. Requires that specified information be contained in confirmations, daily statements and monthly or quarterly statements.
  - b. Confirmations must be provided within (1) business day after the activity and must include: transaction date; transaction type (e.g., new position, offsetting position, rollover, adjustment); currency pair; buy or sell (if a new or offsetting position); size; price or premium (for new or offsetting positions or price adjustments); price or premium change (for price adjustments); monetary adjustments (debit or credit); net profit or loss for offsetting positions; and (charges for each transaction (e.g., rollover interest or fees). Daily statements must show the account equity as of the end of the previous day.
  - c. Must provide monthly statements if the account has an open position at the end of the month or changes in the account balance or equity since the prior statement (otherwise, quarterly statements). Monthly or quarterly statements must include: (i) the account equity at the beginning of the reporting period; (ii) all initiating or offsetting transactions, deliveries, option exercises or options expirations that occurred during the reporting period (with the date, currency pair, buy or sell, size and price or premium [with adjustments noted] for each); (iii) all open positions in the account (with the date initiated, currency pair, long or short, size, price or premium at which initiated [with price or premium adjustments noted] and unrealized profits for each); (iv) deposits and withdrawals; (v) other monetary adjustments (debits and credits); (vi) amount of cash; (vii) fees and charge (including commissions and interest or rollover fees); and (viii) account equity at the end of the reporting period.
  - d. For options, must also include: (i) strike price and expiration date on confirmations and monthly/quarterly statements and (ii) for option positions on monthly/quarterly statements, the value of the option marked to market.

- e. Confirmations and monthly/quarterly statements may be provided electronically only with customer consent. (Daily statements may be provided on-line)
10. **Price Adjustment Restrictions** (Compliance Rule 2-43).
    - a. Can only cancel an executed customer order or adjust a customer account in a manner that, directly or indirectly, would affect the price of the order when: (i) the cancellation or adjustment is favorable to the customer and is to settle a customer complaint (although, subject to certain conditions, can adjust customer orders that were adversely affected by technical problems with the trading platform or similar factors that are beyond the customer's control and are unrelated to market movement) and (ii) if the firm exclusively uses straight-through processing and the counterparty cancels or adjusts the price at which the position was executed.
    - b. For the type of cancellations and adjustments described in (ii), the firm must: (i) provide the customer with written notice of the cancellation or adjustment within 15 minutes of the execution (The notice must include documentation of the cancellation or adjustment from the firm's counterparty); (ii) either cancel or adjust all customer orders executed during the same time period and in the same currency pair or option, regardless of whether they were buy or sell orders; (iii) provide customers with written notice (e.g., in the customer agreement) that the firm may cancel or adjust executed customer orders based upon liquidity provider price changes.
    - c. Requires that cancellations and adjustments be reviewed and approved by a listed principal who is an NFA Associate and be documented and provided to NFA.
    - d. Prohibits a customer agreement from containing a provision that reserves the right to make any price or equity adjustments to a customer account except as permitted by the rule.
  11. **Prohibition on Offsetting Transactions** (Compliance Rule 2-43)
    - a. Prohibits the firm from carrying offsetting positions in a customer account (must offset positions on a first-in, first-out basis). At a customer's request, may offset same-size transactions if there are older transactions of a different offset against the oldest transaction of that size.
  12. **Know Your Customer** (Interpretative Notice 9053).
    - a. Requires that specified information be obtained from prospective customers (e.g., name, approximate age, address, principal occupation or business, current annual income and net worth and previous investment and trading experience).
  13. **Doing Business with Non-Members** (Compliance Rule 2-36; Interpretative Notice 9053)
    - a. Firms that are counterparties to forex transactions for customers are subject to discipline for the activities of certain persons that solicit or introduce a customer to the firm or that manage the customer's account, even if the firm acts diligently and has no knowledge of the third party's conduct.
    - b. Requires written procedures to review the activities of certain non-member third parties, including a review of the trading being conducted in the accounts, following up on customer complaints and a review of the third party's promotional material.
  14. **Discretion**. (Interpretative Notice 9053)
    - a. Prohibits the firm from exercising discretionary trading authority over a customer account for which it is, or is offering to be, the counterparty.
  15. **Financial Books and Records** (NFA Financial Requirements, Section 15)
    - a. Requires that the firm prepare and maintain records that summarize each transaction affecting the firm's assets, liability, income, expense and capital accounts.
    - b. Requires maintenance of daily trade records containing specified information.
    - c. Requires that persons preparing the firm's financial books and records be under the supervision of a listed principal and registered associated person.
  16. **General Recordkeeping** (Interpretative Notices 9053 and 9060)
    - a. Requires procedures to maintain transaction, account and financial records containing specified information.
    - b. Electronic trading platforms must create daily price and time logs.
    - c. Electronic trading platforms must produce monthly and yearly reports of realized and unrealized profits and losses by customer sortable by the person soliciting, introducing or management the account.
    - d. Electronic trading platforms must generate daily exception reports showing specified information and the reports must be reviewed by management for suspicious or unjustifiable activity.
    - e. Electronic trading platforms must generate month end assessment fee reports for which summarize the number of forex transactions executed and the size of those transactions.
    - f. Must periodically review electronic trading platform to ensure that it is maintaining the required data and is capable of generating the required reports.
  17. **Communications with the Public and Promotional Material** (Compliance Rule 2-36; Interpretative Notice 9053).

- a. Requires procedures for monitoring communications with the public, including sales solicitations and website and promotional material.
  - b. Prohibits deceptive material, material misstatements of fact and omissions that would make material misleading and certain representations regarding bankruptcy protection for forex funds.
  - c. Requires review and approval of all promotional material by a supervisory employee that is under the supervision of a listed principal who is also an NFA associate and a written record of the approval.
  - d. Promotional material must be maintained and available for examination for the recordkeeping period, measured from the date of last use.
  - e. Requires NFA review and approval of certain types of radio or television advertisements.
  - f. Places restrictions on statements of opinion, references to the possibility of profits, references to past trading profits, information about past performance, testimonials, statements of commission free services, "no slippage" representations, hypothetical descriptions and solicitations of customers based upon the leverage available.
18. **Supervision** (Compliance Rule 2-36; Interpretative Notice 9053)
- a. Requires written supervisory procedures.
  - b. Requires supervision of the firm's employees and agents in the conduct of their forex activities.
  - c. Requires procedures for screening employees for registration and statutory disqualification. For persons who will be responsible for preparing the firm's financial books and records, the firm must consider specified criteria.
  - d. Requires that employees are trained to perform their duties and to ensure that employees know and understand the firm's supervisory procedures.
  - e. Requires the supervision of the firm's affiliates that are authorized to engage in forex transactions by virtue of their affiliation for compliance with forex requirements. Must make the affiliates' books and records available to NFA, upon request, and are subject to discipline for its activities.
- a. Requires procedures for reviewing information obtained from and provided to customers solicited by the firm to ensure that the necessary account information has been obtained and the appropriate information provided.
  - b. Requires procedures for handling and resolving customer complaints.
  - c. Requires procedures for reviewing disclosures provided to customers.
  - d. Requires procedure for reviewing and analyzing the forex activity in customer accounts.
  - e. Requires procedures for handling customer funds, including accepting security deposits.
  - f. Requires periodic on-site visits to branch offices, guaranteed introducing brokers and other unregulated affiliates that conduct business on behalf of the firm.
19. **Supervision of Use of Electronic Trading Systems** (Interpretative Notice 9060).
- a. Requires that the firm notify NFA of the trading platform used; identify its owner and developer and state whether it is proprietary, used under a white-labeling arrangement or leased from a third party.
  - b. Requires that the firm specifically assign responsibility for compliance with the Interpretative Notice to someone one who is under the supervision of a listed principal.
  - c. Requires procedures to protect the reliability and confidentiality of customer orders and account information (including procedures for authenticating the user, encrypting authentication and order and account information transmitted over public or private networks, using firewalls, providing customers with a means to notify the firm if particular individuals are no longer authorized or to request authentication bc disabled, periodic testing of the system's security and assigning the responsibility for oversight of the security of the electronic trading system to appropriate supervisory personnel).
  - d. Requires procedures to maintain adequate personnel and facilities for the timely delivery of customer orders and reporting of executions (including procedures for regular evaluations of system capacity and performance; establishing acceptable capacity and performance levels; subjecting the system to initial stress tests; increasing capacity, when needed; and following up on customer complaints related to capacity).
  - e. Requires disaster recovery contingency plans designed to service customers if the system goes down or the activity exceeds expected peak volume needs; maintenance of redundant systems or the ability to quickly convert to other systems, as needed (including facilities for accepting orders by telephone); procedures for providing customers with notice of operational difficulties; and notification to NFA in the event of operational difficulties and disruptions.
  - f. Requires procedures to ensure the integrity of the trades placed on the trading platform. Platform must be designed to provide bids and offers that are reasonably related to current market prices and conditions; to ensure that any slippage is based upon real market condition; to calculate uniform settlement prices (must have procedures describing how settlement prices will be set using objective

- criteria); and to ensure rollovers comply with the terms disclosed in the customer agreement. Requires periodic reviews to ensure that the electronic trading platform protects the integrity of trades.
- g. Requires that a qualified outside party conduct an independent annual review of the electronic trading platform within twelve (12) months after the firm begins trading on the platform or within twelve (12) months after the firm becomes an FDM, whichever is later. Thereafter, an independent review must be conducted annually and a qualified outside party must conduct the review every other year. For pure order-routing systems, annual reviews may be conducted by an independent internal audit department or an outside party. Results of reviews must be documented, reported to senior management or to an internal audit committee/department and deficiencies must be addressed.
20. **Privacy Policy (CFTC Regulations)**
- a. Restricts firm's right to disclose non-public, personally identifiable financial information about customers and consumers.
  - b. Requires procedures that describe the firm's safeguards for protecting customer records and information, for disclosing non-public, personal financial information and for notifying customers of these policies.
  - c. Requires provision of a privacy notice that includes specified information when customers establish an account annually thereafter.
21. **Bulk Assignment or Liquidation of Forex Positions; Cessation of Customer Business** (Compliance Rule 2-40 and Interpretative Notice 9058)
- a. Requires customer consent or prior notice for assignment of positions or transfer of customer accounts. The notice must contain specified information and disclosures.
  - b. Requires notice to NFA prior to any bulk assignment of customer positions or bulk transfer of customer accounts.
  - c. Restricts assignments of open positions to authorized counterparties.
  - d. Prior to assignment, firm must investigate and determine if the assignee intends and is financially able to honor the commitments to the firm's customers as a result of the transfer, document the investigation and provide it to NFA.
  - e. Requires notice to NFA prior to any bulk liquidation of customer positions. Can liquidate customer positions with the express written consent of, or prior notice, to the customer.
  - f. If forex positions or accounts are assigned or transferred to the firm, the firm can't accept orders initiating new positions until it has either obtained the required personal and financial information from the customer and provided the required disclosure or, if the assignor was an FDM, obtained the customer information and evidence that the disclosures were provided from the assignor.
  - g. Requires that firm provide NFA with all pertinent records related to a bulk assignment, liquidation or transfer including the customer agreements and a list of affected accounts.
  - h. Requires notice to NFA seven (7) days prior to ceasing business.
22. **Anti-Money Laundering** (Compliance Rule 2-9 and Interpretative Notice 9045)
- a. Requires procedures designed to ensure compliance with the AML provisions of the Bank Secrecy Act and related regulations
  - b. Requires that the firm designate an AML compliance officer.
  - c. Requires procedures for hiring qualified staff, including performing background checks on key employees to screen for criminal and disciplinary histories.
  - d. Requires customer identification program that includes obtaining specified information from customers, verifying the customer's identity and maintaining records of the identification information.
  - e. Requires procedures to detect and report suspicious activity.
  - f. Requires an AML employee training program.
  - g. Requires annual audit of the firm's AML compliance program, which may be performed by internal audit staff, subject to limitations. Must document the audit and report results to senior management or to an internal audit committee or department. If deficiencies are found, must follow up to ensure that they are corrected.
23. **Business Continuity Plan** (Compliance Rule 2-38 and Interpretative Notice 9052)
- a. Requires that the firm maintain a business continuity and disaster recovery plan that addresses establishing back-up facilities and systems and personnel in geographically separate locations, backing-up or copying essential documents and storing them off-site, considering the impact of third party business disruptions and ways to minimize them and developing a communication plan to contact essential parties.
  - b. Requires periodic review of the plan and a record the review.
  - c. Requires distribution of the plan to key employee and maintaining copies at off-site locations,

- d. Must provide NFA with the name and contact information for a person authorized to make key decisions who will be the firm's contact in the event of an emergency.