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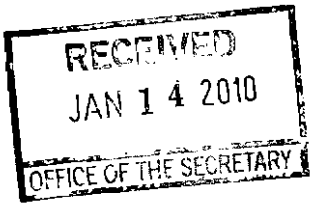
January 13, 2010



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

Re: File Number SR–FINRA–2009–040: Notice of Filing of Proposed Rule Change to Adopt FINRA Rule 2380 to Limit the Leverage Ratio Offered by Broker-Dealers for Certain Forex Transactions

Dear Ms. Murphy:

We appreciate the opportunity to respond to FINRA's Proposed Rule 2380, as amended and published December 8, 2009 in the Federal Register,[1] establishing a leverage limitation of no more than 4:1 for certain retail foreign exchange ("forex") transactions.

In proposing this rule, FINRA's main purpose, as stated in FINRA Regulatory Notices 08-66 and 09-06, and in its rule filings with the Securities and Exchange Commission ("SEC"), is to protect investors from possibly unjustified speculation and excessive losses in light of the recent growth in retail forex activity by broker-dealers. In our prior comment letter to FINRA, enclosed as an attachment, we urged FINRA to adopt an exemption to Rule 2380 for single legal entities that are subject to oversight by both securities and futures regulators, i.e., firms that are both broker-dealers and futures commission merchants ("BD/FCMs" or "dual registrants").[2] Because such firms are well-capitalized and closely regulated pursuant to the laws, regulations, and rules of the Commodities and Futures Trading Commission ("CFTC") and National Futures Association ("NFA") as well as those of the SEC and FINRA, the firms' customers benefit from ample protection in their forex transactions.

FINRA generally rejected this suggestion in its August 27, 2009 "Response to Comments," on the basis that "joint BD/FCMs do not have the same regulatory requirements as sole futures commission merchants"[3] ("sole FCMs"). The most notable difference lies in the adjusted net capital requirements: sole FCMs are subject to a requirement of $20 million under NFA rules, whereas the requirement for BD/FCMs involved in forex transactions is either $5 million or $7.5 million.[4]

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1 Federal Register Vol. 74, No. 234 (Dec. 8, 2009); SEC Release No. 34-61090; File No. SR-FINRA-2009-040.

2 Letter from TradeStation Securities Inc. (May 27, 2009) *online at http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/noticecomments/p118821.pdf.*

3 Letter from FINRA to the SEC (August 27, 2009) (regarding File No. SR-FINRA-2009-040) *online at http://www.finra.org/web/groups/industry/@ip/@reg/@rulfil/documents/rulefilings/p119891.pdf.*

4 In pertinent part, Section 1 of the NFA Rules, applicable to BD/FCMs, provides, with emphasis added:

While acknowledging FINRA's position, we believe that imposing Proposed Rule 2380 on BD/FCMs is not the appropriate course of action because it would create significant costs and difficulties for customers of BD/FCMs, as described in more detail below, whereas alternative approaches would avoid these disadvantages yet still yield a similar level of investor protection. In particular, we propose that the SEC, FINRA, the CFTC and NFA coordinate more closely in order to devise a consistent adjusted net capital requirement for both BD/FCMs and sole FCMs and to eliminate the differing treatment for BD/FCMs and sole FCMs within the futures regulatory framework.

TradeStation Securities, Inc.

Launched in 1991, TradeStation Securities, Inc. ("TradeStation" or "the Firm") provides brokerage services and a single, integrated electronic platform for trading a variety of products, including stocks, options, futures, and forex.[5]

The Firm is a registered Futures Commission Merchant ("FCM") with the CFTC and a member of both FINRA and the NFA. The Firm is subject to additional oversight as a member of other self-regulatory organizations, including the New York Stock Exchange, Options Clearing Corporation, Depository Trust Clearing Corporation, Boston Options Exchange, Chicago Board of Options Exchange, Chicago Stock Exchange, International Securities Exchange, and NYSE ARCA.[6]

(a) Each NFA Member that is registered or required to be registered with the Commodity Futures Trading Commission (hereinafter "CFTC") as a Futures Commission Merchant (hereinafter "Member FCM") must maintain "Adjusted Net Capital" (as defined in CFTC Regulation 1.17) equal to or in excess of the greatest of:

(i) $500,000;
(ii) For Member FCMs with less than $2,000,000 in Adjusted Net Capital, $6,000 for each remote location operated (i.e., proprietary branch offices, main office of each guaranteed IB and branch offices of each guaranteed IB);
(iii) For Member FCMs with less than $2,000,000 in Adjusted Net Capital, $3,000 for each AP sponsored (including APs sponsored by guaranteed IBs);
(iv) For securities brokers and dealers, the amount of net capital specified in Rule 15c3-1(a) of the Regulations of the Securities and Exchange Commission (17 CFR 240.15c3-1(a));
(v) Eight (8) percent of domestic and foreign domiciled customer and four (4) percent of non-customer (excluding proprietary) risk maintenance margin/performance bond requirements for all domestic and foreign futures and options on futures contracts excluding the risk margin associated with naked long option positions;
(vi) For Member FCMs with an affiliate described in section 2(c)(2)(B)(i)(II)(cc)(BB) of the Act that engages in forex transactions (as defined in Bylaw 1507(b)) and that is authorized to engage in those transactions solely by virtue of its affiliation with a registered FCM, $7,500,000; or
(vii) For Member FCMs that are counterparties to forex options transactions (as forex is defined in Bylaw 1507(b)), $5,000,000, except that Forex Dealer Members must meet the higher requirement in Financial Requirements Section 11.

5 The trading platform is described, and may be viewed, on the TradeStation Group website at *http://www.tradestation.com/platform/overview.shtm*.

6 This and other information may be found in the "Company Fact Sheet" on the TradeStation Group website at *http://www.tradestation.com/aboutus/com_factsheet.shtm*.

The Proposed Forex Limitation Will Impose Substantial, Unnecessary Burdens on Customers of Dually-Registered Broker-Dealers/Futures Commission Merchants

FINRA's proposed leverage limitation, if approved, would needlessly injure customers of dual registrants. The proposed leverage limits – even as amended to a 4:1 limit – place dually registered firms at a severe competitive disadvantage with sole FCM firms. Under the current Proposed Rule 2380, dual registrants would face the choice of either winding down their retail forex operations or removing these operations to a separate affiliate. As forex activity is essential to TradeStation's single platform business model, the Firm would have to seriously consider taking the latter course. In doing so, however, the Firm would face significant initial and ongoing financial costs, which would likely have to be passed on in large part to its customers.

In sum, constraining reputable, fully-capitalized dual registrants and their customers by imposing a 4:1 forex leverage limitation would appear to place substantial burdens on the customers of well-capitalized dual firms, when alternative avenues could avoid such burdens while still achieving FINRA's ultimate goal.

FINRA Should Develop a Consistent Adjusted Net Capital Requirement for Both Broker-Dealer/Futures Commission Merchants and Sole Futures Commissions Merchants

As described above, NFA rules mandate a much higher adjusted net capital requirement for sole FCMs ($20 million) than for certain other entities, including banks, insurance companies, and broker-dealers. Congress has recently taken action in the CFTC Reauthorization Act of 2008 ("CRA") to remove this discrepancy in the futures market by requiring CFTC-regulated forex dealers to register with the NFA within the new category of Retail Foreign Exchange Dealers ("RFEDs") and raising the net capital requirements for these entities to $20 million by May 2010. Because Congress did not bring broker-dealers within the scope of its new adjusted net capital requirement, some retail forex firms have attempted to avoid it by shifting their forex transactions to broker-dealers, such as by applying to FINRA to become broker-dealers or by acquiring broker-dealers which are already FINRA members.[7]

The logical response by FINRA to such a development would not be to set so strict a leverage limitation as to prevent any FINRA-registered broker-dealer whatsoever from conducting forex transactions. Rather, FINRA (or the SEC[8]) should follow a path similar to that laid out by Congress with respect to the futures regulators and establish a comparable adjusted net capital requirement for broker-dealers doing forex business. Such a step would have the twin benefit of halting the potential manipulation of customers by poorly-capitalized forex firms while permitting the customers of well-capitalized FINRA members to continue benefiting from their

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[7] See FINRA Regulatory Notice 08-66 (November 2008), p. 3, *online at http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p117362.pdf.*

[8] While the SEC net capital rules generally establish requirements for FINRA member firms and those rules would be the logical vehicle for sueh a change, there is precedent for self-regulatory organizations to establish capital requirements that are greater than those of the SEC. FINRA could explore such an alternative.

services. Thus, FINRA would effectively target the forex business that has recently migrated from the FCM channel, without erecting obstacles for customers of FINRA members that have sufficient safeguards already in place.

Alternatively, FINRA Should Work with the CFTC and NFA to Eliminate the Differences in Their Regulatory Treatment of Broker-Dealer/Futures Commission Merchants and Sole Futures Commission Merchants with Regard to Forex

Alternatively, FINRA (in coordination with the SEC) could work with the CFTC and NFA to establish uniform regulatory treatment of BD/FCMs and sole FCMs with regard to forex. As FINRA explained in Regulatory Notice 08-66, their differing treatment of these entities provided the incentive for retail forex firms to move their business to broker-dealers. Eliminating this difference would eliminate the incentive; new retail forex activity in broker-dealers would disappear as fast as it initially appeared.

Conclusion

For the reasons above, we respectfully recommend that the Securities and Exchange Commission reject FINRA's Proposed Rule 2380 and request that FINRA, in coordination with the SEC (a) adopt a capital requirement for dual firms that is in line with that of the CRA or is otherwise generally uniform with capital requirements of the futures regulators and self-regulatory organizations, or (b) work with the CFTC and NFA to establish uniform treatment for BD/FCMs and sole FCMs within the futures regulatory framework.

If you have any further questions, please contact the undersigned at 954.652.7852. Thank you again for the opportunity to comment.

Sincerely,

William P. Cahill
President

Enclosure

cc Mr. Gary L. Goldsholle,
Vice President and Associate General Counsel,
Financial Industry Regulatory Authority, Inc.

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May 27, 2009

Ms. Marcia E. Asquith
Office of the Corporate Secretary
Financial Industry Regulatory Authority, Inc.
1735 K Street, NW
Washington, DC 20006-1506

Re: Regulatory Notice 09-06: Proposed Rule to Establish Leverage Limitation for Retail Forex

Dear Ms. Asquith:

Thank you for the opportunity to offer comments on Proposed Rule 2380, which establishes a leverage limitation for retail foreign exchange ("forex"). After attentively considering Regulatory Notice 09-06 and the preceding Regulatory Notice 08-66, we would like to suggest one amendment.[1]

We believe that FINRA's stated goal of increasing protection for investors against potentially manipulative or thinly-capitalized retail forex dealers would be more effectively accomplished by exempting firms which are subject to regulation by both securities and futures regulators. The customers of such broker-dealers already benefit from the protections and requirements of the Commodity Futures Trading Commission ("CFTC") and the National Futures Association ("NFA"), a self-regulatory organization. For instance, such firms must comply with the $20 million capital requirement contained in the 2008 CFTC Reauthorization Act ("CRA"). If they were compelled by Proposed Rule 2380 to move their forex activities to separate entities, significant expenses would arise in connection with the transition. Initially incurred by the firms, these expenses would ultimately fall upon their customers, who, despite paying more, would gain no corresponding increase in regulatory protection.

TradeStation Securities, Inc.

Launched in 2001 as an online brokerage firm for self-directed investors who focus on disciplined approaches to trading, TradeStation Securities, Inc. ("TradeStation" or "the Firm") provides brokerage services and a single, integrated electronic platform for trading a variety of products, including stocks, options, futures, and forex.

The Firm is a registered Futures Commission Merchant ("FCM") with the CFTC and a member of both FINRA and the NFA. The Firm is subject to additional oversight as a member of other self-regulatory organizations, including the New York Stock Exchange, Depository Trust Company, National Securities Clearing Corporation, Options Clearing Corporation, Boston Options Exchange, Chicago Board of Options Exchange, Chicago Stock Exchange, International Securities Exchange, NASDAQ OMX and NYSE ARCA.

[1] Although we note that the comment period stated on the Notice has expired, we have learned in informal conversations with FINRA staff that comment letters would still be accepted. We appreciate your flexibility in considering this submission.

Exempting Dually-Registered Firms, or Adopting a Uniform Approach Across Regulatory Entities, Would More Effectively Achieve the Aims of the Proposed Rule

FINRA's proposal comes in the wake of the passage of the CRA last year. In extending the antifraud provisions of the Commodity Exchange Act to retail transactions on the basis of leverage or margin, the CRA set a capital requirement of $20 million as of May 2009 for retail forex dealers registered with the NFA. In reaction, some retail forex activity, as reported by FINRA in Regulatory Notice 09-06,[2] may have migrated from the FCM channel to broker-dealers. FINRA has expressed concern that the allegedly aggressive and misleading practices of certain of these firms create a severe danger of wiping out the funds of unsuspecting investors.[3] In an effort to protect investors in these situations, FINRA has proposed Rule 2380 to limit the forex leverage ratio to 1.5 to 1.

In its current form, however, Proposed Rule 2380 would encompass not just the members causing concern but all members engaged in forex activity. Included would be fully-capitalized broker-dealers that, as FCMs registered with the CFTC and as NFA members, have had forex operations in the same entity for years. Unlike other forex firms that may seek to take advantage of differences between the structures of futures regulation and broker-dealer regulation, such dually-registered firms ("dual registrants") remain squarely within both the futures and broker-dealer regulatory frameworks.

We would, therefore, support the suggestion, already offered in the comment letter by Interactive Brokers LLC, that FINRA exempt broker-dealers that are also registered FCMs and NFA members. Alternatively, we would respectfully request that FINRA impose a capital requirement in line with that of the CRA, as proposed in the comment letter from thinkorswim, Inc., or develop another uniform approach in conjunction with futures regulators and self-regulatory organizations, rather than impose a substantially reduced forex leverage ratio that would affect only forex dealers who also happen to be broker-dealers, regardless of how well capitalized.

Under the Proposed Rule as it is now, dual registrants would face the choice of either winding down their retail forex operations (as they would not be able to compete) or removing these operations to a separate affiliate. As forex activity is essential to TradeStation's single platform business model, the Firm would have to consider seriously taking the latter course. In doing so, however, the Firm would face serious financial costs. Worse, the extended disruption of a transition and the continuing inefficiencies of two business platforms could burden its numerous customers without enlarging their regulatory protection. Constraining in this way reputable, fully-capitalized dual registrants and their customers would appear not to further the goal of Proposed Rule 2380 while possibly erecting barriers to its fulfillment.

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[2] Regulatory Notice 09-06, p. 3 (Jan. 2009).

[3] *See* Regulatory Notice 08-66, p. 2 (Nov. 2008), "Many forex dealers extend leverage to their customers at ratios of 400:1 or higher, which allows customers to control contracts worth significantly more than their cash investment. The high leverage ratios magnify even minor fluctuations in currency rates... Even a small move against a customer's position can result in a significant loss... Nonetheless, retail interest in the market is growing, in part due to aggressive, and sometimes misleading, advertising that minimizes risks and exaggerates potential returns."

Conclusion

For the reasons above, we respectfully recommend that FINRA exempt dually-registered firms from Proposed Rule 2380.

If you have any further questions, please contact the undersigned at (954) 652- 7852 or Dennis Hensley of Sidley Austin at (212) 839-5731. Thank you again for the opportunity to comment.

Sincerely,

William Cahill
President & COO

cc. Grace Vogel