February 19, 2009

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

RE: *FINRA Requests Comment on Proposed Rule 2380 to Establish a Leverage Limitation for Retail Forex, Regulatory Notice 09-06*

Dear Ms. Asquith,

TD AMERITRADE, Inc.[1] "the firm" appreciates the opportunity to comment on the proposed rule 2380 to establish a leverage limitation for retail Forex done through FINRA registered Broker/Dealers. The firm strongly opposes the proposal and feels that if passed, it would only serve to harm retail investors as it would effectively eliminate their ability to engage in Forex as a part of their investment strategy in a securities account. The firm feels the underlying motive by FINRA appears to attempt to force FINRA registrants whose customers trade retail Forex to secure Commodity Futures Trading Commission "CFTC" registration and association with the National Futures Association "NFA" creating an onerous regulatory structure which may have the unintended consequence of regulatory loopholes rather than creating a more transparent structure for the retail investor.

Background

Over the last several years an increase in transparency has lead to the retail consumer increasingly becoming more global with their investment portfolio. When a U.S. customer purchases foreign securities as part of their portfolio that portion will be subject to Currency risk. To help hedge that risk a customer is increasingly turning to Forex as it represents one of the only transparent methods for a retail investor that has exposure indirectly to a foreign currency to hedge that risk. Today, margin leverage is at par in a Broker/Dealer account to that offered in a Futures account. As such, customers are increasingly utilizing Forex in their Broker/Dealer account as the hedge to tie the hedge directly to the security in question.

[1] TD Ameritrade is a wholly owned broker-dealer subsidiary of TD AMERITRADE Holding Corporation ("TD Ameritrade Holding"). TD Ameritrade Holding has a 33-year history of providing financial services to self-directed investors. TD Ameritrade Holding's wholly owned broker-dealer subsidiary, TD Ameritrade serves an investor base comprised of over 4.9 million funded client accounts with approximately $241 billion in assets.

Margin Misnomers

FINRA cites the speculative and volatile nature of retail Forex activity as one reason for a higher margin requirement, yet FINRA offers no basis for this rationale. Moreover, FINRA cites one reason to augment the margin requirement is to protect investors due the lack of real-time margin call notices and the notion that there is an inherent time delay in the current call notice process. The firm strongly disagrees with this position. In a margin account the monies are loaned from the firm to the customer and as such, the firm has a business interest to ensure that a client deposits satisfy call requirements. The firm deploys automated technology that is common place in the industry which provides for real time balance notification to the client. Further the firm deploys common place technology that monitors balances on a real-time basis. Regardless of any call notice, the firm reserves the right to sell a client out at any time regardless of security class as a client approaches a negative equity scenario.

FINRA cites that in the securities industry, the initial margin requirement for marginable equity securities is fifty (50) percent, which is a correct representation and while FINRA recognizes that future minimum margin is twenty five (25) percent, in its proposal; FINRA would require that Forex always be maintained at a 66.67% requirement thus even higher than the maintenance requirement for equity securities and well below the 100:1 leverage afforded to retail customers who transact through an NFA registered dealer. Further, the proposed requirement completely overlooks Rule 2520 “pattern day trader requirements” which provides 4:1 leverage to equity securities.

Finally, when a client engages on Margin they agree to the terms and conditions of the agreement. The firm outlines and notes the following language contained within the customer margin agreement:

- You can force the sale of securities or other assets in my account.
- You can sell my securities or other assets without contacting me.
- I am not entitled to choose which securities or other assets in my Account are liquidated or sold to meet a margin call.
- You can increase your “house” maintenance margin requirements at any time and you are not required to provide me advance written notice of the change.
- I am not entitled to an extension of time on a margin call.

In the end the proposal will do little to protect investors as FINRA claims. The more likely scenario is that customers will withdraw funds from broker-dealer accounts only to deposit those funds with Commodities dealers where they can achieve the leverage prohibited under the proposed FINRA rule.

Unintended Consequences of Regulatory Loop Holes

As FINRA points out, the current broker-dealer margin requirements match those requirements of the Futures Commission Merchant "FCM" channel, so if margin at a FINRA Broker/Dealer were revised from 100:1 to 1.5:1, the result would simply be any client wishing to engage in Forex trading would move to an FCM regulated by the CFTC. The unintended consequence however in this process is that it would become a very likely scenario for an introducing FINRA registered Broker/Dealer to either create a subsidiary which is registered under the NFA alone, or an introducing Broker/Dealer may choose to partner with an NFA firm engaging in Forex transactions. In these types of arrangements, while the NFA firm would have oversight by the CFTC the introducing Broker/Dealer would be an unregulated entity with respect to Forex transactions.

Finally, recent developments that were enacted in concert with the Treasury Department, the Securities and Exchange Commission and the Commodity Futures Trading Commission regarding Portfolio Margin seem to be counter intuitive to this proposal. Although not available for Forex transactions today, Portfolio Margin serves to streamline how margin between security types is administered and begins to provide a customer with a standardized margin metric. FINRA's notation that any account equity derived from a Forex position may not be used to purchase securities not only undermines the value of Portfolio Margin, it essentially would require total segregation which does not serve to benefit the retail investor.

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We would be pleased to discuss our concerns in greater detail with you and your staff. Please feel free to contact me at (402) 970-5656.

Sincerely,

/S/

Christopher Nagy
Managing Director Order Strategy
Co-Head of Government Relations
TD AMERITRADE