



February 20, 2009

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

Regulatory Notice 09-06 (Retail Forex)

Dear Ms. Asquith:

The Capital Steering Committee of SIFMA<sup>1</sup> is pleased to provide the following observations on Regulatory Notice 09-06 (“the Notice”) on a proposed rule to establish a leverage limit for OTC foreign currency transactions with retail customers.

Points Re FINRA 09-06 (Retail FX)

- Prior to implementation of any such rule, we recommend that FINRA clarify whether Rule 15c3-3 is applicable to the deposit required to carry positions involving retail transactions in foreign exchange.
- There is no definition of “retail” customer in the Notice, but instead one is embedded in the definition of “forex” by means of a reference to the definition of an “eligible contract participant” as defined in the Commodity Exchange Act.<sup>2</sup> We recommend that FINRA create a definition of a “retail customer” directly in

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<sup>1</sup> The Securities Industry and Financial Markets Association brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry. SIFMA works to represent its members' interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

<sup>2</sup> As proposed, natural persons and corporations with less than ten million dollars in assets would generally fall within the terms of the rule. This test would include not merely all but very high net worth natural persons, but also a great many small businesses.

the final rule without reference to a regulatory framework that may not be ordinarily relevant to every broker-dealer.

- An OTC contract may be the only meaningful way of hedging for a small business or a retail investor that has exposure to a foreign currency that either is not available on a futures exchange or where the contract terms are a poor match for the exposure.<sup>3</sup> We strongly recommend that FINRA consider an exemption for customers engaging in hedging activities, as a leverage limit of 1.5 to 1 is very likely to make hedging uneconomic when conducted in a broker-dealer.

If there are any questions concerning our observations or if FINRA wishes the Committee to expand upon them, please do not hesitate to contact me directly (203-719-8308) or our Committee staff advisors, Kyle Brandon (212-313-1280) or Jerry Quinn (212-313-1207). Thank you.

Sincerely,

*/s/Daniel McIsaac*

Daniel McIsaac, Chair  
Capital Steering Committee

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<sup>3</sup> For example, if a customer purchases a foreign security denominated in a foreign currency but which will be paid for at settlement date in U.S. dollars, the customer will be subject to FX risk and might reasonably seek to hedge that exposure during the interim period. Even if that currency is available in the form of an exchange traded futures or options contract, it may be illiquid, or if a European-style options contract, the time during which exercise is permitted may not align with the settlement date.