



TradeStation[®]

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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.

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,

A handwritten signature in black ink, appearing to read "William Cahill".

William Cahill
President & COO

cc. Grace Vogel