



Financial Industry Regulatory Authority

**Gary L. Goldsholle**  
Vice President  
and Associate General Counsel  
Regulatory Group

April 28, 2010

Elizabeth M. Murphy  
Secretary  
U.S. Securities Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

**Re: File No. SR-FINRA – 2009-040, Amendment No. 2 – Response to Comments**

Dear Ms. Murphy:

This letter responds to comments submitted to the Securities and Exchange Commission (“Commission”) regarding the above-referenced rule filing, a proposed rule change to adopt FINRA Rule 2380 (Leverage Limitation for Retail Forex) to prohibit any member firm from permitting a customer to: (1) initiate any forex position with a leverage ratio of greater than 4 to 1; and (2) withdraw money from an open forex position that would cause the leverage ratio for such position to be greater than 4 to 1.<sup>1</sup>

The Commission most recently published the proposed rule change for comment in the Federal Register on December 8, 2009,<sup>2</sup> and received six comment letters.<sup>3</sup> All six letters reiterated comments made in prior letters. In short, these comment letters repeated the following issues:

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<sup>1</sup> See Securities Exchange Act Release No. 61090 (December 1, 2009); 74 FR 64776 (December 8, 2009) (SR-FINRA-2009-040).

<sup>2</sup> *Id.*

<sup>3</sup> Letter from Korman Tam, Managing Director, MG Securities, LLC (December 29, 2009) (“MG Securities”); Letter from John S. Markle, Deputy General Counsel, Regulatory Operations, TD AMERITRADE, Inc. and Thinkorswim, Inc. (December 29, 2009) (“TD AMERITRADE”); Letter from John M. Damguard, President Futures Industry Association (January 4, 2010) (“FIA”); Letter from Dennis A. Klejna, Senior Vice President and Assistant General Counsel, MF Global Inc. (January 4, 2010) (“MF Global”); Letter from David M. Battan, Executive Vice President, Legal/Compliance, Interactive Brokers Group (January 4, 2010) (“Interactive Brokers”); Letter from William Cahill, President and COO, TradeStation Securities (January 13, 2010) (“TradeStation”).

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- FINRA should exclude from the proposed rule dually registered broker-dealer/FCMs that are also subject to oversight by the National Futures Association (“NFA”);<sup>4</sup>
- FINRA should coordinate with the Commodity Futures Trading Commission and the NFA to establish consistent regulatory treatment of BD/FCMs and sole FCMs with regard to forex;<sup>5</sup>
- FINRA should impose a higher net capital requirement instead of implementing the leverage ratio;<sup>6</sup>
- The proposed rule change prohibits broker-dealers from offering forex to their retail customers and would force such customers to engage in forex outside of the broker-dealer;<sup>7</sup>
- The proposed rule change is inconsistent with congressional intent;<sup>8</sup> and
- The proposed rule is inconsistent with the provisions of Section 15A(b)(6) of the Securities Exchange Act.<sup>9</sup>

FINRA has addressed these comments in previous submissions made to the Commission<sup>10</sup> and believes such submissions fully respond to the material issues raised in the comment letters to this rule filing. If you have any questions, please contact me at (202) 728-8104, or Matthew Vitek at (202) 728-8156.

Sincerely,



Gary L. Goldsholle  
Vice President and Associate General Counsel

<sup>4</sup> Interactive Brokers, MF Global and TD AMERITRADE.

<sup>5</sup> FIA, MF Global and TradeStation.

<sup>6</sup> Interactive Brokers and TradeStation.

<sup>7</sup> FIA, Interactive Brokers, MF Global, MG Securities, TD AMERITRADE and TradeStation.

<sup>8</sup> Interactive Brokers and MF Global.

<sup>9</sup> FIA.

<sup>10</sup> See Securities Exchange Act Release No. 60172 (June 25, 2009), 74 FR 32022 (July 6, 2009); see also letter from Gary L. Goldsholle, Vice President and Associate General Counsel, FINRA, to Elizabeth M. Murphy, Secretary, Commission, dated August 27, 2009.