

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 1.¹

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

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

² Id.

³ 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. Damgaard, 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”).

- FINRA should exclude from the proposed rule dually registered broker-dealer/FCMs that are also subject to oversight by the National Futures Association ("NFA");⁴
- 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;⁵
- FINRA should impose a higher net capital requirement instead of implementing the leverage ratio;⁶
- 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;⁷
- The proposed rule change is inconsistent with congressional intent;⁸ and
- The proposed rule is inconsistent with the provisions of Section 15A(b)(6) of the Securities Exchange Act.⁹

FINRA has addressed these comments in previous submissions made to the Commission¹⁰ 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

⁴ Interactive Brokers, MF Global and TD AMERITRADE.

⁵ FIA, MF Global and TradeStation.

⁶ Interactive Brokers and TradeStation.

⁷ FIA, Interactive Brokers, MF Global, MG Securities, TD AMERITRADE and TradeStation.

⁸ Interactive Brokers and MF Global.

⁹ FIA.

¹⁰ 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.