From: James Sanders <jsanders@fxcm.com>
Sent: Monday, March 8, 2010 12:57 PM
To: secretary <secretary@CFTC.gov>
Subject: Regulation of Retail Forex - RIN 3038-AC61
Attach: FXCM LLC - CFTC Comment Letter 3-8-2010.pdf

March 8, 2010

Mr. David Stawick
Secretary
Commodity Futures Trading Commission
1155 21st Street, NW.
Washington, DC 20581

Re: Regulation of Retail Forex - RIN 3038-AC61

Dear Mr. Stawick:

Attached please find FXCM LLC's comments with respect to the above-referenced rule proposal.

Sincerely,

James M. Sanders
Chief Compliance Officer
Forex Capital Markets LLC
Financial Square
32 Old Slip, 10th Floor
New York, New York 10005
Telephone: (646) 432-2209
Facsimile: (212) 897-7669
E-mail: jsanders@fxcm.com

FXCM and its affiliates assume no liability for errors, inaccuracies or omissions in these materials. They do not warrant the accuracy or completeness of the information, text, graphics, links or other items contained within these materials. FXCM and affiliates shall not be liable for any special, indirect, incidental, or consequential damages, including without limitation losses, lost revenues, or lost profits that may result from these materials. This email is not a solicitation to buy or sell currency. All information contained in this e-mail is strictly confidential and is only intended for use by the recipient. All e-mail sent to or f this address will be received by the FXCM corporate e-mail system and is subject to archival and review by someone other th the recipient.

Financial Square 32 Old Slip, 10th Floor New York, NY 10005 USA • Tel: (212) 897-7660 • Fax: (212) 897-7669

WWW.FXCM.COM

March 8, 2010

Via U.S. First Class Mail and E-mail

Mr. David Stawick
Secretary
Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Regulation of Retail Forex – RIN3038-AC61

Dear Mr. Stawick:

Forex Capital Markets LLC ("FXCM") is a registered futures commission merchant and Forex Dealer Member of National Futures Association ("NFA"). FXCM has been registered with the Commodity Future Trading Commission ("CFTC" or "the Commission") as a futures commission merchant since 2001 and is one of the leading U.S. firms offering off-exchange forex trading to retail clients around the world. FXCM is proud of its position as an industry leader in retail FX both in the United States and globally. FXCM has been a staunch advocate for increased regulation for the U.S. forex industry and the protection of retail forex customers. FXCM submits these comments in response to the Commission's January 20, 2010 rulemaking proposal (the "January 20th Proposal") concerning "Regulation of Off-Exchange Retail Foreign Exchange Transactions and Intermediaries."

FXCM believes that the vast majority of the regulations contained in the January 20th Proposal are sound and consistent with the legislative goals for retail forex embodied in the CFTC Reauthorization Act of 2008. These legislative goals focused first and foremost on clarifying the CFTC's jurisdiction over retail forex; imposing statutory capital requirements for CFTC-registered retail forex counterparties; and requiring retail forex intermediaries such as introducing brokers, trading advisers and pool operators to register with the CFTC and become members of NFA. Since FXCM has been a longtime proponent for the registration of forex intermediaries in the U.S. our firm is pleased that the January 20th Proposal includes provisions that will formally implement these legislative mandates.

FXCM, however, believes that the January 20th Proposal contains one provision that if adopted as part of the final rules will have dramatic and negative consequences for U.S.-registered retail forex dealers as well as present and future U.S. retail forex investors. This provision, "Proposed Regulation 5.9 – Security Deposits for Retail Forex Transactions," would restrict leverage on

retail forex transaction to a level of 10:1, which is a 90% reduction from the present leverage level of 100:1 permitted for major currencies under Section 12 of NFA's Financial Requirements. The CFTC's proposal to severely reduce leverage would not provide any meaningful customer protection benefits and would effectively eliminate the domestic retail forex industry. If the 10:1 leverage level is adopted, U.S.-registered retail forex dealers will be unable to compete with foreign-based forex dealers, who routinely offer forex trading to customers at leverage levels of 200:1 or even higher. Additionally, FXCM believes that, if adopted, the proposed 10:1 leverage limit will have the unintended consequence of increasing the potential for retail forex fraud in the U.S. as domestically registered firms are forced out of business or move offshore due to their inability to effectively compete for customers in the global marketplace. Once domestically regulated forex firms leave the U.S. marketplace, unscrupulous criminal elements acting purposefully outside the CFTC and NFA regulatory framework may seek to fill the vacuum. Finally, the consequences of adoption of the 10:1 leverage proposal will also include the loss of thousands of jobs in the U.S. forex industry and a significant loss of U.S. tax revenue as trading business migrates to foreign jurisdictions.

The premise that increasing margin requirements for retail forex customers will provide additional customer protection is incorrect. Presently, U.S.-regulated forex dealers provide retail customers with sophisticated web-based trading platforms through which they can individually adjust - subject to NFA maximum limits - the leverage level at which they trade . These trading platforms operate to automatically liquidate open positions when available margin is exhausted thereby limiting a customer's potential loss to the amount placed on deposit. The overwhelming majority of customers are comfortable with the present system under which they can manage and assume responsibility for their individual trading activity and monitor all open positions, profit/loss, and available margin <u>in real time</u> in accordance with their personal risk profile. Under the CFTC's leverage proposal all retail customers will have to place at least 10 times more funds on deposit and at risk of loss in order to meet the minimum margin requirement to open any trading position. This requirement will preclude a large percentage of current U.S. retail forex customers from maintaining accounts with U.S.-registered counterparties. These customers with smaller account balances who nevertheless wish to continue participating in the forex market will have no choice but to move their accounts to non-U.S. forex counterparties in order to continue trading with a relatively modest commitment of funds.

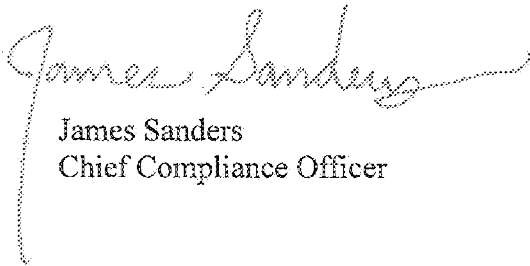
FXCM respectfully submits that the CFTC should withdraw proposed regulation 5.9 and defer to current NFA rules on available leverage for CFTC-registered forex counterparties. As the self-regulatory organization for U.S. regulated forex dealers since 2001, the NFA has extensive experience with the domestic forex industry, which it obtained through regular interaction with forex industry member firms and a robust audit process. While FXCM has not always agreed completely with NFA's rulemaking initiatives concerning forex, we believe NFA has successfully developed and adopted an array of legitimate customer protection rules while maintaining recognition of factors that would affect its members' ability to compete in the global marketplace. The NFA's present rule setting a maximum of 100:1 leverage level on major currencies was only recently proposed by NFA, approved by CFTC and became effective in

November 2009. FXCM believes that NFA's current leverage limits are not inappropriate and if maintained will enable CFTC-registered forex counterparties to continue competing against non-U.S. firms.

In conclusion, FXCM believes that the current U.S. regulatory framework for retail forex is among the strongest in the world and the soon to be implemented requirements regarding registration for forex intermediaries will only enhance this status. The CFTC, however, must reconsider the current proposal with respect to leverage since the carefully constructed U.S. regulatory framework for forex will be meaningless if customers from the U.S. and abroad overwhelmingly choose to open accounts with non-U.S. counterparties because of their ability to offer more favorable trading conditions.

FXCM appreciates the opportunity to offer these comments to the Commission on the January 20th Proposal.

Sincerely,



James Sanders
Chief Compliance Officer