

From: Alex Bobinski <ABobinski@GAINCapital.com>
Sent: Friday, March 19, 2010 8:07 PM
To: secretary <secretary@CFTC.gov>
Cc: Glenn Stevens <GStevens@GAINCapital.com>; Penner, William <WPenner@CFTC.gov>; Alex Bobinski <ABobinski@GAINCapital.com>
Subject: Gain Capital - CFTC Comment Letter on Proposed Rules
Attach: Gain Memorandum - CFTC Comment Letter on Proposed Rules (Submitted).doc

Dear Mr. Stawick:

Gain Capital Group, LLC ("GCG"), doing business as Forex.com, appreciates the opportunity to comment on the Commission's proposed rules regarding the regulation of off-exchange retail foreign currency transactions. Our comments on the Proposed Rules are in the attached word document.

Respectfully yours,

Alex Bobinski
CFO and Compliance Director

March 19, 2010

Via E-mail: secretary@cftc.gov

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

Re: Comments on Proposed Regulation of Retail Foreign Exchange Transactions and Intermediaries

Dear Mr. Stawick:

Gain Capital Group, LLC ("GCG"), doing business as Forex.com, appreciates the opportunity to comment on the Commission's proposed rules regarding the regulation of off-exchange retail foreign currency transactions ("forex"). GCG is registered with the Commodity Futures Trading Commission ("CFTC") as a Futures Commission Merchant ("FCM"), and is a Forex Dealer Member ("FDM") of National Futures Association ("NFA"). GCG is also a member of the Foreign Exchange Dealers Coalition ("FXDC"), an organization which is comprised of the leading FDMs and which advocates for responsible regulation and customer protection within the retail foreign exchange industry before the CFTC and the Congress. GCG has been a staunch advocate in support of the CFTC's goal of creating a well-regulated domestic retail forex market that is more transparent and provides increased customer protections. As such, GCG supports many of the provisions and believes that RIN3038-AC61 (the "Proposal") will go a long way towards achieving this goal. However, GCG believes that the Proposal contains certain provisions that are inconsistent with the intent of the Proposal as follows:

Security Deposits:

GCG believes that the Proposal regarding "Proposed Regulation 5.9 – Security Deposits for Retail Forex Transactions," that if adopted as part of the final rules will have a devastating impact on the retail forex industry, drive retail customers largely overseas, and in essence cancel out the many positive intentions included in the Proposal. This provision, "Proposed Regulation 5.9 – Security Deposits for Retail Forex Transactions," would restrict leverage on retail forex transactions to a level of 10:1, which is a 90% reduction from the present maximum leverage level of 100:1 permitted under Section 12 of NFA's Financial Requirements. See **Appendix A**. Although GCG supports the CFTC's desire to protect retail customers and the financial integrity

of FCMs/FDMs, GCG believes the current rules in place as implemented by NFA in November 2009 and current industry practices adequately address these objectives.

First, GCG firmly believes the financial integrity of FCMs/FDMs is important to the integrity of the industry as a whole and the protection of its participants. Currently, this objective is primarily addressed by requiring each FCM/FDM to maintain a minimum capital requirement of at least \$20 million. Additionally, an FCM/FDM must take additional capital charges for any net exposure to foreign currencies which range from 6% to 20%. Finally, the trading platforms operate programmatically to identify and /or liquidate client position(s) in breach of minimum security deposit requirements ensuring that a customer's maximum potential loss is limited to their funds on deposit. These regulations and operating practices help to ensure forex counterparties against absorbing losses of defaulting customers which, if significant, could affect the counterparty's capital and put the funds of other customers at risk. In addition to these stringent measures, it should be noted each customer has the ability to trade at a security deposit requirement level and/or request the FCM/FDM to set their account at a security deposit requirement level that is less than the current maximum requirements established by NFA.

Should the 10:1 leverage provision be adopted, U.S.-based forex dealers will not be able to compete with competitors from overseas (primarily in the United Kingdom where the FSA has no comparable leverage limits for forex dealers). Many of these customers may choose to trade with foreign, unregulated dealers in other jurisdictions offering more desirable security deposit requirements thus leaving them susceptible to fraud outside the protections of any U.S. authority.

Finally, the consequences of adoption of the 10:1 leverage proposal will also result in the loss of thousands of jobs in the U.S. forex industry as well as associated domestic marketing expenditures which we estimate at \$500 million or greater.

Based on the foregoing, as well as in the best interest of U.S. retail customers, GCG respectfully submits that the CFTC withdraw proposed regulation 5.9 and maintain the NFA's current leverage regime (100:1 major currencies, 25:1 on exotic currencies) that went into effect on November 30th of 2009.

Registration:

GCG supports the registration of Introducing Brokers ("IBs"), Commodity Pool Operators ("CPOs") and Commodity Trading Advisors ("CTAs") with the CFTC. However, GCG does not believe that Introducing Brokers must be solely restricted to becoming Guaranteed Introducing Brokers ("GIBs"). As is the case with IBs engaged in introducing customers transacting in futures, the IB has a choice to become an Independent IB or Guaranteed IB subject to oversight of the CFTC, NFA and applicable regulations. Not allowing IBs engaged in the introduction of forex customers to become Independent IBs is inconsistent, and arguably anti-competitive, with existing registration options available to IBs introducing futures customers.

Additionally, allowing an IB to be independent and maintain multiple relationships with more than one FCM/FDM increases competition amongst FCMs/FDMs to provide the best available services to its customers and attract new customers. Equally important, it provides options for the U.S. retail customer to choose FCMs/FDMs, trading platforms and services that may be best suited for their intended trading activities. Finally, requiring Independent IB's

engaged in the introduction of forex accounts to meet stringent net capital requirements and submit annual audited financial statements to the regulators provides the U.S. retail customer protection as well. All of this directly benefits the U.S. retail customer.

For the reasons noted above, GCG firmly believes that providing for an Independent IB registration category is in the best interest of the U.S. retail customer and the forex industry as a whole. As such, GCG respectfully submits that the CFTC amend the Proposal outlined in 5.18(h) to allow for an Independent Introducing Broker registration category in addition to the GIB option.

Account Disclosures:

GCG supports the concept of providing adequate risk disclosures to customers to ensure they have a full understanding of the attendant risks and leverage involved in these transactions so that they may make an informed decision. However, GCG does not believe that requiring an FCM/FDM provide the (i) total number of retail forex accounts maintained (ii) the percentage of such accounts that were profitable and (iii) the percentage of accounts that were not profitable for four quarters meets this objective.

We believe that the intent of the proposed disclosures is to inform the client of the inherent risks of engaging in a leveraged transaction. To accomplish this objective, GCG suggests an alternative approach that would require a text disclaimer identifying those inherent risks.

GCG believes the Proposal may ultimately have the opposite effect of the perceived intended purpose. First, GCG believes the Proposal assumes there will be a disproportionate percentage of accounts that were not profitable to those that were profitable. Even if that were the case for a particular point in time, that trend could reverse over time and have the opposite effect of the intended disclosure. Additionally, the mere fact that a percentage of customers were profitable, regardless of the percentage that were successful, might entice and/or validate a customer's decision to open an account and trade. As such, GCG recommends that any disclosures be in the form of text, presented to the client in advance of trading and describe the inherent risks involved with leveraged investments. As a final point, this is consistent with the manner that other comparable regulators and industries address this disclosure issue as well.

For the reasons noted above and in the best interest of the U.S. retail customer, GCG respectfully submits that the CFTC amend its Proposal outlined in 5.18(i) to allow for an appropriate text disclosure discussing the inherent risks of leveraged investments and omit the requirement to disclose account details as presented in the Proposal.

GCG commends the CFTC and its staff for putting forth proposed retail forex requirements that will provide greater protection to forex customers and regulatory certainty to firms engaging in retail forex transactions. As always, GCG stands ready to assist the CFTC in this endeavor. If you have any questions concerning this letter, please do not hesitate to contact me at (908) 731-0705 or gstevens@gaincapital.com.

Respectfully submitted,

Bedminster One
135 US Highway 202/206, Suite 11
Bedminster NJ 07921

Glenn Stevens
C.E.O.

cc: William Penner (wpenner@cftc.gov)

Appendix A

Notice I-09-18

September 24, 2009

Effective Date of Amendments to NFA Financial Requirements Sections 11 and 12 and the Interpretive Notice Regarding Forex Transactions

NFA has received notice that the Commodity Futures Trading Commission has approved changes to NFA Financial Requirements Sections 11 and 12 and related changes to the Interpretive Notice titled "Forex Transactions." The amendments adopt an alternative net capital requirement for Forex Dealer Members (FDMs) and eliminate the existing exemption from the security deposit requirement. These changes will become effective on November 30, 2009.

The amendments to Section 11 revise the existing alternative net capital requirement that is based on an FDM's liabilities to customers.¹ As of November 30, 2009, the alternative requirement is \$20 million plus 5% of the amount of customer liabilities over \$10 million. FDMs that exclusively use straight-through-processing for their customer transactions are exempt from this alternative requirement and need only maintain the \$20 million minimum (unless the firm is subject to a higher requirement under FR Section 1).

The amendments to Section 12 eliminate the existing security deposit exemption for FDMs that maintain 150% of their required net capital. This means that, beginning on November 30, 2009, all FDMs must collect a customer security deposit of at least 1% for the currencies listed in Section 12 and at least 4% for all other currencies.²

NFA's submission letters to the Commodity Futures Trading Commission include of the revised language and more detailed descriptions of the changes. You can access electronic copies of the February 23, 2009 submission letters at http://www.nfa.futures.org/news/PDF/CFTC/FRSec11_IntNotc021909.pdf (for the changes to Section 11) and http://www.nfa.futures.org/news/PDF/CFTC/FRSec12_IntNotc021909.pdf (for the changes to Section 12).

Questions concerning these requirements should be directed to Valerie Kretschmer, Manager, Compliance (vkretschmer@nfa.futures.org or 312-781-1290) or to Sharon Pendleton, Director, Compliance, (spendleton@nfa.futures.org or 312-781-1401).

¹ The term "customer" does not include eligible contract participants.

² The currencies that qualify for the 1% security deposit are the British pound, the Swiss franc, the Canadian dollar, the Japanese yen, the Euro, the Australian dollar, the New Zealand dollar, the Swedish krona, the Norwegian krone, and the Danish krone.