ROSENTHAL COLLINS GROUP

March 8, 2010

Via courier and email
Mr. David A. Stawick
Secretary
Commodity Futures Trading Commission
1155 21st Street NW
Washington DC 20581

Re: Regulation of Retail Forex
RIN 3038-AC61

Dear Mr. Stawick:

Rosenthal Collins Group, LLC ("**RCG**"), for itself and MG Financial LLC, its wholly-owned subsidiary ("**MG**") (collectively, "**Company**"), respectfully submits this letter in response to the request of the Commission for comments on its proposed rules for the "Regulation of Off-Exchange Retail Foreign Exchange Transactions and Intermediaries." Federal Register, vol. 75, No.12, 3282. While the Company lauds the Commission for proposing "...a scheme that would put in place requirements for, among other things, registration, disclosure, recordkeeping, financial reporting, minimum capital and other operational standards (**"Proposal"**), we believe that some aspects of the Proposal are not in the public interest and will have unintended negative consequences upon the public and the industry.

The Commenters

RCG has been a registered futures commission merchant and clearing member of all major futures exchanges for many years, has in excess of 20,000 active customers and currently holds customer funds in excess of one billion dollars. One of its Managing Members, Leslie Rosenthal, has served on the Board of Directors of the Chicago Board of Trade, the Chicago Mercantile Exchange and the Board of Trade Clearing Corporation. In addition, his service has included the Chairmanship of the Chicago Board of Trade, the Chairmanship of the Board of Trade Clearing Corporation and the Chairmanship of the CME Clearing House Committee.

MG has been a registered FCM and National Futures Association ("**NFA**") member since 2001. Recently, MG was invited by the China Forex and Gold High-Level Organizing Committee of the State Administration of Foreign Exchange to participate in the organization and implementation of educational seminars and classes in the Peoples Republic of China regarding trading forex. MG, throughout its dealings in retail forex, has been and continues to be compliance oriented and without disciplinary history.

Certain of the Disclosures Required by the Proposal's Regulation Section 5.5 Provide No Relevant Information, and, Compliance is Virtually Impossible

Proposed Regulation 5.5 requires that retail forex customers be provided with a risk disclosure statement similar to that currently required to be disseminated to futures and options on futures customers. As is the case with futures and options on futures customers, requiring that risk disclosure statements be given to retail forex customers is a positive educational tool. However, Proposed Regulation 5.5 goes further and requires each retail forex "counterparty" to disclose to retail forex customers its total number of non discretionary accounts and the percentage of such accounts that were profitable and non-profitable for each of the four most

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recent quarters. In the Company's view, to require disclosure of the number of non-discretionary retail forex accounts—in all probability an ever changing number—and the percentage of such accounts that were profitable for each of the four most recent quarters, is not only an almost impossible task, but also patently unfair. Such calculations and disclosures are not required for futures or options accounts or by broker-dealers. Why is the retail forex industry different?

In discussing its reason for this proposed regulation, the Commission stated:

> "...the vast majority of retail customers who enter these [forex] transactions do so solely for speculative purposes and that relatively few of these participants trade profitably. Whether or not this is actually the case, the Commission believes that disclosure of the percentage of profitable accounts maintained by RFEDs and FCMs engaging in off-exchange retail forex will provide the retail customer with vital information when deciding whether or not to engage in such transactions."

Id. at 3289.

The same may be said about retail futures and options on futures customers. Thus, we fail to see how these disclosures will assist any retail forex customer in making a decision to trade forex. The success or failure of one customer in no way impacts any other customer, as each customer makes an independent decision to trade. In fact, this concept is well recognized by the regulators, including the Commission, which requires the well known statement, that "past performance is not indicative of future results", be provided in promotional materials. Rather than achieve the result of providing information, we believe that the result of requiring this aspect of the Proposal will be to discourage participants in the retail forex market. Furthermore, to avoid making such required disclosures, firms will move their operations off-shore where this disclosure is not required and the other protections of domestic regulation are not available.

More importantly, however, is the fact that this disclosure needlessly imposes an onerous burden on US retail forex firms, as well as placing them at competitive disadvantages, without adding any value to the disclosures to potential retail forex customers. Disclosure is in the public interest; however, in the Company's view, the proposed disclosure concerning non-discretionary accounts amounts to regulatory overkill, which is not in the public's interest.

The Proposal needs Clarification: The Use of the Term "Counterparty" May Lead to Confusion

The Proposal, for example, would require retail forex counterparties (defined in the Proposal as FCMs and RFEDs to which retail customers are introduced) "to calculate on a quarterly basis the percentage of non-discretionary accounts that were profitable...." We believe that the use of the term "counterparty" to mean the FCM or RFED to which a customer account may be introduced, while in other contexts that term is used to mean the opposite principal of a transaction, may be confusing. Thus, some clarification may be in order, if not the deletion of the term.

The Financial Requirements of the Proposal's Regulations 5.6 and 5.7 will Drive Retail Forex Offshore

Proposed Regulations 5.6 and 5.7 implement the minimum financial requirements that retail foreign exchange dealers ("RFEDs") and FCMs must satisfy to engage in retail forex trading. In discussing the basis for these requirements, the Commission stated:

> "The minimum net capital regulation for RFEDs and FCMs offering off-exchange retail forex is proposed based on the significantly higher minimum net capital level for RFEDs and FCMs offering retail forex established in the CRA

> [the CFTC Reauthorization Act of 2008]. The Commission believes that the higher level of $20 million reflects Congressional intent to ensure that substantially undercapitalized 'shell' FCM off-exchange retail forex dealers and their affiliates, from whom it may be impossible to recover funds in the event of customer claims, do not engage in off-exchange retail forex activity....(T)he CRA's higher dollar threshold of minimum capital required, $20 million, will apply, as well as an additional early warning requirement of 110%, resulting in a notice reporting net capital level of $22 million."

Id at 3289

We certainly concur with the concept that higher minimum capital requirements for off-exchange retail forex dealers is appropriate; however, without providing exceptions to the manner in which the minimum net capital requirement is calculated, the unintended consequence, in our view, will be to drive retail forex dealers off-shore where, most likely, they will be unregulated, to the detriment of US customers. (Even if customers "relocate" their accounts to the UK, where the retail forex firms are regulated by the well regarded FSA, the regulatory regime there is not as onerous or burdensome as that set forth in the Proposal.) This is especially so in light of both the proposed "add-on" to net capital of 5% of the total retail forex obligation in excess of $10,000,000 and the required security deposit, discussed below. We, therefore, strongly suggest that exceptions, such as the NFA "straight through processing" exception, be incorporated in the Proposal. This would be more in the public interest as it would balance the need for regulation with the will to stay in business in the United States in a compliant and meaningful way.

The Proposed "Security Deposit" Level Required by the Proposal's Regulation 5.9 will Destroy Retail Forex Business in the United States, to the Detriment of the U.S. Public

Proposed Regulation 5.9(a) would require each RFED and each FCM that engages in retail forex transactions, in advance of any transaction, to collect a security deposit equal to 10% of the notional value of the transaction. The effect of such a requirement is to cap leverage at a ratio of 10:1, which, in our view, not only will drive the business off-shore, but is clearly regulatory overkill. Since such a ratio is far below those currently available in the retail forex industry within and outside the United States, it is the Company's view that such a requirement will drive all retail forex transactions offshore, thereby requiring the United States public, to its detriment, to deal with off-shore and possibly unregulated firms. One thing is clear—the public will not stop trading retail forex because the dealers are not in the US. Instead, they will simply open offshore accounts, thereby losing the oversight and protections afforded in the US.

Current industry practice clearly indicates that leverages far in excess of 10:1 are the norm. We acknowledge that, unlike for exchange traded products, there are no margin setting exchanges, thus requiring the Commission to step in and afford appropriate levels. We strongly suggest that the Commission look to the NFA's current leverage restrictions of 100:1 on major currencies and 25:1 on non-major currencies as the appropriate level in the US. To do otherwise at this point in time will send customers overseas into the arms of unscrupulous and unregulated dealers, to the customers' material detriment. With the NFA-type requirements for counterparty regulation and oversight, that risk is lessened, notwithstanding the principal-to-principal nature of the transactions and lack of a clearing house being interposed. We further suggest that whatever leverage level is finally determined, that it be phased in, thereby allowing the participants time to adjust.

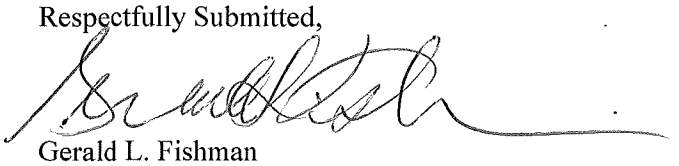
IB Capital is Needed, not FCM Guarantees

Proposed Regulation 5.18(h) would require each person that applies for registration as an introducing broker ("**IB**"), in order to solicit or accept off-exchange retail forex orders, to enter into a guarantee agreement with an FCM or an RFED. This, we suggest, will have a chilling effect on registrations.

This proposed requirement turns the original reason for the guaranteed introducing broker ("**GIB**") concept on its head. In 1982, when the new registration category of introducing broker was established, unregistered "agents," under the Commodity Exchange Act then in effect, were given the alternative of using their own net capital or of getting an FCM to jointly and severally "guarantee" their compliance with the law and regulations. Would independent introducing brokers with their own capital ("**IIBs**") now in retail forex be required to "downgrade" to GIB status (thus, removing any capital requirement)? With respect to IIBs intending to be in the retail forex business, to require levels of net capital higher than IBs engaging principally in futures and options on futures makes more sense in 2010 than having them obtain "guarantees" from FCMs. These independent retail forex IBs, like their futures and options counterparts, can and should regulate themselves (including via the NFA) with respect to sales practices. Most FCMs, in our view, generally will decline to guarantee IBs (i.e., "take on" GIBs) whose business is limited principally to retail forex. Thus, net capital requirements, even increased net capital requirements for IIBs whose business is limited principally to retail forex, make more sense in this registration category, if appropriate retail forex regulation in the United States is to be achieved, at all.

We thank you for the opportunity to submit these comments. Should the Commission or Staff desire to discuss this matter, please do not hesitate to contact me (312.795.7636 or gfishman@rcgdirect.com).

Respectfully Submitted,



Gerald L. Fishman
Executive Vice President and
General Counsel

cc: Hon. Gary Gensler, Chairman
Hon. Michael Dunn, Commissioner
Hon. Jill E. Sommers, Commissioner
Hon. Bart Chilton, Commissioner

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