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From: Mindy Yost [mindyyost@kc.rr.com]  
Sent: Saturday, May 16, 2009 4:15 AM  
To: secretary  
Subject: RIN 3038-AC66

OFFICE OF THE SECRETARY  
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### COMMENT

May 16, 2009

Dear CFTC,

I would like to respond to your request for comments regarding **RIN 3038-AC66: Revised Adjusted Net Capital Requirements for Futures Commission Merchants and Introducing Brokers.**

The part of this change that I feel needs to be reconsidered is your recommendation that the ANC for IBs, involved in the Retail Forex market, to be increased to \$45,000.

I have issues with this for a variety of reasons, but primarily because it again illuminates the lack of understanding that the CFTC and NFA have over the very industry they are trying to regulate. It becomes more obvious almost daily that the CFTC and NFA are trying to eliminate Spot Forex as an investment option for retail traders, as evidenced recently by Rule 2-43(b) (which does nothing but ensure losses for retail traders and will give a windfall profit to the brokers who act as counterparty to client trades), FINRA's recent attempt to reduce leverage to 1.5:1 (again a total lack of understanding of Spot Forex and using assumptions that it is brokered and traded like Futures contracts), and the way that the CFTC and NFA have tried to slide these changes in under the radar by eliminating Spot Traders from any of the discussion or process of developing the rule changes.

In the text justifying the decision to raise the ANC for IBs, it is stated that purpose of the ANC is to ensure that:

**"...IBs must meet the minimum financial requirements that the Commission may by regulation prescribe as necessary to insure that FCMs and IBs meet their obligations as registrants."**

*and*

**"The minimum ANC requirements of \$30,000 for IBs and \$250,000 for FCMs were adopted by the Commission over a decade ago, and are no longer consistent with the regulatory objective of requiring these registrants to maintain a minimum base of liquid capital from which to meet their current financial obligations, including obligations to customers."**

*and*

**"Therefore, the Commission's proposal to increase the minimum dollar ANC requirement of IBs to \$45,000 merely harmonizes its regulations with NFA rules, which will simplify the capital calculations of IBs."**

Now, please consider that the NFAs definition of an IB is stated in the NFA web site as:

**"An IB is an individual or organization which solicits or accepts orders to buy or sell futures contracts or commodity options but does not accept money or other assets from customers to support such orders."**

My points are these:

- 1) The original ANC was developed OVER 10 YEARS AGO. Well, ten years ago, the Retail Spot Forex market was just beginning and at that time seemed to be taking a much different direction than what has actually developed. At that time, there were very few retail traders who actually traded for themselves and most retail forex was traded in managed accounts by brokers or money managers. What has evolved instead is a very popular investment niche that individuals enjoy participating in directly, with a huge cottage industry of information services, support, training, and supplemental industry businesses that are not directly linked to the actual brokers.
- 2) The registrant category of IB (Introducing Broker) needs to be better defined AND an additional category of registrant needs to be added to be more applicable to what is currently going on in this market.
- 3) The above excerpts imply to me that it was just easier for the CFT and NFA to copy what had already existed than to do the homework necessary to study the current situation of this industry to find logical regulatory solutions that make sense.
- 4) The CFTC and NFA are again trying to fit Retail Forex into the box they have already created for Forex Futures - which is traded by a COMPLETELY different financial demographic of traders.

I am a retail forex trader, and have been for many years. Two years ago I started teaching other people about the Forex market and how to trade it successfully. There were many reasons why I decided to do this, but one of the main reasons was because I saw the abuses going on by some Brokers (mostly the ones that act as counterparty to their clients' trades) in the way that "educational" services and training programs were being priced, provided and marketed. I decided that it would be much better for a student of Forex to have an independent education apart from the Broker who would be ultimately executing their trades. I also, of course, saw the potential for an ongoing income for myself from the small commission I would receive from the Broker when I gave them a new and qualified client.

But here is the point to this: I created a system whereby it is a win/win/win situation for all involved.

**For the Student:** I provide Forex trading education to individuals for FREE and for as long as it takes them to master the skills needed for successful trading BEFORE they go into live trading. I teach a much more involved program than they could buy from a Broker at any price. My program includes not only an introduction to Forex, but fundamental and technical analysis, money management, risk management, and trade management. My students work with me for a minimum of 3 to 6 months (or longer) prior to trading live and never before they have proven to both me and themselves that they will be successful. And, they are never under any financial obligation at any time, and are never pressured to in any way to open a live account. I do NOT recommend trades; I merely teach people how to find the situations that will most likely present an opportunity for a profitable trade. (You will NOT find this to be the case when the Broker sells them in a "training" program.)

**For the Broker:** By the time my student opens a live account, the Broker knows that they are getting a new client that is educated in Forex trading and is competent to trade.

**For Myself:** If I have done a good job and produced a confident, successful trader, THEN and only then am I compensated by a small commission from the Broker from that individuals trading. My commissions come from a portion of what the Broker already charges in the Spread. I don't know how I could have come up with a program that could be more fair to all than that.

What you are doing by increasing the ANC requirement is pushing me out of this market as an independent trainer. The NFA's rules for IBs are ridiculous enough already. In the first place, I only made a total last year of \$27,000 in total commissions. To comply with everything the NFA requires, i.e. Registration Fees as an IB AND as an AP, audited financial statements, dual locations, Series Exam fees, and now the new ANC, it would cost me almost 3 times what I made last year! How ridiculous is that? So, what you will have instead is one less good, honest (and FREE) training alternative for individuals who are interested in learning Retail Forex as an investment option.

The definition of IB is, as the NFA states, "**An IB is an individual or organization which solicits or accepts orders to buy or sell futures contracts or commodity options but does not accept money or other assets from customers to support such orders.**"

I DO NOT: 1) Solicit Orders, 2) Accept Orders, 3) Accept Assets, 4) Trade managed accounts for others, or 5) Recommend trades. And, since I have no financial obligation to my students, then WHY should I need, as the CFTC Rule states, "to have a base of liquid capital to meet financial obligations to my customer"? Also, when my students go into live trading, they are THE CLIENT OF THE BROKER, not MY CLIENT, so isn't it the Broker who has the financial obligation to the individual at that point?

**Why don't you add a category that makes some kind of sense for individuals like me?** I really DO NOT fit into any of the Registrant categories that the NFA and CFTC now have outlined. I am NOT a CTA as I do not recommend trades, I am NOT a CPO as I do not manage other people's money or trades, and I am NOT an IB in any way, shape or form as I am in no way a "broker". So why should I be mandated to fit into one of these categories just to be able to receive a "finder's fee" from a Broker for sending them a qualified client?

I realize that the self-regulatory arm of the CFTC is the NFA. But, the NFA's focus has for years been on Forex Futures, and they are so engrained into that forte, that they simply do not understand that Retail Spot Forex is different, is traded by a different element of traders, and the rules that apply to one are NOT necessarily reasonable for the other. (By the way, the NFA's On Line Learning Programs regarding Forex not only give WRONG information, but it is so contorted it is a disgrace to the NFA and the CFTC should be ashamed to have it on their web site.)

**The CFTC should CREATE A NEW ENTITY to regulate Retail Spot Forex,** and staff it with people who are of this industry, who care about this industry, and would be able to make rational regulations for it. But what is going on from the NFA and CFTC currently regarding Spot Forex is a joke and you folks need to start listening to the people who trade and understand this market. Maybe then we could have regulators that would be working for the benefit of the TRADER, which should be the primary focus to begin with.

Sincerely,

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