

[Print](#) | [Close](#)

# FX Week

## CFTC retail FX rules fail to curb offshore trading

Author: [Farah Khalique](#)

Source: [FX Week](#) | 06 Sep 2010

WASHINGTON, DC - The US Commodity and Futures Trading Commission's (CFTC) compromise to limit leverage on retail FX trading accounts to 50:1 from a proposed 10:1, is unlikely to curb the shift of retail business offshore, according to market participants.

The futures regulator published rules governing the retail foreign exchange market on August 30, the most significant of which was the reduction (to 50:1 from 100:1) of leverage imposed by regulator the National Futures Association (NFA) at the end of last year (*FX Week* March 2, 2009). In so doing, the CFTC backtracks on a proposal made at the start of the year to slash leverage to 10:1, after suffering a backlash from the retail trading community (*FX Week*, January 15 and March 1).

While a welcomed compromise, some retail FX brokers believe the new rules will render the US retail FX market internationally uncompetitive and force more US clients offshore. Brokers note that since the proposal was made in January, the number of offshore accounts being established by US clients has risen significantly.

Daniel Skowronski, chief executive at retail FX broker Alpari US in New York, said clients had been moving accounts to its offshore sister company Alpari (UK) in anticipation of the leverage rules. And, he believes, the trend is unlikely to change, with markets such as the UK not imposing any caps on leverage at all. Alpari UK offers leverage as high as 500:1, he said.

"Now that leverage is confirmed at 50:1, I think we will continue to see clients moving offshore," he said. "I am certain clients that moved offshore due to the threat of 10:1 will still not come back to US shores at 50:1."

Clients of retail brokers note there is also still a lack of clarity on what the new rules mean for those who set up accounts with offshore entities. Josh Levy, managing director at high-frequency trading firm Tactical Asset Management in New York, said: "The CFTC still hasn't clarified whether or not it's acceptable for non-US brokers to accept a deal with US-based clientele and according to which terms. So if a UK-based forex firm accepts a US-based client, how should it be treated?"

The new rules include an increase in net capital requirements for retail brokers, which brokers note might have the unintended consequence of deterring new players from entering the US market. In the past two years, the NFA has introduced a series of rules to tighten regulation of the retail FX market, including upping capital requirements from \$5 million to \$15 million, which led to companies including ODL Securities and AC Markets exiting the US market altogether (*FX Week*, January 12 and 19, February 2, 2009, and March 17, 2008).

Michael Stumm, chief executive at retail broker Oanda in New York, said the increased net capital requirement creates a higher barrier to entry into the market, which protects incumbents, but deters new innovative entrants. "When Oanda started out nine years ago in this industry, we didn't have that type of capital and wouldn't have been able to start," said Stumm.

Stumm, who also acts as chairman of the National Futures Association's FX dealer member advisory committee, said: "In the next month, there will be a lot of discussions surrounding what the new rules mean and how you interpret them."

The rules come into operation on October 18.

### The new CFTC rules:

Retail foreign exchange trading leverage has been reduced to 50:1 from 100:1.

The minimum net capital requirement increases to \$20 million plus 5% of any customer liabilities exceeding \$10 million. Leverage in retail forex customer accounts will be subject to a security deposit requirement to be set by the National Futures Association within limits provided by the CFTC.

Counterparties offering retail FX broking must register as either futures commission merchants or retail FX dealers, a new category of registrant.

Salespeople of these services must register as either introducing brokers, commodity trading advisers, commodity pool operators or as associated persons.

Otherwise regulated entities, such as US financial institutions and Securities and Exchange Commission-registered brokers or dealers, remain able to serve as counterparties in such transactions under the oversight of their primary regulators.

All retail forex counterparties and intermediaries will be required to distribute forex-specific risk disclosure statements to customers and comply with comprehensive record-keeping and reporting requirements.

[Print](#) | [Close](#)

© Incisive Media Investments Limited 2010, Published by Incisive Financial Publishing Limited, Haymarket House, 28-29 Haymarket, London SW1Y 4RX, are companies registered in England and Wales with company registration numbers 04252091 & 04252093.