
FINAL NOTICE

To: **ACCENDO MARKETS LIMITED**

Firm Ref: **475285**

Date: **29 March 2012**

1. ACTION

- 1.1. For the reasons listed below and pursuant to section 206 of the Financial Services and Markets Act 2000 (the “Act”), the FSA hereby imposes a financial penalty of £56,000 on Accendo Markets Limited (“Accendo”/the “Firm”). This penalty is in respect of breaches of Principles 3 and 9 of the FSA’s Principles for Businesses (the “Principles”) during the period between 7 January 2008 and 1 October 2010 (“the Relevant Period”).
- 1.2. Accendo agreed to settle at an early stage of the FSA's investigation and has therefore qualified for a 20% (Stage 2) discount under the FSA's executive

settlement procedures. The FSA would have otherwise sought to impose a financial penalty of £70,000 on Accendo.

2. SUMMARY OF REASONS

2.1. The FSA has imposed a financial penalty on the basis of the facts and matters described in more detail in section 4, below. These failings relate to advice given by Accendo in respect of Contracts for Differences (“CFDs”) during the Relevant Period.

2.2. Specifically, during the Relevant Period, in relation to the advisory sale of CFDs, Accendo failed to:

- (1) take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems, in breach of Principle 3, in that it:
 - (a) appointed brokers who did not hold the prescribed qualification;
 - (b) failed to distinguish between execution-only and advisory trades; and
 - (c) did not have a robust compliance monitoring programme in place as call monitoring was limited to a sample review of less than 10% of all calls and the Firm’s call monitoring template lacked adequate content and appropriate prompts; and
- (2) take reasonable care to ensure the suitability of its advice for customers who were entitled to rely upon its judgment, in breach of Principle 9, as it failed to:
 - (a) gather and record adequate customer information before advising on relevant transactions;
 - (b) gather and record evidence of undertaking any adequate assessment of customers’ overall ATR or risk tolerance threshold in relation to the size of the account;
 - (c) gather and record evidence of customers’ CFD trading strategy;

- (d) ensure the suitability of customers for CFD trading was properly documented; and
- (e) ensure that customers were suitable to trade in CFDs at the account funding levels that the customers chose.

2.3. The FSA considered Accendo's failings to be serious because:

- (1) CFDs are high risk products which can expose customers to losses exceeding their initial investment;
- (2) they increased the risk of customers entering into CFD transactions which were unsuitable for them, in that they exposed them to an unacceptable level of investment risk or were inappropriate given the customer's level of investment understanding and experience; and
- (3) they related to compliance monitoring, record-keeping and training procedures.

2.4. The FSA also considered that Accendo had taken significant steps to mitigate the failings:

- (1) following a visit from the FSA, Accendo took significant steps to improve its systems and controls, record-keeping and training and competence procedures, including instructing an external compliance consultant to undertake a review of the systems and controls relevant to its sales procedures;
- (2) Accendo has cooperated fully with the FSA's investigation;
- (3) Accendo agreed to make appropriate redress to customers. As a result Accendo will pay redress of £19,298;
- (4) after contacting customers a skilled person identified little evidence that the Firm's customers had actually been unsuitable for CFD trading. Relevantly, however, the skilled person was unable to form a view as to the suitability of

some customers to trade in CFDs, prior to contacting those customers, due to a lack of recorded information kept by the Firm; and

- (5) all brokers held the securities qualification which the Firm mistakenly thought was the correct qualification for them to hold. All brokers were supervised by staff who held the derivatives qualification and upon becoming aware of their mistake the Firm arranged for all brokers to sit the correct derivatives examination which all brokers attained by the end of July 2010.

3. DEFINITIONS

The definitions below are used in this Final Notice:

the “Act” means the Financial Services and Markets Act 2000;

“ATR” means attitude to risk;

“CFD” means Contracts for Difference;

the “FSA” means the Financial Services Authority; and

“KYC” means know your customer.

4. FACTS AND MATTERS

BACKGROUND

Contracts for Differences

- 4.1. CFDs are contracts, the purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the price of underlying property (including securities, bonds and commodities) or in an index or other designated factor. CFDs allow investors to make profits from predicting movements in the price or value of the underlying property or index. For example, an investor may take a short position (that is, predict a falling price) and gain where the price of the underlying asset declines, but lose if the price rises. The reverse applies where a long position is taken (that is, predict a rising price).

- 4.2. Investors at Accendo typically used leverage to maximise the position taken, so that, for instance, they might take a short position in the sum of £1,000 but would only invest £50 of their own money and gear the balance of the position (£950).
- 4.3. The extent of losses that might otherwise be incurred by a customer who takes a position based on an erroneous prediction can be mitigated by the use of a stop loss. A stop loss closes the position taken and caps the loss without any further action from the customer once the underlying asset's price has moved a pre-specified amount in the opposite direction to that predicted by the customer.
- 4.4. The main type of risk associated with CFDs is investment risk – while CFDs can produce a positive return even when a stock or market index declines (because the CFD is a short position) investment returns and in some cases the return of capital are, as with any investment, dependent on the performance of market indices.

The Firm

- 4.5. Accendo is an investment firm based in London which provided investment advice to customers, largely in relation to CFDs. Accendo was authorised by the FSA on 7 January 2008 and had permission during the Relevant Period to undertake the following regulated activities:
- (1) advising on investments (excluding pension transfers and opt-outs);
 - (2) arranging (bringing about) deals in investments;
 - (3) dealing in investments as agent;
 - (4) making arrangements with a view to transactions in investments; and
 - (5) agreeing to carry out the above regulated activities.
- 4.6. During the Relevant Period, three individuals at Accendo were approved by the FSA to hold significant influence functions. Sixteen individuals were approved by the FSA to provide investment advice to customers. Accendo advised customers and helped to arrange their transactions in CFDs with other FSA authorised firms who dealt with the customers as principal (the "Principal"). As such, Accendo's role was

to act as an intermediary between the customer and the Principal. Accendo's primary function was to guide customers as to how they could structure and execute their CFDs with the Principal. During the relevant period, 98% of the Firm's business related to customers investing in CFDs.

Thematic review

- 4.7. The FSA visited Accendo in April 2010 as part of an ongoing thematic review of the selling practices of firms that advise on and/or deal in CFDs for retail customers. During that visit, the FSA identified concerns with the Firm's practices, and subsequently invited it to vary its Part IV Permission. The Firm had been considering its options as a result of the Retail Distribution Review, and had decided to alter its business model to an execution-only model. Accordingly, on 16 July 2010 the Firm voluntarily varied its permission in accordance with the terms proposed by the FSA.
- 4.8. The FSA required Accendo to appoint a skilled person (the "Skilled Person") in accordance with section 166 of the Act to conduct a review of all sales of CFDs in the Relevant Period. Accendo has complied with that requirement. The Skilled Person concluded that three customers (3.7%) of the sample of 82 customers were unsuitable to trade in CFDs due to a lack of affordability and for nine customers (11%) the suitability to trade in CFDs was unable to be determined because some of the customers were unable to be contacted by the Skilled Person. Accordingly Accendo has undertaken to provide appropriate redress to those customers and this is assessed as £19,298.
- 4.9. As a result of the FSA's concerns arising from the visit in April 2010, and the initial findings of the Skilled Person, the Firm was referred to Enforcement in September 2010.

CONDUCT IN ISSUE

Inadequate KYC information

4.10. The account opening processes used by the Firm were flawed and failed to gather sufficient customer information to enable brokers at the Firm to assess the suitability of investments for customers. This included the following failings:

- (1) potential customers were able to open and fund trading accounts with the Principal, via an external link on the Firm's website, prior to the Firm having conducted any customer information gathering (although the Principal would have its own, separate procedure, for gathering the same information and the client would not be able to trade until the information was obtained by the Firm and separately by the Principal);
- (2) the collection and assessment of customer information was performed over several stages which were not clearly defined within the Firm's internal systems and controls;
- (3) the Firm did not undertake and/or record any assessment of customers' overall ATR or risk tolerance threshold in relation to the size of the account, beyond a check that their level of account funding did not exceed the Firm's self-imposed limit of 25% of the customer's liquid assets although each customer was always asked by Accendo on a transaction by transaction basis what they wanted to risk prior to the transaction being executed;
- (4) it was unclear from the Firm's assessment of the customers' net worth, and therefore potential investment capital, whether illiquid assets were included;
- (5) it was unclear whether the Firm considered the net worth of a customer, the customer's income, or a combination of both to assess the level of potential risk to which the customer was exposed through the account;
- (6) the KYC process did not determine the customer's trading strategy and , for example, the frequency with which the Firm's customers were seeking to undertake CFD transactions or the number of concurrent open positions and in particular the amount that the customer wished to place at risk in any one transaction; and

(7) brokers gathered customer information (and information updates) via a series of closed, rather than open, questions, which limited the amount of relevant information gathered.

4.11. Brokers made recommendations despite this lack of information, thereby putting customers at risk of receiving unsuitable advice prior to deciding whether to enter into a transaction with the Principal via the Firm.

Suitability record keeping

4.12. The Firm's assessment of the suitability of its customers for CFD trading was inadequately recorded.

4.13. An initial review of the Firm's customer information for 82 customers conducted by the Skilled Person identified that the Firm failed to take reasonable care to ensure that the suitability of customers for CFD trading was properly documented, for instance, in the Firm's customer suitability checklist. On the information recorded by the Firm at the time of allowing the customer to trade, the Skilled Person could not establish the suitability of 16 (19.5%) of the sample of 82 customers to trade in CFDs although it was later established by the Skilled Person (as mentioned below) that a much smaller proportion of customers were in fact unsuitable.

4.14. After a subsequent customer contact exercise the Skilled Person determined that three customers (3.7%) of the sample of 82 customers were unsuitable to trade in CFDs due to a lack of affordability. For seven customers (8.5%) the suitability to trade in CFDs was unable to be determined because the customers either refused to provide information to the Skilled Person or were unable to be contacted by the Skilled Person. In respect of a further two customers (2.4%) their suitability to trade in CFDs was unable to be determined for reasons unspecified by the Skilled Person.

Over Funded Customers

4.15. Nine of the 82 customers (11%) from the Skilled Person's sample deposited monies into their trading accounts with the Firm beyond a level that was suitable for them.

Accendo failed to take reasonable steps to ensure that over-funding did not occur. In particular, the over funding of customer accounts by customers putting too much money into them resulted in customers trading in CFDs which were unsuitable for them, as they traded at greater levels of exposure than were suitable for them although each customer was always asked by Accendo what they wanted to risk prior to each transaction.

Compliance monitoring

4.16. Accendo did not have a robust compliance monitoring programme in place in that:

- (1) call monitoring of account opening calls was limited to a sample review of less than 10% of calls without listening to all relevant calls in their entirety;
- (2) the Firm's call monitoring template for deal calls lacked adequate content and appropriate prompts; and
- (3) the Firm failed to monitor pre-trade KYC check-list calls conducted by the Firm's approved persons.

Training and qualifications of advisors

4.17. The Firm failed to ensure that its advisors were adequately trained given the following:

- (1) only three out of 16 individuals at the Firm who held the CF30 function and who advised on derivatives were permitted to carry out this activity as they had passed the derivatives examination from the list of examinations maintained by the Financial Services Skills Council (the "Skills Council") although all 16 individuals held the securities examination from the Skills Council which the Firm had mistakenly thought was the correct examination for them to hold; and
- (2) despite Accendo having a training and competence scheme, it failed to employ appropriate processes to ensure the effectiveness of the training provided.

Execution-only versus advisory transactions

- 4.18. The Firm failed to take reasonable steps to ensure that its brokers always distinguished between trades that were execution-only and those that were advisory transactions. The FSA's review of nine transactions (which formed part of a sample of 29 transactions reviewed by the FSA) which were characterised by the Firm as execution-only, found that in all cases brokers gave advice to customers with regard to CFD positions.

5. FAILINGS

- 5.1. The relevant statutory and regulatory provisions, to the extent not set out in the body of this Notice, are set out in the Annex to it.

- 5.2. By reason of the facts and matters set out in paragraphs 4.10 to 4.18 above, the FSA considered that the Firm failed to comply with Principles 3 and 9 as follows:

- (1) the Firm failed to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems, in breach of Principle 3, in that it:
 - (a) appointed brokers who did not hold the above prescribed qualification;
 - (b) failed to distinguish between execution-only and advisory trades; and
 - (c) did not have a robust compliance monitoring programme in place ; as call monitoring was limited to a sample review of less than 10% of all calls and the Firm's call monitoring template lacked adequate content and appropriate prompts; and
- (2) the Firm failed to take reasonable care to ensure the suitability of its advice to for customers who were entitled to rely upon its judgment, in breach of Principle 9, as it failed to:
 - (a) gather and record adequate customer information before advising on relevant transactions;

- (b) gather and record evidence of undertaking any adequate assessment of customers' overall ATR or risk tolerance threshold in relation to the size of the account; and
- (c) gather and record evidence of customers' CFD trading strategy;
- (d) ensure the suitability of customers for CFD trading was properly documented; and
- (e) ensure that customers were suitable to trade in CFDs at the account funding levels that the customers chose and which the Firm on occasion recommended, although each customer was always asked by Accendo on a transaction by transaction basis what they wanted to risk prior to the transaction being executed.

6. SANCTION

- 6.1. On 6 March 2010, the new penalty framework, referred to in the Decision Procedure and Penalties Manual ("DEPP") came into force. The Firm's misconduct covers a period straddling before and after 6 March 2010. However, the FSA considered that the gravamen of the misconduct is pre 6 March 2010. Accordingly, the FSA assessed the financial penalty under the regime prescribed for authorised firms in Chapter 6 of the version of DEPP in force prior to 6 March 2010, which formed part of the FSA Handbook during the Relevant Period. In determining the appropriate level of financial penalty the FSA has also had regard to Chapter 7 of its Enforcement Guide.
- 6.2. The principal purpose of a financial penalty is to promote high standards of regulatory conduct by deterring authorised firms who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour (DEPP 6.1.2G).
- 6.3. The FSA will consider the full circumstances of each case when determining whether or not to take action for a financial penalty. DEPP 6.5.2G set out, as guidance, a non-exhaustive list of factors that may be of relevance in determining

the level of a financial penalty. The FSA considered that the following factors are particularly relevant in this case.

Deterrence (DEPP 6.5.2(1)G)

- 6.4. The financial penalty is intended to deter Accendo from further breaches of regulatory rules and Principles. In addition it will promote high standards of regulatory conduct by deterring other Firms from committing similar breaches and demonstrating generally the benefit of compliant behaviour.

The nature, seriousness and impact of the breach in question (DEPP 6.5.2(2)G)

- 6.5. In determining the appropriate sanction, the FSA has had regard to the seriousness of the breaches by Accendo, including the nature of the requirements breached, the number and duration of the breaches, the number of customers who have suffered financial loss and the fact that the breaches revealed serious failings in Accendo's systems and controls.

The extent to which the breach was deliberate or reckless (DEPP 6.5.2(3)G)

- 6.6. The FSA has determined that Accendo did not deliberately or recklessly contravene regulatory requirements.

The size, financial resources and other circumstances of the person on whom the penalty is to be imposed (DEPP 6.5.2(5)G)

- 6.7. There is no evidence that Accendo is unable to pay the financial penalty.

The amount of benefit gained or loss avoided as a result of the breaches (DEPP 6.5.2(6)G)

- 6.8. The FSA has taken account of the volume of relevant business done, income received and profits made by Accendo from the sale of unsuitable CFDs in the Relevant Period.

Conduct following the breaches (DEPP 6.5.2(8)G)

6.9. In deciding the appropriate disciplinary sanction, the FSA recognised the following factors which mitigate the seriousness of the findings:

- (1) following a visit from the FSA, Accendo took significant steps to improve its systems and controls, record-keeping and training and competence procedures, including instructing an external compliance consultant to undertake a review of the systems and controls relevant to its sales procedures;
- (2) Accendo has cooperated fully with the FSA's investigation;
- (3) Accendo agreed to make appropriate redress to customers - as a result Accendo has identified redress payable of £19,298;
- (4) after speaking to customers the Skilled Person identified little evidence that the Firm's customers had actually been unsuitable for CFD trading. Relevantly, however, the Skilled Person was unable to form a view as to the suitability of some customers to trade in CFDs, prior to speaking to those customers, due to a lack of recorded information kept by the Firm; and
- (5) all brokers held the securities qualification which the Firm mistakenly thought was the correct qualification for them to hold. All brokers were supervised by staff who held the derivatives qualification and upon becoming aware of their mistake the Firm arranged for all brokers to sit the correct derivatives examination which all brokers attained by the end of July 2010.

Disciplinary record and compliance history (DEPP 6.5.2(9)G)

6.10. The fact that Accendo has not been the subject of previous disciplinary action by the FSA has been taken into account.

Other action taken by the FSA (DEPP 6.5.2G(10)G)

6.11. In determining the level of financial penalty, the FSA has taken into account penalties imposed by the FSA on other authorised persons for similar behaviour.

- 6.12. The FSA, having regard to all the circumstances, considered that the appropriate level of financial penalty is £70,000 before any discount for early settlement.

7. PROCEDURAL MATTERS

- 7.1. The decision which gave rise to the obligation to give this Notice was made by the Settlement Decision Makers.
- 7.2. This Final Notice is given under, and in accordance with, section 390 of the Act.

Manner of and time for payment

- 7.3. The financial penalty is to be paid in 24 monthly instalments. The first instalment of £2,333.33 must be paid by Accendo to the FSA within 14 days of the date of the Final Notice. The following 22 equal instalments of £2,333.33 each must then be paid on the 1st day of the month following the previous instalment (the “Due Date”). If the Due Date for any given payment falls on a public holiday (including Saturdays and Sundays) in any given month then the Due Date is deemed to be the first business day immediately following the public holiday concerned. The final instalment is due one month after the last of the 22 instalments, and is for £2,333.41.
- 7.4. If Accendo realises any assets which enable it to pay the outstanding amount of the financial penalty in full, it will do so within 14 days of those assets being realised.

If the financial penalty is not paid

- 7.5. If any instalment is not paid by the due date for that instalment then the financial penalty becomes payable immediately and in full. The FSA may recover the outstanding amount as a debt owed by Accendo and due to the FSA.

Publicity

- 7.6. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the FSA must publish such information about the matter to which this notice relates as the FSA considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish

information if such publication would, in the opinion of the FSA, be unfair to you or prejudicial to the interests of consumers.

- 7.7. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

- 7.8. For more information concerning this matter generally, contact Kate Tuckley (direct telephone line: 020 7066 7086/fax: 020 7066 7087) of the Enforcement and Financial Crime Division of the FSA.

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Tom Spender

FSA Enforcement and Financial Crime Division

ANNEX A

RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND GUIDANCE

1. Statutory provisions

- 1.1. The FSA's statutory objectives, set out in section 2(2) of the Act, include the protection of consumers.
- 1.2. Section 206(1) of the Act provides: “if the Authority considers that an authorised person has contravened a requirement imposed on him by or under this Act ... it may impose on him a penalty, in respect of the contravention, of such amount as it considers appropriate”.
- 1.3. Section 138 of the Act provides that the FSA may make such rules applying to authorised persons with respect to the carrying on by them of regulated activities as appear to it to be necessary or expedient for the purpose of protecting consumers.

2. Relevant Handbook provisions

In exercising its power to impose a financial penalty, the FSA must have regard to relevant provisions in the FSA Handbook. The main provisions relevant to the action specified above are set out below.

3. Principles for Businesses

- 3.1. Under the FSA’s rule-making powers as referred to above, the FSA has published in the FSA Handbook the Principles, which apply in whole, or in part, to all authorised Firms.
- 3.2. The Principles are a general statement of the fundamental obligations of authorised Firms under the regulatory system and reflect the FSA’s regulatory objectives. An authorised firm may be liable to disciplinary sanction where it is in breach of the Principles.
- 3.3. The Principles relevant to this matter are:

- (1) Principle 3 which provides that: “a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems”; and
 - (2) Principle 9 which provides that: “a firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment.”
- 3.4. The procedures to be followed in relation to the imposition of a financial penalty are set out in sections 207 and 208 of the Act.