
FINAL NOTICE

To: **Forex Capital Markets Limited ("FXCM Ltd")
FXCM Securities Limited ("FXCM Securities")
(together "FXCM UK")**

Reference
Number: 217689
171487

Address: Northern & Shell Building,
10 Lower Thames Street,
8th Floor,
London EC3R 6AD

Date: 24 February 2014

1. ACTION

1.1. For the reasons given in this notice, the Authority hereby imposes:

- (1) on FXCM Ltd, for breaches of Principle 6 (Customers' interests) and the rules relating to best execution, a financial penalty of £3,200,000 plus any amount of the FXCM Ltd redress (being USD \$9,828,677) that remains unclaimed by customers after 15 months from the date of this Final Notice (the "Unclaimed Redress").
- (2) on FXCM Securities, a public censure for breaches of Principle 6 and rules relating to best execution; and
- (3) on FXCM UK, a joint financial penalty of £800,000 in relation to a breach of Principle 11 (Relations with regulators).

1.2. The Authority therefore imposes a combined penalty of £4,000,000 plus the Unclaimed Redress.

- 1.3. FXCM UK agreed to settle at an early stage of the Authority's investigation. They therefore qualified for a 20% (stage 2) discount under the Authority's executive settlement procedures. Were it not for this discount, the Authority would have imposed financial penalties of £4,000,000 (plus the Unclaimed Redress) and £1,000,000 for the breaches of Principle 6 and Principle 11 respectively.
- 1.4. FXCM UK has also agreed to pay redress to its customers amounting to up to USD \$9,941,970. The Authority notes that the FXCM Group agreed to pay redress to US customers in August 2011 but at that stage did not treat its UK customers in the same way.
- 1.5. The public censure will be issued on 24 February 2014 and will take the form of this Final Notice, which will be published on the Authority's website.

2. SUMMARY OF REASONS

Principle 6

- 2.1. From 1 August 2006 to 17 December 2010, FXCM Ltd treated its customers unfairly because it failed to pass on favourable price movements to its customers and instead the FXCM Group retained the benefit.
- 2.2. In relation to rolling spot forex trades its customers were subject to "asymmetric price slippage" in that if in the time between a customer's order being placed by FXCM Ltd and execution of that order the price moved the FXCM Group would pass on any resulting loss to the customer but retain any benefit for itself. Limit orders placed by customers were also treated asymmetrically because positive price movements were retained by the FXCM Group whereas negative price movements resulted in the customer losing the opportunity to have the order executed.
- 2.3. FXCM Group gained an estimated USD \$9,828,677 by retaining the profits from positive price improvements in relation to trades by customers of FXCM Ltd.
- 2.4. FXCM Group also gained USD \$113,293 by retaining the profits from positive price improvements in relation to trades by customers of FXCM Securities between 14 May 2010 and 17 December 2010. Those customers of FXCM Securities were therefore also treated unfairly. No fine is imposed on FXCM Securities in this regard (for reasons explained below) but the redress to be paid includes this gain to the FXCM Group.

- 2.5. The Authority recognises the following factors that mitigate the seriousness of FXCM Ltd's breach:
- (1) FXCM Ltd did not itself retain any gains from price improvements.
 - (2) The impact on individual trades was typically very limited. The average slippage retained by FXCM Ltd on those trades where slippage was retained, a subset of all trades, was approximately \$3.70.
- 2.6. Senior managers within FXCM Group decided to take steps to address the issue of asymmetric price slippage prior to and independently of the subsequent US regulatory investigations described below. FXCM Group changed the asymmetric slippage settings in mid-2010 (for certain order types) and December 2010 (for the remainder of order types).
- 2.7. The Authority nevertheless considers these breaches to be serious because they involved a systemic and prolonged unfairness in trading terms that reduced customers' ability to profit from trading in rolling spot forex trades.

Principle 11

- 2.8. Between July 2010 and August 2011, FXCM UK failed to be sufficiently open and co-operative and disclose to the Authority information of which it would reasonably expect notice, namely:
- (1) the fact that in July 2010 US authorities had begun to investigate an FXCM Group company in relation to the use of asymmetric pricing; and
 - (2) the subsequent decision by the FXCM Group company to settle with the US authorities and pay redress to its US customers who had suffered detriment due to asymmetric pricing.
- 2.9. Both of the above pieces of information were highly relevant to the Authority for the purposes of considering the significance of asymmetric pricing issues and any potential impact on FXCM UK's customers. The Authority only learnt of the information as a result of its monitoring of relevant press coverage.
- 2.10. The Authority considers this breach to be serious because the failure to notify the Authority revealed a systemic weakness in FXCM UK's systems and controls to ensure that relevant regulatory information was captured and its regulatory reporting obligations were satisfactorily met. Moreover, but for the Authority's

monitoring of relevant press coverage the breach could have resulted in FXCM UK avoiding the payment of USD \$9,941,970 in redress to FXCM UK's customers who suffered loss as a result of asymmetric price slippage in circumstances where the FXCM Group's US customers were being paid redress in relation to the same issue.

3. DEFINITIONS

3.1. The definitions below are used in this Final Notice.

"the Act" means the Financial Services and Markets Act 2000.

"asymmetric price slippage" means the practice of applying an order execution policy where losses from adverse price movements occurring between a customer's order and execution of that order are passed on to customers, or in the case of limit orders result in the order not being executed, but profits from favourable price movements between a customer's order and execution of that order are retained by the firm.

"the Authority" means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority.

"COB" means the Conduct of Business part of the Authority Handbook, in force until 31 October 2007.

"COBS" means the Conduct of Business Sourcebook part of the Authority Handbook, in force since 1 November 2007.

"CFTC" means the Commodity Futures Trading Commission, based in the United States of America.

"DEPP" means the Authority's Decision Procedure & Penalties Manual.

"EG" means the Authority's Enforcement Guide.

"ENF" means the Enforcement part of the Authority's Handbook in force prior to 28 August 2007.

"FXCM Ltd" means Forex Capital Markets Limited.

"FXCM Securities" means FXCM Securities Limited.

“FXCM Group” means the FXCM Group of companies operating around the world including FXCM Ltd, FXCM Securities and FXCM LLC. FXCM Inc. is the ultimate parent company for the FXCM Group.

“FXCM UK” means Forex Capital Markets Limited and FXCM Securities Limited.

“FXCM LLC” means the sister company of FXCM Ltd and FXCM Securities based in the United States of America, through which the FXCM Group’s US operations are conducted and through which FXCM Ltd’s and FXCM Securities’ rolling spot forex trades were executed.

“Limit Order” is an order to buy or sell a financial instrument at its specified price limit or better and for a specified size.

“NFA” means the National Futures Association, based in the United States of America, an industry wide self-regulatory organisation regulating the US futures industry.

“Principles” means the Authority’s Principles for Businesses.

“rolling spot forex trades” means non-deliverable rolling spot foreign exchange contracts.

“the Tribunal” means the Upper Tribunal (Tax and Chancery Chamber)

“Unclaimed Redress” means the profits retained by FXCM LLC as a result of the breaches of Principle 6 and best execution rules between 1 August 2006 and 17 December 2010 that is not reclaimed by FXCM Ltd’s customers within 15 months from the date of publication of a final notice.

4. FACTS AND MATTERS

Background to FXCM Ltd and trading systems

- 4.1. FXCM Ltd was authorised by the Authority on 27 May 2003 and is part of the FXCM Group which primarily provides online foreign exchange trading services to customers. The majority of FXCM Ltd’s revenue derives from trading in rolling spot forex trades. As at 17 December 2010 it had approximately 75,000 active retail accounts.
- 4.2. The rolling spot forex trading activity undertaken by FXCM Ltd is conducted on the online trading systems supplied by FXCM LLC, the FXCM Group’s US-based trading entity. FXCM LLC used external liquidity providers, such as large

institutional banks, to provide pricing and liquidity for customers' rolling spot forex trades. The most competitive liquidity providers' prices would be fed through FXCM LLC, then on to FXCM Ltd's systems and thus displayed to FXCM Ltd's customers with a mark-up/mark-down charged by FXCM Group for its broking services.

- 4.3. FXCM Ltd contracted with its customers on a principal-to-principal basis, rather than contracting as agent for the customer. FXCM Group then managed the risk by executing a corresponding order with the liquidity provider that provided the best price available. However, FXCM Ltd would only execute or "fill" the customer's order once the corresponding order plus the mark-up/mark-down had been charged by FXCM.
- 4.4. On 13 June 2008 FXCM Ltd received incorrect legal advice that by contracting on a principal-to-principal basis with its customers and agreeing with its customers that all orders would be executed through FXCM LLC, FXCM Ltd would not be subject to the requirements of the best-execution rules set out in COBS and referred to in Annex A of this notice. The advice was incorrect because, as explained in COBS 11.2.2G and 11.2.3G (set out in Annex A of this notice) the best execution rules will also apply to a firm that contracts with a customer on an "own account" basis (which is synonymous with a principal-to-principal relationship). Moreover, as explained in COBS 11.2.20G, specific instructions from a customer regarding one aspect of order execution, such as the execution venue, do not release the firm from its best execution obligations in respect of any other aspects of the customer order, such as handling of price movements. The legal advice did not address the broader question of whether, in being subject to asymmetric price slippage, FXCM Ltd's customers were being treated fairly.
- 4.5. Prior to September 2012, FXCM Ltd did not have a system in place to monitor sufficiently the compliance of its order execution policies with the Authority's rules on best-execution and did not have a process to monitor sufficiently regularly the effectiveness of its order execution arrangements (see COBS 11.2.14R, 11.2.27R and 11.2.28R).

FXCM Ltd and FXCM LLC use of asymmetric price slippage

- 4.6. From 1 August 2006 to 17 December 2010, FXCM LLC practised asymmetric price slippage which directly impacted on FXCM Ltd's customers.
- 4.7. The following is an illustration of how this might occur. A customer could log on to their account with FXCM Ltd and see EUR/USD trades with an indicative price of "buy" at 1.29 (including commission). If the customer placed an order to buy, FXCM Ltd would pass this order on to FXCM LLC. FXCM Group would send an offsetting order to one of its liquidity providers. If, in the latency period of that offsetting order, the price had moved against the customer and was "buy" at 1.30 (including commission), FXCM LLC would either re-quote FXCM Ltd 1.30, not execute the trade, or execute the trade at 1.30 depending on whether the FXCM Ltd customer had chosen trading settings which allowed some negative price movements at execution.
- 4.8. However, if, in the latency period of FXCM Group's offsetting order, the price had moved in the customer's favour and was "buy" at 1.28, FXCM LLC would execute the trade at 1.28 and then book the corresponding trade with FXCM Ltd as 1.29. FXCM Ltd would then fill the customer's order at 1.29 and FXCM LLC would retain the profit made from buying EUR/USD at 1.28 and selling to FXCM Ltd and the customer at 1.29, in addition to the profit made from the mark up charged to customers on all trades.
- 4.9. FXCM LLC's asymmetric slippage also affected FXCM Ltd customers' margin liquidation orders, which were automatically generated orders to close out a customer's position when the customer's trading positions moved against the customer and caused the customer's security margin to fall below a required level.
- 4.10. Between 1 August 2006 and 17 December 2010, FXCM Group retained USD \$6,725,106 as profits from positive price improvements in 2,214,053 trades by customers of FXCM Ltd while negative price movements were passed on to customers. FXCM Ltd did not itself retain any profits from positive price movements on customers' orders.
- 4.11. Between 1 August 2006 and 17 December 2010, FXCM Group retained USD \$3,103,571 from positive price movements in 1,101,161 limit orders. A limit order is defined in the Markets in Financial Instruments Directive as an order to buy or sell a financial instrument at its specified price limit *or better* and for a specified size (emphasis added). Limit orders were however treated by FXCM Ltd as an agreement with the customer to buy or sell at a specific price when and if

that price became available, even if the orders could in practice be executed at a better price by FXCM LLC on behalf of FXCM Ltd as a result of positive price movements during order execution.

- 4.12. For example, a customer could log on to their account with FXCM Ltd, see EUR/USD trading positions offered for 1.31 and place a limit order to "buy" a EUR/USD position if and when the price for the currency pair reached 1.29 (including commission). If the EUR/USD price offered by the liquidity providers to FXCM LLC and on to FXCM Ltd reached 1.29, FXCM Ltd would seek to execute the customer's limit order with FXCM LLC. However, if in the latency period of FXCM Group's offsetting order with its liquidity providers the price had moved back above 1.29, the customer's order with FXCM Ltd would be reset to a pending status whereas if in the latency period of FXCM Group's offsetting order the EUR/USD purchase price had continued to drop and was "buy" at 1.28 , FXCM LLC would execute the trade at 1.28 and then book the corresponding trade with FXCM Ltd as 1.29. FXCM Ltd would then fill the customer's order at 1.29 and FXCM LLC would retain the profit made from buying EUR/USD at 1.28 and selling to FXCM Ltd and the customer at 1.29, in addition to the profit made from the mark up charged to customers on all trades.
- 4.13. FXCM Group thus retained \$3,103,571 from positive price movements in 1,101,161 limit orders while customers of FXCM Ltd bore the risk of negative price movements during order execution as these resulted in the orders being reset to a pending status and the customer losing the opportunity to have the order executed at that time.
- 4.14. FXCM Ltd did not itself retain any profits from positive price movements on customers' orders.
- 4.15. In early 2010 FXCM Group decided to rewrite the programming for its trading platform to ensure FXCM LLC passed on all positive price movements to FXCM Ltd, other FXCM Group sister companies and US customers who traded directly with FXCM LLC. This decision was made prior to and independently of the NFA and CFTC regulatory investigations.
- 4.16. From July 2010, the first set of changes to FXCM LLC's platform took effect and all positive price movements obtained by FXCM LLC when executing customer orders were passed on to customers on market and limit orders. From 18 December 2010, the second set of changes to FXCM LLC's trading platform took effect so that all positive price movements obtained by FXCM LLC, when executing

automatically generated margin liquidation orders, were also passed on to customers.

- 4.17. FXCM Ltd has implemented from September 2012 onwards regular monitoring of the effectiveness of its order execution systems and regular reviews of its order execution policies.

FXCM Securities

- 4.18. FXCM Securities, previously known as ODL Securities, was brought within the operational framework of the FXCM Group in May 2010 and was then purchased by the FXCM Group on 1 October 2010.
- 4.19. Between 14 May 2010 and 17 December 2010, customers who placed rolling spot forex trades with FXCM Securities were subject to FXCM LLC's policy of asymmetric price slippage. This did not however affect any customers of FXCM Securities who placed limit orders.
- 4.20. During the period from 14 May to 17 December 2010, FXCM Group retained USD \$113,293 as profits from positive price improvements in 24,709 rolling spot forex trades by customers of FXCM Securities, including margin liquidation orders. FXCM Securities did not itself retain any profits from positive price movements on these orders.
- 4.21. Following its acquisition by the FXCM Group in October 2010, FXCM Securities has undertaken a significant programme of improvements to its governance, systems and controls. This has included de-risking its overall business, strengthening the compliance function including bringing in new personnel and undertaking a review of its compliance standards and processes, establishing more formal and robust oversight by the Board of compliance issues, formalising the work of the risk function, restoring the independence of the audit function, improving anti-money-laundering controls and ensuring it is meeting its capital adequacy requirements. Further improvements to its systems and controls have included the implementation from September 2012 onwards of regular monitoring of the effectiveness of its order execution systems and regular reviews of its order execution policies.

US Regulatory Investigations

- 4.22. In July 2010, the NFA and CFTC notified FXCM LLC that its use of asymmetric price slippage was subject to investigation by the NFA and CFTC for suspected breaches of NFA and CFTC rules. FXCM UK failed to inform the Authority about this despite being aware of the investigations and the potential significance for FXCM UK's customers and the Authority.
- 4.23. On 12 August 2011, the NFA published its Decision imposing a USD \$2m fine against FXCM LLC in settlement of a complaint issued by the NFA on the same date for retaining gains derived from asymmetric price slippage. As part of the settlement, FXCM LLC also agreed in principle to pay redress to US customers. FXCM LLC neither admitted nor denied the allegation in the NFA complaint, which was based on NFA rules.
- 4.24. On 3 October 2011, the CFTC issued an order against FXCM LLC for failing to supervise diligently the handling of customer orders subject to price movements. The CFTC required FXCM LLC to pay a further fine of USD \$6m and redress of USD \$8,261,937 to customers of FXCM LLC who suffered loss as a result of asymmetric price slippage. The redress scheme did not include customers of FXCM Ltd whose orders were executed through FXCM LLC. FXCM LLC neither admitted nor denied the findings in the CFTC order.
- 4.25. The NFA and CFTC investigations were handled by senior members of FXCM LLC's compliance and legal functions who, at that time, reported to the Board of FXCM LLC. As a result, those members of FXCM LLC's Board who also sat on the Boards of FXCM Ltd and FXCM Securities knew about the NFA and CFTC's concerns with FXCM LLC's asymmetric price slippage, the fact of the regulatory investigation and that the conduct in question affected customers of FXCM UK as it did customers of FXCM LLC. They assumed that FXCM LLC's global compliance function, which was based in the United States of America, would brief the compliance function of FXCM Group's global subsidiaries, including FXCM UK, and that FXCM UK's compliance function would share the information with other members of FXCM UK's senior management and, if necessary, the Authority. That assumption turned out to be wrong because senior management within FXCM UK who reported to the Authority on regulatory matters remained unaware of the NFA and CFTC investigations. The Authority is satisfied that this breakdown in communication was inadvertent and did not amount to a deliberate withholding of information on the part of FXCM UK.

4.26. The Authority only learnt of the fact of the US investigations and the settlement reached between FXCM LLC and NFA in August 2011 as a result of the Authority's monitoring of press coverage in relation to the NFA's case against FXCM LLC.

5. FAILINGS

5.1. On the basis of the facts and matters described above, the Authority considers that:

- (1) between 1 August 2006 and 17 December 2010 FXCM Ltd breached Principle 6 and the following rules set out in the Authority Handbook: COB 7.5.3R and 7.5.5R and COBS 11.2.1R, 11.2.14R, 11.2.27R and 11.2.28R (the COBS 11.2.14R, 11.2.27R and 11.2.28R breaches continued until September 2012); and
- (2) between 14 May 2010 and 17 December 2010 FXCM Securities breached Principle 6 and COBS 11.2.1R, 11.2.14R, 11.2.27R and 11.2.28R (the COBS 11.2.14R, 11.2.27R and 11.2.28R breaches continued until September 2012); and
- (3) between July 2010 and August 2011 FXCM UK breached Principle 11.

5.2. The regulatory provisions relevant to this Final Notice are referred to in Annex A.

FXCM Ltd and FXCM Securities Breaches of Principle 6

- 5.3. By reason of the facts and matters set out above, FXCM Ltd breached Principle 6 from 1 August 2006 to 17 December 2010 by failing to pay due regard to the interests of its customers and treating them fairly.
- 5.4. Specifically, for a period of over four years, FXCM Ltd allowed FXCM LLC to retain the gain from positive price movements occurring between receipt of FXCM Ltd's orders and execution of those orders while passing on to customers the losses from negative price movements occurring prior to the execution of customer orders. This handling of price movements was inherently unfair to customers and allowed FXCM Group to retain USD \$9,828,677 from positive price movements.
- 5.5. FXCM Securities breached Principle 6 from 14 May 2010 to 17 December 2010 because during this period it practised the same handling of price movements and thus failed to pay due regard to the interests of its customers and treating them fairly.

Breach of Principle 11

- 5.6. By reason of the facts and matters set out above, FXCM UK breached Principle 11 because it failed to be open and cooperative and disclose to the Authority appropriately information of which the Authority would reasonably expect notice.
- 5.7. Specifically, from July 2010 until August 2011, FXCM UK failed to disclose to the Authority the fact and nature of the NFA and CFTC investigations into FXCM LLC's order execution policies and the fact redress was to be paid to US customers. These matters were clearly relevant to FXCM UK's own order execution policies up to 17 December 2010 and the Authority's consideration thereof.

Breach of the Authority's Rules

- 5.8. By reason of the facts and matters detailed above, FXCM Ltd and FXCM Securities also breached the Authority's best-execution rules referred to in Annex A and summarised below.

Best Execution under COB prior to 1 November 2007

- 5.9. Prior to 1 November 2007, FXCM Ltd was subject to the rules on best-execution set out in Chapter 7.5 of the Conduct of Business ("COB") part of the Authority's Handbook.
- 5.10. Under COB 7.5.3R and COB 7.5.5R, when FXCM Ltd received from customers an order to execute a transaction in circumstances giving rise to duties similar to those arising on an order to execute a transaction as agent, it had a duty to ascertain the price which was the best available for the customer order and execute the order at a price which was no less advantageous. FXCM Ltd was acting in circumstances giving rise to duties similar to those arising on an order to execute a transaction as agent because it acted as riskless principal and would only transmit an order to FXCM LLC when instructed to do so by a customer, it would do so within the limits set by the customer and purportedly avoid a situation in which its interests could conflict with those of the customer.
- 5.11. By failing to pass on positive price movements on rolling spot forex contracts between receipt of an order and its execution by FXCM LLC, while passing on negative price movements from FXCM LLC or, in the case of limit orders, not executing the trade, FXCM Ltd breached the best-execution rule in COB 7.5.3R and 7.5.5R from 1 August 2006 to 31 October 2007.

Best Execution under COBS from 1 November 2007 to 17 December 2010

- 5.12. From 1 November 2007, FXCM Ltd and subsequently FXCM Securities were subject to the rules on best-execution set out in the Authority's Conduct of Business Sourcebook ("COBS") Chapter 11.2.
- 5.13. The best execution obligations in COBS 11.2.1R, as explained in COBS 11.2.2G, COBS 11.2.3G, COBS 11.2.20G and The Perimeter Guidance Manual, applied to FXCM Ltd and FXCM Securities' execution of customer orders via FXCM LLC even if FXCM Ltd and FXCM Securities contracted with customers on a principal-to-principal, or "own account", basis. COBS 11.2.3G states that "*Dealing on own account with clients by a firm should be considered as the execution of client orders, and therefore subject to the requirements under MiFID, in particular, those obligations in relation to best execution.*"
- 5.14. By failing to pass on positive price movements on rolling spot forex contracts between receipt of an order and its execution by FXCM LLC, while passing on negative price movements or not executing limit orders due to negative price movements, FXCM Ltd and FXCM Securities failed to obtain "the best possible result" when executing customer orders in breach of the best-execution rule in COBS 11.2.1R. The breach by FXCM Ltd occurred from 1 November 2007 to 17 December 2010. The breach by FXCM Securities occurred from 14 May 2010 to 17 December 2010.
- 5.15. In addition, by reason of the facts and matters set out above, between November 2007 and September 2012 FXCM Ltd:
 - (1) failed to establish a compliant order execution policy in breach of COBS 11.2.14R;
 - (2) failed to monitor the effectiveness of its order execution arrangements in breach of COBS 11.2.27R; and
 - (3) failed to review annually its execution policy and execution arrangements in breach of COBS 11.2.28R.
- 5.16. Similarly, between May 2010 and September 2012 FXCM Securities:
 - (1) failed to establish a compliant order execution policy in breach of COBS 11.2.14R;

- (2) failed to monitor the effectiveness of its order execution arrangements in breach of COBS 11.2.27R; and
- (3) failed to review annually its execution policy and execution arrangements in breach of COBS 11.2.28R.

6. SANCTION

- 6.1. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP.
- 6.2. Changes to DEPP were introduced on 6 March 2010 and the Authority has had regard to the fact that part of FXCM Ltd's misconduct in relation to the breach of Principle 6 occurred after the new provisions came into force. However, as the majority of FXCM Ltd's misconduct in this regard occurred before that change and by 6 March 2010 active steps were being taken by FXCM LLC to eliminate the asymmetric slippage, the Authority has applied to the Principle 6 breach the penalty regime as set out in DEPP in its pre-6 March 2010 form.
- 6.3. The breach of Principle 11 occurred after 6 March 2010 and therefore the Authority has had regard to the provisions of DEPP in force from 6 March 2010 in respect of the breach of Principle 11.
- 6.4. Guidance on the imposition and amount of penalties for misconduct, in respect of the breach of Principle 6, part of which occurred prior to 28 August 2007, is set out in ENF. We have accordingly had regard to the ENF provisions on penalty policy that were in force at the time of the earlier misconduct as well as to those in Chapter 6 of DEPP.
- 6.5. FXCM Ltd received incorrect external legal advice on 13 June 2008 that it would not be subject to the requirements of the best-execution rules if it contracted with its customers on a principal-to-principal basis and agreed specific instructions regarding the execution venue. Therefore, in relation to FXCM Ltd's failure to comply with the rules set out in COBS 11.2, the Authority has not imposed a financial penalty, other than disgorgement of profits, for the period following receipt of the incorrect legal advice on 13 June 2008.
- 6.6. Similarly in relation to FXCM Securities' failure to comply with the rules set out in COBS 11.2 the Authority has not imposed a financial penalty.

- 6.7. The FXCM Group's use of asymmetric price slippage was being eliminated by the time FXCM Securities was integrated into FXCM Group's order execution system and the practices ceased within the following seven months. For that reason, FXCM Securities' breach of Principle 6 from 14 May 2010 to 17 December 2010 is not considered for the imposition of a separate, additional penalty and instead a public censure is imposed for this aspect of its misconduct.

Penalty for breaches of Principle 6 (from 1 August 2006 to 17 December 2010) and of relevant COB and COBS rules (from 1 August 2006 to 13 June 2008) under DEPP 6.5.2G

- 6.8. The Authority considers the following DEPP factors to be particularly important in assessing the sanction for FXCM Ltd's breaches of Principle 6 and relevant COB and COBS rules.

Deterrence – DEPP 6.5.2G (1)

- 6.9. The principal purpose of a financial penalty is to promote high standards of regulatory conduct by deterring firms who have breached regulatory requirements from committing further contraventions, helping to deter other firms from committing contraventions, and demonstrating generally to firms the benefits of compliant behaviour.

Nature, seriousness and impact of the breach – DEPP 6.5.2G (2)

- 6.10. In determining the appropriate sanction, the Authority has had regard to the seriousness of the contraventions by FXCM Ltd, including the nature of the requirements breached, the impact and the duration of breaches.
- 6.11. FXCM Ltd's breach of Principle 6 lasted from 1 August 2006 to 17 December 2010 and impacted FXCM Ltd's execution of forex trades which was the central service it offered to its customers. The breach revealed a systemic and prolonged unfairness in trading terms that reduced customers' ability to profit from trading in rolling spot forex trades.
- 6.12. The asymmetry would have been particularly costly to customers trading in the forex market (as opposed to equities markets) as there can be no overall rising market to compensate for trading costs. As a result of the breach, FXCM Ltd failed to pass on to customers USD \$9,828,677 from asymmetric price slippage (including positive price slippage retained by FXCM LLC on limit orders).

The size, financial resources and other circumstances of the firm – DEPP 6.5.2 G (5)

- 6.13. The Authority has taken into account FXCM Ltd's size and financial resources. There is no evidence to suggest that FXCM Ltd is unable to pay the penalty.

The amount of benefit gained or loss avoided – DEPP 6.5.2G (6)

- 6.14. FXCM Ltd's sister company FXCM LLC gained over USD \$9,828,677 as a result of retaining positive price movements which it should have passed on to FXCM Ltd's customers. To the extent that this amount is not paid out in full as redress to FXCM Ltd's customers after 15 months (which may occur in certain circumstances if customers choose not to take steps necessary to enable redress to be paid), FXCM Ltd's fine will be increased by the amount of the Unclaimed Redress.

Conduct following the breach – DEPP 6.5.2G (8)

- 6.15. Even though the FXCM Group agreed in August 2011 to pay redress to US customers who had suffered detriment from the use of asymmetric price slippage, it was only following the commencement of the Authority's disciplinary investigation that FXCM Ltd agreed in principle to pay redress to its customers.
- 6.16. In early 2010 FXCM Group decided to rewrite the programming for its trading platform to ensure FXCM LLC passed on all positive price movements to FXCM Ltd, other FXCM Group sister companies and US customers who traded directly with FXCM LLC. The process of removing asymmetric order execution for all customers' trades was concluded by 18 December 2010.

Other action taken by the Authority

- 6.17. In determining the level of financial penalty, the Authority has taken into account penalties imposed by the Authority on other authorised persons for comparable behaviour.

Conclusion for breach of Principle 6 and COB and COBS rules

- 6.18. FXCM Ltd has agreed to settle at an early stage of the Authority's investigation, and therefore qualifies for a 20% (stage 2) discount under the Authority's executive settlement procedures. This 20% discount will not apply to the Unclaimed Redress.
- 6.19. The Authority therefore has decided to impose a financial penalty on FXCM Ltd of £3,200,000 plus the Unclaimed Redress for its breaches between 1 August 2006 and 17 December 2010. Were it not for the Stage 2 settlement discount, the

Authority would have imposed a financial penalty of £4,000,000 plus the Unclaimed Redress on FXCM Ltd.

Penalty for breach of Principle 11 under DEPP 6.5A

- 6.20. In respect of conduct occurring on or after 6 March 2010, the Authority applies a five-step framework to determine the appropriate level of financial penalty. DEPP 6.5A sets out the details of the five step framework that applies in respect of financial penalties imposed on firms.

Step 1: Disgorgement

- 6.21. Pursuant to DEPP 6.5A.1G, at Step 1 the Authority seeks to deprive a firm of the financial benefit derived directly from the breach where it is practicable to quantify this.
- 6.22. The Authority has not identified any financial benefit that FXCM UK derived directly from its breach.
- 6.23. The figure after Step 1 is therefore £0.

Step 2: the seriousness of the breach

- 6.24. Pursuant to DEPP 6.5A.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the breach. Where the amount of revenue generated by a firm from a particular product line or business area is indicative of the harm or potential harm that its breach may cause, that figure will be based on a percentage of the firm's revenue from the relevant products or business area.
- 6.25. However the Authority considers that the revenue generated by FXCM UK is not an appropriate indicator of the harm or potential harm caused by their breach of Principle 11. The breach relates to a failure to notify the Authority of information it would reasonably expect to be notified of, and the breach is not related to revenue. The Authority has not identified an alternative indicator of the harm or potential harm caused by FXCM UK's breach and so, pursuant to DEPP 6.5A.2G (13), has determined the appropriate Step 2 amount by taking into account those factors which are relevant to an assessment of the level of seriousness of the breach.
- 6.26. In deciding on the percentage of the relevant revenue that forms the basis of the step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 20%. This range is divided into five fixed levels

which represent, on a sliding scale, the seriousness of the breach; the more serious the breach, the higher the level. For penalties imposed on firms there are the following five levels:

Level 1 – 0%

Level 2 – 5%

Level 3 – 10%

Level 4 – 15%

Level 5 – 20%

- 6.27. In assessing the seriousness level, the Authority takes into account various factors which reflect the impact and nature of the breach, and whether it was committed deliberately or recklessly. The Authority considers the following factors to be relevant to the seriousness of FXCM UK's breach:

Impact of the Breach

- 6.28. The breach lasted from July 2010 until August 2011.
- 6.29. As a result of the breach, the Authority was unable to consider, prior to publication of the NFA Decision against FXCM LLC in August 2011, the significance of FXCM Ltd and FXCM Securities' unfair treatment of its customers. This ultimately delayed FXCM Ltd and FXCM Securities' agreement to provide redress to customers.

Nature of the Breach

- 6.30. The breach was repeated over a long period of time from the failure to notify the Authority of the NFA and CFTC investigations in July 2010 to the failure to notify the Authority of the decision in August 2011 to settle the cases brought by the NFA and CFTC and provide redress to customers of FXCM LLC.
- 6.31. The breach revealed a systemic weakness in FXCM UK's systems and controls to ensure that relevant regulatory information from the FXCM Group was captured and its regulatory reporting obligations were satisfactorily met.
- 6.32. Moreover, but for the eventual publication of the NFA and CFTC regulatory action in August 2011, the breach could have resulted in FXCM UK avoiding the payment of USD \$9,941,970 in redress to FXCM UK's customers who suffered loss as a result of the breaches set out above.

6.33. However, the Authority has not found that FXCM UK acted deliberately or recklessly. Rather, the breach was committed inadvertently or negligently.

6.34. Taking all of these factors into account, the Authority considers the seriousness of the breach to be level 3 and determines that the Step 2 figure is £1,000,000.

Step 3: mitigating and aggravating factors

6.35. Pursuant to DEPP 6.5A.3G, at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2 to take into account factors which aggravate or mitigate the breach. Having considered aggravating and mitigating factors, there is no change to the Step 2 figure.

6.36. The figure after Step 3 is therefore £1,000,000.

Step 4: adjustment for deterrence

6.37. Pursuant to DEPP 6.5A.4G, if the Authority considers the figure arrived at after Step 3 is insufficient to deter the firm who committed the breach, or others, from committing further or similar breaches, then the Authority may increase the penalty.

6.38. The Authority considers that the Step 3 figure of £1,000,000 represents a sufficient deterrent to FXCM UK and others, and so has not increased the penalty at Step 4.

6.39. The figure after Step 4 is therefore £1,000,000.

Step 5: settlement discount

6.40. Pursuant to DEPP 6.5A.5G, if the Authority and the firm on whom a penalty is to be imposed agree the amount of the financial penalty and other terms, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the Authority and the firm reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.

6.41. The Authority and FXCM UK reached agreement at Stage 2 and so a 20% discount applies to the Step 4 figure.

6.42. The figure after Step 5 is therefore £800,000.

Penalty

- 6.43. The Authority has therefore imposed a combined penalty of £4,000,000 plus the Unclaimed Redress being:
- (1) a financial penalty of £3,200,000 plus the Unclaimed Redress on FXCM Ltd for breaching Principles 6 and the best execution rules; and
 - (2) on FXCM UK a joint financial penalty of £800,000 in relation to a breach of Principle 11 (Relations with regulators).

7. PROCEDURAL MATTERS

Decision maker

- 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. £3.2 million must be paid in full by FXCM Ltd to the Authority by no later than 10 March 2014, 14 days from the date of the Final Notice. £800,000 must be paid in full by FXCM UK by no later than 10 March 2014, 14 days from the date of the Final Notice. Any Unclaimed Redress must be paid in full by FXCM Ltd to the Authority by no later than 8 June 2015, 15 months and 15 days from the date of the Final Notice.

If the financial penalty is not paid

- 7.4. If all or any of the financial penalty owed by FXCM Ltd other than the Unclaimed Redress is outstanding on 11 March 2014 the Authority may recover the outstanding amount as a debt owed by FXCM Ltd and due to the Authority. If all or any of the financial penalty owed by FXCM UK is outstanding on 11 March 2014 the Authority may recover the outstanding amount as a debt owed by FXCM UK and due to the Authority. If all or any of the Unclaimed Redress is outstanding on 9 June 2015 the Authority may recover the outstanding amount as a debt owed by FXCM Ltd and due to the Authority.

Publicity

- 7.5. 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 Authority must publish such information about the matter to which this notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to you or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
- 7.6. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Authority contacts

- 7.7. For more information concerning this matter generally, contact Arturo John (direct line: 020 7066 4190), Natalie Rivett (direct line: 020 7066 4166) or Anthony Monaghan (direct line: 020 7066 6772) at the Authority.

Megan Forbes

Financial Conduct Authority, Enforcement and Financial Crime Division

Annex A

RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND AUTHORITY GUIDANCE

Statutory Provisions

The Authority's statutory objectives, set out in sections 1A to 1K of the Act, are to secure an appropriate degree of consumer protection, to protect and enhance the integrity of the UK financial system and to promote effective competition in the interests of consumers.

Section 205 of the Act provides:

"If the appropriate regulator considers that an authorised person has contravened a relevant requirement imposed on the person, it may publish a statement to that effect."

Section 206 (1) of the Act provides:

"If the appropriate regulator considers that an authorised person has contravened a relevant requirement imposed on the person, it may impose on him a penalty, in respect of the contravention, of such amount as it considers appropriate".

FXCM Ltd and FXCM Securities are authorised persons for the purposes of sections 205 and 206 of the Act. The requirements imposed on authorised persons include those set out in the Authority's rules and made under section 137A of the Act.

Regulatory Provisions

In exercising its power to issue a financial penalty, the Authority must have regard to the relevant provisions in the Authority Handbook.

In deciding on this action, the Authority has also had regard to guidance set out in the Regulatory Guides, in particular the Decision Procedure and Penalties Manual (DEPP).

The Principles are a general statement of the fundamental obligations of firms under the regulatory system and are set out in the Authority Handbook. They derive their authority from the Authority's rulemaking powers as set out the Act and reflect the Authority's regulatory objectives. The relevant Principles are as follows:

Principle 6 provides:

"A firm must pay due regard to the interests of its customers and treat them fairly."

Principle 11 provides:

"A firm must deal with its regulators in an open and co-operative way, and must disclose to the appropriate regulator appropriately anything relating to the firm of which that regulator would reasonably expect notice"

For rolling spot forex trades executed prior to 1 November 2007

COB 7.5.3R provides:

"A firm that executes a customer order in a designated investment must provide best execution, unless COB 7.5.4 R applies"

COB 7.5.4R provides:

"COB 7.5.3 R does not apply in any of the following circumstances:

- (1) *the customer order is for:*
 - (a) *the purchase of a life policy; or*
 - (b) *the purchase of or sale of units in a regulated collective investment scheme from or to the operator of that scheme;*
- (2) *the firm has agreed with an intermediate customer that it need not owe a duty of best execution to him, unless that customer is:*
 - (a) *the trustee of an occupational pension scheme or an OPS collective investment scheme; or*
 - (b) *the trustee of any other trust for whom, and to the extent that, the firm acts as a permitted third party under COB 11.6 (Delegation to a permitted third party); or*
- (3) *the firm relies on another person to whom it passes a customer order for execution to provide best execution, but only if it has taken reasonable care to ensure that he will do so."*

COB 7.5.5R provides:

"To provide best execution, a firm must:

- (1) *take reasonable care to ascertain the price which is the best available for the customer order in the relevant market at the time for transactions of the kind and size concerned; and*
- (2) *execute the customer order at a price which is no less advantageous to the customer, unless the firm has taken reasonable steps to ensure that it would be in the customer's best interests not to do so."*

"Customer Order" is defined in the Glossary as:

"(a) an order to a firm from a customer to execute a transaction as agent;

"(b) any other order to a firm from a customer to execute a transaction in circumstances giving rise to duties similar to those arising on an order to execute a transaction as agent;

(c) a decision by a firm in the exercise of discretion to execute a transaction with or for a customer."

"Execute" is defined in the Glossary as:

"(in relation to a transaction) carry into effect or perform the transaction, whether as principal or as agent, including instructing another person to execute the transaction"

For rolling spot forex trades executed on or after 1 November 2007

COBS 11.2.1R provides:

"A firm must take all reasonable steps to obtain, when executing orders, the best possible result for its clients taking into account the execution factors"

COBS 11.2.2G provides:

"The obligation to take all reasonable steps to obtain the best possible result for its clients should apply to a firm which owes contractual or agency obligations to the client."

COBS 11.2.3G provides

"Dealing on own account with clients by a firm should be considered as the execution of client orders, and therefore subject to the requirements under MiFID, in particular, those obligations in relation to best execution."

COBS 11.2.14R provides:

"A firm must establish and implement effective arrangements for complying with the obligation to take all reasonable steps to obtain the best possible result for its clients. In particular, the firm must establish and implement an order execution policy to allow it to obtain, for its client orders, the best possible result in accordance with that obligation"

COBS 11.2.27R provides

"A firm must monitor the effectiveness of its order execution arrangements and execution policy in order to identify and, where appropriate, correct any deficiencies. In particular, it must assess, on a regular basis, whether the execution venues included in the order execution policy provide for the best possible result for the client or whether it needs to make changes to its execution arrangements. The firm must notify clients of any material changes to their order execution arrangements or execution policy."

COBS 11.2.28R provides:

"(1) A firm must review annually its execution policy, as well as its order execution arrangements.

(2) This review must also be carried out whenever a material change occurs that affects the firm's ability to continue to obtain the best possible result for the execution of its client orders on a consistent basis using the venues included in its execution policy."

COBS 11.2.19R provides:

(1) Whenever there is a specific instruction from the client, the firm must execute the order following the specific instruction.

(2) A firm satisfies its obligation under this section to take all reasonable steps to obtain the best possible result for a client to the extent that it executes an order, or a specific aspect of an order, following specific instructions from the client relating to the order or the specific aspect of the order.

COBS 11.2.20G provides:

When a firm executes an order following specific instructions from the client, it should be treated as having satisfied its best execution obligations only in respect of the part or aspect of the order to which the client instructions relate. The fact that the client has given specific instructions which cover one part or aspect of the order should not be treated as releasing the firm from its best execution obligations in respect of any other parts or aspects of the client order that are not covered by such instructions.

PERG 13.3 provides:

Q15. When might we be executing orders on behalf of clients?

When you are acting to conclude agreements to buy or sell one or more MiFID financial instruments on behalf of clients. You will be providing this investment service if you participate in the execution of an order on behalf of a client, as opposed simply to arranging the relevant deal. In our view, you can execute orders on behalf of clients either when dealing in investments as agent (by entering into an agreement in the name of your client or in your own name, but on behalf of your client) or, in some cases, by dealing in investments as principal (for example by back-to-back or riskless principal trading).

Decision Procedure and Penalties Manual (DEPP) and Enforcement ENF

Guidance on the imposition and amount of penalties is set out in Chapter 6 of DEPP. Changes to DEPP were introduced on 6 March 2010 and the Authority has had regard to the fact that part of FXCM Ltd's misconduct in relation to the breach of Principle 6 occurred after the new provisions came into force. However, as the majority of FXCM Ltd's misconduct in this regard occurred before that change and by 6 March 2010 active steps were being taken by FXCM LLC to eliminate the asymmetric slippage, the Authority has applied to the Principle 6 breach the penalty regime as set out in DEPP in its pre-6 March 2010 form.

The breach of Principle 11 occurred after 6 March 2010 and therefore the Authority has had regard to the provisions of DEPP in force from 6 March 2010 in respect of the breach of Principle 11.

Guidance on the imposition and amount of penalties for misconduct that occurred prior to 28 August 2007 is set out in ENF. We have accordingly had regard to the ENF provisions on penalty policy that were in force at the time of the earlier misconduct as well as to those in Chapter 6 of DEPP.

Enforcement Guide (EG)

The Authority's approach to taking disciplinary action is set out in Chapter 2 of EG. The Authority's approach to financial penalties and public censures is set out in Chapter 7 of EG.

EG 7.1 states that the effective and proportionate use of the Authority's powers to enforce the requirements of the Act, the rules and the Statements of Principles for Approved Persons will play an important role in the Authority's pursuit of its regulatory objectives. Imposing financial penalties and public censures shows that the Authority is upholding regulatory standards and helps to maintain market confidence and deter financial crime. An increased public awareness of regulatory standards also contributes to the protection of consumers.