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FINAL NOTICE

To: Infinox Capital Limited

Reference
Number: 501057

Address: Birchin Court, 20 Birchin Lane, London, EC3V 9DU, United Kingdom

Date: 27 January 2025

1. ACTION

1.1. For the reasons given in this Final Notice, the Authority hereby imposes on Infinox Capital Limited ("Infinox") a financial penalty of £99,200 pursuant to section 206 of the Act.

1.2. Infinox agreed to resolve this matter and qualified for a 30% discount under the Authority's executive settlement procedures. Were it not for this discount, the Authority would have imposed a financial penalty of £141,800 on Infinox.

2. SUMMARY OF REASONS

2.1. The Authority has taken this action because Infinox breached Article 26(1) of MiFIR between 1 October 2022 and 31 March 2023 (the "Relevant Period"). During the Relevant Period, Infinox failed to submit any transaction reports to the Authority by close of the following working day, or at all, in relation to transactions undertaken by its single-stock CFD desk through one of its corporate brokerage accounts ("the single corporate account"). Approximately 60% of trades in

Infinox's single-stock CFD business line were executed through the single corporate account. This resulted in Infinox failing to submit 46,053 transaction reports during the Relevant Period. The back-reporting of transaction reports was completed on 15 December 2023.

- 2.2. The Authority is a data led regulator and transaction reports are an integral part of the Authority's work to detect, investigate, and prevent market abuse and reduce financial crime. In order to be able to monitor and detect market abuse effectively, the Authority needs to receive complete and accurate information regarding the types of instruments traded, when and how they are traded and by whom. This data set plays a key role in the Authority's ability to conduct effective market oversight, meet our statutory objective to maintain market integrity, and deliver on the prioritised commitment in the Authority's Business Plan to strengthen the UK's position in global wholesale markets. The Authority therefore considers Infinox's failure to submit any transaction reports for approximately 60% of its single-stock CFD business line by close of the following day to be particularly serious.
- 2.3. The Authority hereby imposes on Infinox a financial penalty of £99,200 pursuant to section 206 of the Act.

3. DEFINITIONS

- 3.1. The definitions below are used in this Notice:

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

"the Authority" means the Financial Conduct Authority;

"the Authority's Handbook" means the Authority's Handbook of rules and guidance;

"Contract for Difference" or "CFD" means a contract between two parties (a CFD provider and a client) to pay each other the change in the price of an underlying asset. At the expiry of the contract, the parties exchange the difference between the opening and closing prices of a specified financial instrument, such as shares, without owning the specified financial instrument;

"DEPP" is the Decision Procedures and Penalties Manual, which forms part of the Authority's Handbook;

"ESMA" means the European Securities and Markets Authority;

“FIX API” means Financial Information Exchange Application Programming Interface, a messaging protocol which enables Infinox clients to place trades directly with the firm’s liquidity provider;

“MiFID II” means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments, as implemented in the UK;

“MiFIR” means the UK version of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, which is part of UK law by virtue of the European Union (Withdrawal) Act 2018; and

“Relevant Period” means the period from 1 October 2022 to 31 March 2023.

4. FACTS AND MATTERS

Background

- 4.1. The implementation of MiFID across all European Economic Area member states on 1 November 2007 (effective from 5 November 2007 for transaction reporting) introduced changes to the list of products in which transactions had to be reported to the Authority and standardised the list of information which had to be included in the reports. These rules were then replaced with the MiFID II and MiFIR transaction reporting regime from 3 January 2018, which was subsequently onshored into UK legislation post-Brexit.
- 4.2. Infinox has been authorised by the Authority since 15 September 2009 as a CFD provider. Infinox previously traded predominantly in index CFDs. In October 2022, Infinox also started trading in single-stock CFDs, a line of business which the Authority considers to be particularly vulnerable to market abuse due to the speculative and leveraged nature of CFDs, as well as the nature of the underlying asset.
- 4.3. As a UK MiFID investment firm (as defined in the Authority’s Handbook) Infinox is required under Article 26(1) of MiFIR to submit transaction reports to the Authority for all reportable transactions it executes in financial instruments.
- 4.4. Infinox has been subject to transaction reporting requirements under MiFID II and MiFIR since January 2018 and was therefore aware of the requirement to submit transaction reports under Article 26(1) of MiFIR.

Transaction Reporting

- 4.5. Between October 2022 and March 2023, Infinox established and operated a new line of business in single-stock CFDs, which it executed through two corporate brokerage accounts.
- 4.6. The Authority independently identified a potential discrepancy in the transaction data submitted by Infinox and contacted Infinox on 5 May 2023 to clarify the position. On 31 May 2023, Infinox confirmed that it had failed to complete the appropriate MiFIR transaction reporting for its single-stock CFD business executed through the single corporate account. As a result, Infinox initially suspected that it had failed to submit approximately 6,000 transaction reports. On 6 July 2023, Infinox informed the Authority that it may have failed to submit up to 50,000 transaction reports. Infinox engaged with the Authority over the next five months to provide updated figures and finished back-reporting the affected trades on 15 December 2023. However, it took Infinox a year to provide a complete and accurate figure to the Authority as to the total number of transaction reports it had failed to submit in respect of trades executed through the single corporate account.
- 4.7. Transaction reports play a key role in the Authority's ability to conduct effective market oversight and Infinox's failure to submit transaction reports in this case fell short of the standards the Authority expects of firms.

Third Party Review

- 4.8. Prior to the Authority's engagement with Infinox, on 16 March 2023, Infinox separately identified its failure to submit transaction reports in relation to trades executed through the single corporate account, after it engaged a third party to review its compliance with transaction reporting obligations under MiFIR and the European Market Infrastructure Regulations.
- 4.9. The third party review identified the failure of Infinox to report the transaction data from the single corporate account under MiFIR. The third party recommended that Infinox investigate the duration and volume of these underreported transactions, as it anticipated that a breach notification to the Authority and back-reporting would be required.
- 4.10. However, between 16 March 2023 and 31 May 2023 when Infinox confirmed, at the Authority's request, that it had missing transaction data, Infinox did not

proactively contact the Authority regarding the breach. Infinox submitted a formal breach notification to the Authority on 6 July 2023.

- 4.11. The Authority expects that in the event of any breaches to transaction reporting requirements, it is notified in a timely manner and not only once prompted by the Authority.

Infinox's Systems and Controls

- 4.12. During the Relevant Period it was the responsibility of a single individual at Infinox to manually identify which financial instruments were reportable when new business was commenced, for the purpose of ensuring that relevant data was fed into the firm's transaction reporting systems. Infinox did not put in place any steps to scrutinise this process or any checks to ensure that the correct trades had been identified as reportable until it commissioned the third party review of its transaction reporting systems in February 2023.

5. FAILINGS

- 5.1. The statutory and regulatory provisions relevant to this Notice are referred to in Annex A.
- 5.2. Infinox contravened Article 26(1) of MiFIR by failing to submit transaction reports to the Authority by close of the day following the relevant transaction.

6. SANCTION

- 6.1. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. 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

- 6.2. 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.
- 6.3. Infinox did not derive any financial benefit from its breach.
- 6.4. The Step 1 figure is therefore £0.

Step 2: the seriousness of the breach

- 6.5. Pursuant to DEPP 6.5A.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the breach. In this case, the Authority does not consider that revenue is an appropriate indicator of the harm or potential harm caused by Infinox's breach. Instead, the Authority considers that the number of missing transaction reports is indicative of the harm or potential harm caused by the breach.
- 6.6. The Authority has attributed a value of £2.00 for each of Infinox's missing transaction reports in breach of Article 26(1) MiFIR. The Authority considers that this reflects the serious nature of failing to report transactions in accordance with Article 26(1) MiFIR and the failure to comply with transaction reporting obligations in light of previous publications and action taken against other firms.
- 6.7. During the Relevant Period Infinox failed to report a total of 46,053 transactions executed through the single corporate account and therefore the Authority has determined the appropriate starting point for Step 2 to be £92,106.
- 6.8. The Authority has determined the seriousness of Infinox's breaches to be Level 3 for the purposes of Step 2, having taken into account:
- (1) DEPP 6.5A.2G (6) to (9) which provide factors the Authority will generally take into account which reflect the impact and nature of the breach, and whether it was committed deliberately or recklessly, in deciding which level of penalty best indicates the seriousness of the breach;
 - (2) DEPP 6.5A.2G (11) which lists factors likely to be considered 'level 4 or 5 factors';
 - (3) DEPP 6.5A.2G (12) which lists factors likely to be considered 'level 1, 2 or 3 factors'; and
 - (4) While DEPP 6.5A.2G (11) and (12) list specific factors, those lists are not exhaustive, and the Authority may take into account other factors that it considers appropriate.
- 6.9. The Authority considers the following 'level 1, 2 or 3 factors' to be relevant:
- (1) Little, or no, profits were made or losses avoided as a result of the breach, either directly or indirectly;

(2) There was no or little loss or risk of loss to consumers, investors or other market users; and

(3) The breach was committed negligently or inadvertently, not deliberately or recklessly.

6.10. The Authority also considers the following 'level 4 or 5 factors' to be relevant:

(1) Single-stock CFDs are considered by the Authority to be a high-risk product with regard to potential market abuse, and Infinox's failure to report transactions for the single corporate account created a risk that if market abuse occurred it would not be detected promptly;

(2) The breaches are considered serious as they revealed weaknesses in certain aspects of Infinox's systems and internal controls relating to its MiFIR transaction reporting; and

(3) The Authority relies on firms to submit complete and accurate transaction reports to enable it to carry out its market surveillance obligations and to detect and investigate cases of market abuse and uphold proper conduct in the financial system. The Authority therefore considers Infinox's failure to submit any transaction reports for approximately 60% of its single-stock CFD business line by close the day following the relevant transactions to be particularly serious.

6.11. In accordance with DEPP 6.5A.2G(13), the Authority has applied the following percentages to the seriousness factors considered above:

1. Level 1 - 0%

2. Level 2 - 10%

3. Level 3 - 20%

4. Level 4 - 30%

5. Level 5 - 40%

6.12. Taking all of the above-mentioned factors into account, the Authority considers that a seriousness level of 3 is appropriate and so the Step 2 figure is 20% of £92,106.

6.13. Step 2 is therefore £18,421.20.

Step 3: mitigating and aggravating factors

6.14. 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, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the breach.

6.15. The Authority considers that the following factors aggravate the breach:

(1) Over the years, the Authority has given substantial and ongoing guidance to the industry regarding transaction reporting requirements through its transaction reporting webpage, the Market Watch newsletter, the Transaction Reporting User Pack (under MiFID), the ESMA Transaction Reporting Guidelines and Q&A, the Transaction Reporting Forum and ad hoc industry events;

(2) Infinox failed to quickly, effectively and completely bring the breach to the Authority's attention. Infinox was notified of the transaction reporting breach on 16 March 2023 following the compliance review by a third party, but did not confirm the breach to the Authority until 31 May 2023 after it had been contacted by the Authority on 5 May 2023; and

(3) There have been prior instances where Infinox has failed to submit transaction reports for other areas of its business.

6.16. Having considered these aggravating and mitigating factors, the Authority considers that the Step 2 figure should be increased by 10%.

6.17. Step 3 is therefore £20,263.32.

Step 4: adjustment for deterrence

6.18. 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.

6.19. The Authority does not consider the Step 3 figure of £20,263.32 sufficient to deter Infinox and others and considers that a multiplier of 7 should be applied at Step 4.

6.20. The Authority considers that the following factors are relevant:

- (1) The absolute value of the penalty is too small in relation to the breach to meet the Authority's objective of credible deterrence, particularly given the substantial profits that can be made as a brokerage;
- (2) It is likely similar breaches will be committed by Infinox or other firms in the future without an increase to the penalty. Given the history of non-compliance in transaction reporting both by Infinox and other brokerages, the Authority considers it important to send a clear message to Infinox and to the market that fulfilling transaction reporting obligations is an essential part of operating, and sufficient resources should be expended to ensure that appropriate systems and controls are in place; and
- (3) Without an increase both Infinox and other firms may be tempted to see any fines imposed because of transaction reporting breaches as a cost of doing business. Transaction reporting is fundamental to the Authority's ability to monitor markets, and it is important that any fine be sufficiently credible that it is not seen as a cost that can simply be factored into operating.

6.21. Step 4 is therefore £141,843.24.

Step 5: settlement discount

6.22. 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.

6.23. The Authority and Infinox reached a settlement agreement and so a 30% discount applies to the Step 4 figure. Step 5 is therefore £99,200 (rounded down to the nearest £100).

Penalty

6.24. The Authority hereby imposes a total financial penalty of £99,200.

7. PROCEDURAL MATTERS

7.1. This Notice is given to Infinox under and in accordance with section 390 of the Act. The following statutory rights are important.

Decision maker

- 7.2. The decision which gave rise to the obligation to give this Notice was made by the Settlement Decision Makers.

Manner and time for payment

- 7.3. The financial penalty must be paid in full by Infinox to the Authority no later than 9 February 2025.

If the financial penalty is not paid

- 7.4. If all or any of the financial penalty is outstanding on 10 February 2025, the Authority may recover the outstanding amount as a debt owed by Infinox 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 Teresa Barron at the Authority (direct line: 020 7066 3396/email: teresa.barron@fca.org.uk).

Ross Murdoch

Head of Department, Financial Conduct Authority, Enforcement and Market Oversight Division

ANNEX A

RELEVANT STATUTORY AND REGULATORY PROVISIONS

RELEVANT STATUTORY PROVISIONS

The Financial Services and Markets Act 2000

1.1. The Authority's statutory objectives, set out in section 1B of the Act, include the strategic objective of ensuring that the relevant markets function well and the operational objectives of protecting and enhancing the integrity of the UK financial system and securing an appropriate degree of protection for 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 ... it may impose on him a penalty, in respect of the contravention, of such amount as it considers appropriate."

MiFIR

1.3. Regulation 26(1) of MiFIR provides:

"Investment firms which execute transactions in financial instruments shall report complete and accurate details of such transactions to the competent authority as quickly as possible, and no later than the close of the following working day."

RELEVANT REGULATORY PROVISIONS

DEPP

1.4. Chapter 6 of DEPP, which forms part of the Authority's Handbook, sets out the Authority's statement of policy with respect to the imposition and amount of financial penalties under the Act.

The Enforcement Guide

1.5. The Enforcement Guide sets out the Authority's approach to exercising its main enforcement powers under the Act.

1.6. Chapter 7 of the Enforcement Guide sets out the Authority's approach to exercising its power to impose a financial a penalty.