
FINAL NOTICE

To: **Plus500UK Limited**
359 Goswell Road
London EC1V 7LJ

Firm
Reference Number: **509909**

Date: **17 October 2012**

1. ACTION

- 1.1. For the reasons given in this Notice, the FSA hereby imposes on Plus500UK Limited (“the Firm”) a financial penalty of £205,128 in respect of breaches of SUP 17 of the FSA Handbook and Principle 3 of the FSA’s Principles for Business (“the Principles”).
- 1.2. The Firm agreed to settle at an early stage of the FSA’s investigation and therefore qualified for a 30% (Stage 1) reduction of the financial penalty under the FSA’s executive settlement procedures. Were it not for this discount, the FSA would have imposed a penalty of £293,040.

2. SUMMARY OF REASONS

- 2.1. The FSA has decided to take this action because, of the 1,332,000 reportable transactions it executed between 29 June 2010 and 5 November 2011 (“the Relevant Period”), the Firm failed to report 189,000 and failed to accurately report the remaining 1,143,000. This represents a failure by the firm to comply with its obligations in respect of every reportable transaction it executed during this period. The Firm’s systems and controls were inadequate because it failed to set up adequate reporting systems, did not have any documented procedures in place in relation to transaction reporting and failed to provide any relevant training to staff. It therefore breached rules in SUP 17 and Principle 3.
- 2.2. Accurate and complete transaction reporting is essential to enable the FSA to meet its statutory objectives of maintaining market confidence and reducing financial crime. The primary function for which the FSA uses transaction reports is to detect and investigate suspected market abuse, insider trading and market manipulation.
- 2.3. A transaction report is a data set submitted to the FSA that relates to an individual financial market transaction which includes (but is not limited to) details of the product traded, the firm that undertook the trade, the trade counterparty and the trade characteristics such as buy/sell identifier, price and quantity.
- 2.4. The FSA considers the reporting failures by the Firm as particularly serious, given that the FSA (i) has provided a significant quantity of guidance to firms on how to report, and check those reports and (ii) had, shortly before and during the Relevant Period, publicised a number of Enforcement actions taken in relation to similar failings by other firms.
- 2.5. Although the Firm is small relative to others in the industry, the FSA does not consider this in any way lessened the Firm’s obligation to report its transactions fully and accurately. The FSA does however acknowledge the Firm’s quick engagement and co-operation in identifying possible breaches, and recognises that the Firm took independent and positive steps to remedy said breaches.

3. DEFINITIONS

3.1. The definitions below are used in this Notice:

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

“SUP” means the FSA Supervision Manual; and

“the FSA” means the Financial Services Authority.

4. FACTS AND MATTERS

4.1. The implementation of the Markets in Financial Instruments Directive ("MiFID") across all European Economic Area (EEA) member states on 1 November 2007 (effective 5 November 2007 for transaction reporting) introduced changes to the list of products in which transactions have to be reported and standardised the list of fields which need to be included in the reports.

4.2. Prior to the Relevant Period the FSA had provided significant guidance on transaction reporting issues. This guidance included presentations via periodic Transaction Reporting Forums, the Transaction Reporting User Pack, numerous Market Watch articles, a transaction reporting helpline and a transaction reporting library on the FSA website. The FSA also makes available to all firms a tool to enable them to regularly review their transaction data by requesting a sample of data they have submitted to the FSA. The FSA encourages firms to use this tool by raising awareness of it at our Transaction Monitoring Forums and publishing reminders in our Market Watch newsletters.

4.3. Shortly before the start of the Relevant Period the FSA published Final Notices and imposed financial penalties in respect of five firms for transaction reporting failures. The FSA published Final Notices and imposed financial penalties in respect of a further two firms for transaction reporting failures during the Relevant Period.

4.4. Firms can submit reports directly to the FSA from their own systems provided those reports are full and accurate in accordance with SUP 17.

- 4.5. The Firm ran an online trading platform offering clients the opportunity to trade as principals in Contracts for Difference (CFDs) in a range of products. When the Firm executed a transaction in a CFD with an underlying equity that was listed or dual listed in the EEA, it was required under SUP 17 to report certain details of this transaction to the FSA.
- 4.6. Throughout the Relevant Period the Firm, in breach of SUP 17.1.4R, failed to ensure all reportable transactions were captured from their database of executed transactions and submitted to the FSA. This failure occurred as the filters in place to download reportable transactions from the Firm's database were set up using an incomplete database of reportable products.
- 4.7. Throughout the Relevant Period the Firm failed to populate the relevant fields in the transaction reports it submitted to the FSA in accordance with provisions of SUP 17.4.1EU/SUP 17 Annex 1 EU. For the entire period the Firm reported 967,000 transactions in Greenwich Mean Time instead of British Summer Time, 3,000 transactions with multiple identifiers applied for a single client and 70,000 transactions with the buy/sell indicator inverted. Between 29 June 2010 and 28 October 2010 the Firm acted in a Principal trading capacity. From 29 October 2010 onwards the Firm acted in a Principal Cross trading capacity, this involved simultaneously executing a 'buy' and 'sell' trade at the same price and quantity as Principal in a single product. Principal Cross trades must be reported in a single transaction report that must correctly identify the transacting client and counter party in respective fields. The Firm reported details of the transacting client and counter party in the wrong fields for every Principal Cross transaction they carried out between 29 October 2010 and 5 November 2011. These failures were due to a misunderstanding of the reporting requirements.
- 4.8. The Firm is a MiFID investment firm. It has admitted culpability immediately and confirmed that throughout the Relevant Period it had failed to:
- (1) report 189,000 transactions that it executed (all of which should have been reported in accordance with SUP 17.1.4R);

- (2) accurately report 1,143,000 transactions (which should have been accurately reported in accordance with SUP 17.4.1EU/Annex 1 EU); and
- (3) set up its transaction reporting system adequately, have any documented procedures and staff training in place to ensure complete and accurate transaction reporting (which it should have done in accordance with Principle 3).

5. FAILINGS

5.1. Section 206 of the Act give the FSA the power to impose a penalty on an authorised firm if he has contravened a requirement imposed on him by or under the Act or by any directly applicable Community regulation or decision made under the Markets in Financial Instruments Directive.

5.2. The FSA considers that the Firm has breached SUP 17.1.4R, SUP 17.4.1EU and Principle 3. SUP 17.1.4R states:

“A firm which executes a transaction:

(1) in any financial instrument admitted to trading on a regulated market or a prescribed market (whether or not the transaction was carried out on such a market);
or

(2) in any OTC derivative the value of which is derived from, or which is otherwise dependent upon, an equity or debt-related financial instrument which is admitted to trading on a regulated market or on a prescribed market;

must report the details of the transaction to the FSA.

5.3. 1,332,000 of the transactions that the Firm executed in the Relevant Period were reportable and, by failing to report 189,000 of them, the Firm breached its obligations under SUP 17.1.4R.

5.4. SUP 17.4.1EU states:

‘Reports of transactions made in accordance with Article 25 (3) and (5) of MiFID shall contain information in SUP 17 Annex 1 EU which is relevant to the type of financial instrument in question and which the FSA declares is not already in its possession or is not available to it by other means.’

SUP 17 Annex 1 EU sets out the minimum content of a transaction report in a table including Field Identifiers and Descriptions.

5.5. 1,143,000 of the transactions that the Firm executed in the Relevant Period were reported incorrectly in breach of its obligations under SUP 17.4.1EU as they did not contain data in the format required by SUP 17 Annex 1 EU.

5.6. Principle 3 of the Principles states that:

“A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.”

5.7. In the Relevant Period the Firm breached Principle 3 by failing to properly set up its transaction reporting system, failing to have any documented procedures in place in relation to transaction reporting and failing to provide any relevant training to staff.

6. SANCTION

Financial penalty

6.1. Effective 6 March 2010, Chapter 6 of the FSA’s Decision Procedures and Penalties Manual was amended to introduce a new penalty regime. The misconduct in this case falls entirely within the new regime.

6.2. The FSA 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.

Steps 1-3

6.3. The Firm did not financially benefit from their breaches (for the purpose of Step 1, DEPP 6.5A.1). For the purpose of Step 2, DEPP 6.5A.2, the FSA considers that the number of reportable transactions executed by the Firm during the relevant period is

an appropriate indicator of the harm or potential harm caused. The FSA has established the appropriate basis figure at Step 2 to be £1,332,000 by attributing a value of £1 to each reportable transaction executed by the Firm in breach of SUP17 during the relevant period. The FSA has determined the seriousness of the Firm's breaches to be Level 3 for the purposes of Step 2 having taken into account:

- (a) DEPP 6.5A.2 (6-9) which lists factors the FSA will generally take into account in deciding which level of penalty best indicates the seriousness of the breach
- (b) DEPP 6.5A.2 (11) which lists factors likely to be considered 'level 4 or 5 factors'.
- (c) DEPP 6.5A.2(12)G which lists factors likely to be considered 'level 1, 2 or 3 factors'.

Of these, the FSA considers the following factors to be relevant:

- (i) The breach revealed weaknesses in the Firm's procedures, management systems and internal controls relating to transaction reporting;
- (ii) The Firm did not make any profit or avoid any loss as a result of the breach:
- (iii) There was no loss to consumers, investors or other market users;
- (iv) There was a potential effect, albeit limited, on market confidence; and
- (v) There is evidence that the breach was committed negligently or inadvertently.

For the purposes of this case the FSA has applied the following percentages to the seriousness factors considered at DEPP 6.5A.2 (3):

- (a) level 1 - 0%
- (b) level 2 - 10%

(c) level 3 – 20%

(d) level 4 – 30%

(e) level 5 – 40%

The penalty calculation, having taken into account the factors above is therefore 20% of £1,332,000. The figure after Step 2 is therefore £266,400.

Step 3: mitigating and aggravating factors

- 6.4. At Step 3 the FSA may increase or decrease the amount of financial penalty arrived at after Step 2 to take account of any mitigating or aggravating factors. In accordance with DEPP 6.5A.3(1) any adjustment must be made by way of a percentage of the Step 2 figure. The FSA acknowledges that the Firm did take steps to mitigate the situation, notably acting wholly in co-operation with the FSA from the initial discovery of the breaches (prior to any enforcement action having been discussed) admitting culpability immediately and taking positive independent steps to rectify the breaches (including commissioning an independent report into the matter). However as stated at paragraph 2.4 above, the FSA considers the reporting failures by the Firm to be aggravated by the fact the FSA (i) has provided a significant quantity of guidance to firms on how to report, and check those reports and (ii) had, shortly before and during the Relevant Period, publicised a number of Enforcement actions taken in similar failings by other firms. The FSA therefore considers that the aggravation justifies an increase of 10% to the Step 2 figure. The figure after Step 3 is therefore £293,040.

Step 4: Adjustment for deterrence

- 6.5. Pursuant to DEPP 6.5A.4 if the FSA 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 FSA may increase the penalty.
- 6.6. The FSA considers that the figure at Step 3 is sufficient to achieve deterrence. The penalty figure after Step 4 is therefore £293,040.

Step 5: Settlement discount

6.7. Pursuant to DEPP 6.5A.5, if the FSA 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 FSA and the individual reached agreement.

6.8. The FSA and the Firm reached agreement at Stage 1 and so a 30% discount applies to the Step 4 figure.

6.9. The penalty figure after Step 5 is therefore £205,128.

7. PENALTY

7.1. The FSA therefore decided to impose a total financial penalty of £205,128 on the Firm for breaching SUP 17.1.4R, 17.4.1EU and Principle 3.

8. PROCEDURAL MATTERS

Decision maker

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

8.2. This Final Notice is given under and in accordance with section 390 of the Act.

9. MANNER OF AND TIME FOR PAYMENT

9.1. The financial penalty must be paid in full by the Firm to the FSA by no later than 31 October 2012, 14 days from the date of the Final Notice.

10. IF THE FINANCIAL PENALTY IS NOT PAID

10.1. If all or any of the financial penalty is outstanding on 1 November 2012, the FSA may recover the outstanding amount as a debt owed by the Firm and due to the FSA.

11. PUBLICITY

11.1. 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.

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

12. FSA CONTACTS

- 12.1. For more information concerning this matter generally, contact Neil Gamble of the Enforcement and Financial Crime Division of the FSA (direct line: 020 7066 1884).

Matthew Nunan

Head of Department

FSA Enforcement and Financial Crime Division