FINAL NOTICE

To: Forex TB Limited ("FXTB")

Reference Number: 729874

Date: **9 August 2024**

1. ACTION

1.1. For the reasons given in this Final Notice, the Authority hereby imposes on Forex TB Limited ("FXTB") a financial penalty of £276,100.

1.2. FXTB agreed to resolve this matter and provided verifiable evidence that payment of the penalty originally proposed by the Authority would cause it serious financial hardship. Had it not been for this, the Authority would have proposed to impose a financial penalty of £1,736,000 (or £1,215,200 adjusted for a 30% (stage 1) settlement discount) on FXTB.

2. SUMMARY OF REASONS

2.1. Between 1 January 2021 and 12 April 2021 (the "Relevant Period"), FXTB breached Principle 6 of the Authority's Principles for Businesses ("the Principles") by failing to pay due regard to the interests of its customers and treat them fairly, and section 20(1) of the Act by carrying out the regulated activity of advising on investments without the requisite permissions.

2.2. FXTB is a Cypriot firm which markets contracts for differences ("CFDs") through an online platform accessed through its websites, www.forextb.com and www.patronfx.com. CFDs are complex financial derivative products which are used to speculate on the movement in prices on a wide range of assets. They frequently involve high levels of leverage which creates the risk of substantial losses in the event of even small adverse price fluctuations in the underlying assets. Because of the risks which CFDs present, the Authority has imposed specific restrictions on the marketing and sale of CFDs to retail consumers ("the Product Intervention Measures").

2.3. Until the Authority required FXTB to cease providing services to UK consumers in April 2021, FXTB marketed its products online, using advertisements which attracted customers using the names of well-known companies. Customers who clicked on an advertisement were directed to an application form and subsequently contacted by a member of FXTB's staff, frequently referred to as an "Account Manager".

2.4. Account Managers presented themselves as experienced financial professionals who were assigned by FXTB to assist the customer and to work in the customer's best interests. Most contact between Account Managers and customers was by telephone.

2.5. FXTB's customers were frequently inexperienced in trading and did not always understand the significant risks attached to trading CFDs. Yet, rather than ensure that these risks were fully and clearly explained and that customers did not trade CFDs unless they were willing to lose a significant part of, or all, their investment, Account Managers frequently exploited their position as a trusted and apparently experienced professional adviser using various devices to encourage customers to trade through FXTB without any, or any adequate, explanation of the risks of doing so.

2.6. This exploitation included encouraging customers to deposit additional funds, either on the basis that they would 'miss out' on profits or that additional funds were needed to maintain open trades. This encouragement often amounted to improper pressure, including the use of frequent and persistent calls and continued suggestions to deposit further funds even where the customer had clearly informed the Account Manager that they could not afford to. On occasions, Account Managers encouraged customers to borrow money from friends or family to make deposits, or to obtain finance.

2.7. In conjunction, Account Managers frequently provided customers with advice on specific trades to make, despite FXTB having no permission to provide investment advice. This advice often amounted to directions on which trades to make. In providing this advice, Account Managers relied on the trust their customers placed in them to induce them to enter into trades.

2.8. Account Managers frequently encouraged customers to apply for 'Elective Professional Client' status. The Product Intervention Measures do not apply to Elective Professional Clients meaning, in particular, that they may trade using higher leverage than retail clients. This may lead to higher, and more rapid, losses in the event of adverse price movements. Firms may categorise customers as Elective Professional Clients only where they have assessed the customer's expertise, experience and knowledge and where the customer meets certain criteria relating to experience and size of investment portfolio. Yet, FXTB frequently encouraged customers to apply for Elective Professional Client status without any reasonable basis for considering the customer to have sufficient expertise, experience and knowledge and conducted assessments improperly, including providing customers with the answers to tests and encouraging them to provide false information.

2.9. As a result of this misconduct, some customers lost significant sums of money. For UK resident-consumers who deposited to their accounts during the Relevant Period, the total loss experienced during the Relevant Period was £4,426,023.

2.10. The Authority considers FXTB's misconduct to have been particularly egregious since it relied upon the exploitation of customers who, because of their inexperience, were vulnerable. FXTB risked, and in some cases caused, individual customers to lose substantial sums of monies.

2.11. Accordingly, the Authority hereby imposes a financial penalty on FXTB of £276,100.

3. DEFINITIONS

3.1. The definitions below are used in this Notice:

"Account Manager" means the FXTB employee or agent that was assigned to a customer to manage their account;

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

"the Authority" means the Financial Conduct Authority;

"CFD" means a contract for differences, as defined in article 85 of The Financial Services and Markets Act 2000 (Regulated Activities Order) 2001 (SI 2001/544);

"COBS" means the Conduct of Business Sourcebook, part of the Handbook;

"EEA" means European Economic Area;

"Elective Professional Client" means an elective professional client, as defined in COBS 3.5.3R, set out in Annex A;

"FXTB" means Forex TB Limited (FRN 729874);

"the Handbook" means the Authority's online handbook of rules and guidance (as in force from time to time);

"Margin" means the initial sum required to support an open CFD position. Margin is sometimes referred to as Initial Margin, i.e. the initial amount you need to have on account to open/support a CFD position;

"Margin Call" means a demand by a broker that an investor deposit further cash or securities to cover possible losses;

"PRIN" means the section of the Handbook entitled "Principles for Businesses";

"the Principles" means the Principles for Businesses, rules of the Authority set out in PRIN 2.1;

"the Product Intervention Measures" means the restrictions on the retail marketing, distribution and sale of CFDs, as set out in COBS 22.5;

"the Relevant Period" means the period from 1 January 2021 to 12 April 2021;

"the TPR" means the temporary permissions regime for firms previously operating in the UK under EEA passporting provisions; and

"the Tribunal" means the Upper Tribunal (Tax and Chancery Chamber).

4. FACTS AND MATTERS

Background

FXTB

4.1. FXTB is a Cypriot incorporated company, authorised in Cyprus as an investment firm. Its principal authorised activity during the relevant period was the provision of CFDs via a trading platform, accessible via its websites – **www.forextb.com** and **www.patronfx.com**.

4.2. FXTB conducted matched principal trading, meaning that it executed trades as counterparty with its clients but simultaneously entered into matching trades with a liquidity provider. This meant that it was not exposed to market risk and earned revenue through commission, fees or charges on transactions. This also meant that it was in FXTB's interests to induce customers to trade CFDs through its platform.

4.3. From 23 December 2015 to 31 December 2020, FXTB was entitled to provide cross-border regulated activities to UK consumers, pursuant to a European Economic Area ("EEA") service passport.

4.4. On 28 March 2019, FXTB provided notice of its intention to enter the UK's Temporary Permissions Regime ("TPR"). FXTB entered the TPR on 1 January 2021, with temporary permissions to receive and transmit orders in relation to financial instruments, to execute orders on behalf of clients and other ancillary activities. FXTB did not have permission to provide advice to its customers.

TPR

4.5. The TPR was established for firms based in the EEA as part of the United Kingdom's preparations for Brexit. The TPR allowed EEA-based firms that were passporting into the UK at the end of the transition period (31 December 2020) following Brexit, and which notified the Authority that they wanted to join the TPR, to continue operating in the UK within the scope of their previous passport permission for a limited period after the end of the transition period until the Authority had the opportunity to conduct a full authorisation assessment of the firm.

4.6. Whilst FXTB held its temporary permission, it was deemed to be an authorised person. As such, it was subject from 1 January 2021 to many of the Authority's rules and to supervision by the Authority, but the Authority had not yet assessed its ownership, governance, internal controls and business practices.

CFDs

4.7. CFDs are complex financial derivative products under which the contracting parties agree to pay the difference in the settlement price of an underlying asset between the opening and closing of the trade. They are frequently used to speculate on the movement in prices on a wide range of underlying assets, including foreign exchange, commodities, equities and indices. CFDs are cash-settled and investors in a CFD obtain no interest in the underlying asset. CFDs frequently involve high levels of leverage which creates the risk of substantial losses in the event of even comparatively small adverse price fluctuations in the underlying assets.

4.8. Because of this, CFDs present significant risks to investors who lack the necessary experience, knowledge and expertise to trade such complex products. As a result, they are generally unsuitable products for inexperienced investors or for those who are not prepared to lose a significant part of, or potentially all, their investment. In 2018, the Authority noted that an estimated 78% of active retail client accounts with CFD providers were loss-making.

4.9. CFDs are generally traded on margin. Margin in CFD trading is the minimum deposit required to open and maintain a leveraged position. For each position opened by a customer, there is an initial margin requirement associated, which is the amount of money required to be deposited with the broker.

4.10. Maintenance margin refers to the additional margin a trader may have to commit in order to maintain a trading position. In the event of an adverse price movement on an open trade, the maintenance margin requirement will increase. If the customer retains insufficient free uncommitted funds with the broker, this may lead to a margin call – a requirement, if the customer wishes to keep the trade open in the hope of beneficial price movements, to deposit further funds with the broker.

Product intervention measures

4.11. Because of the risks associated with CFD trading, the Authority has imposed the Product Intervention Measures in respect of the marketing and sale of CFDs to retail consumers. Similar restrictions were originally introduced by the European Securities and Markets Authority in August 2018, as a temporary product intervention across the EEA. These were replaced on a permanent basis from 1 August 2019 with substantially the same measures imposed by the Authority in the UK. From the same time, other EEA countries, including Cyprus, imposed at a national level the same, or similar, measures. The Product Intervention Measures were applicable to firms in the TPR in respect of products offered to retail customers.

4.12. The Product Intervention Measures required firms that offered CFDs, and CFD-like options, to retail consumers:

a) to limit leverage to between 30:1 and 2:1 depending on the volatility of the underlying asset;

b) to close out a retail client’s position when their funds fell below 50% of the margin needed to maintain their open positions on their CFD account;

c) to provide protections that guarantee a retail client cannot lose more than the total funds in their trading account;

d) not to offer or provide to current and potential retail clients cash or other incentives; and

e) to include within any written communication to a retail client (including a webpage) a standardised risk warning, including details of the percentage of the firm’s retail client accounts that made losses when trading CFDs.

4.13. The Product Intervention Measures only apply in respect of retail clients and do not apply in respect of clients which meet the criteria to be categorised as professional clients. Some clients, such as other financial services firms, are automatically categorised as professional clients, while others, which would otherwise be categorised as retail clients, may elect to be treated as professional clients (“Elective Professional Client”). However, a firm may only treat a client (who would otherwise be categorised as a retail client) as an Elective Professional Client in relation to CFDs where it has assessed the client’s expertise, experience and knowledge and obtained reasonable assurance that the client is capable of understanding the risks involved and where certain criteria relating to experience are fulfilled.

FXTB’s Business

FXTB’s operations in the relevant period

4.14. As at 31 December 2020 FXTB had 1,833 UK-based client accounts. From the inception of the TPR on 1 January 2021 until 5 April 2021, FXTB opened 2,477 accounts relating to UK-resident consumers. For UK resident-consumers who deposited to their accounts during the Relevant Period, the total loss experienced during the Relevant Period was approximately £4.4m. The largest individual loss was £167,478.

4.15. For the period 1 January 2021 to 30 April 2021 FXTB realised revenue of £666,186 from investment activities provided to UK consumers.

4.16. On 7 April 2021, the Authority relayed to FXTB its serious concerns with the conduct of FXTB’s business and invited it to apply for the imposition of requirements which would prevent it from conducting further regulated activities in respect of UK consumers. FXTB applied for the imposition of these requirements, and they were imposed, on 12 April 2021.

4.17. Subsequently, the Authority conducted a review of 47 complaints made by UK customers of FXTB during the Relevant Period. The number, nature, extent and similarity of the conduct described in these complaints, as outlined in more detail below, demonstrates, in the Authority's view, that employees of FXTB routinely persisted throughout the Relevant Period in behaviour designed to induce customers to trade CFDs through FXTB to the maximum extent possible regardless of whether it was in the customers' best interests to do so.

4.18. In doing so, they exposed their customers to the significant risk of losses. FXTB was aware that 77.8% of retail clients who traded CFDs through FXTB lost money.

4.19. The Authority considers that the consistent and repeated themes captured within these complaints, as outlined below, demonstrates that, at least within parts of FXTB, this was a prevalent way of conducting business.

Marketing

4.20. FXTB marketed its services online, including using advertisements on social media. This made it likely that the advertisements would attract inexperienced investors. Advertisements frequently claimed to offer the opportunity of investing small sums in large, popular companies, such as Amazon.

Account Managers

4.21. Once a prospective customer provided their contact details after clicking on the advertisement, or signing up online, they commonly received a telephone call from a sales representative of FXTB. These representatives were known to customers as trades managers, senior accountants, account managers, traders and senior account managers ("Account Managers"). The complaints reviewed by the Authority show that at least 30 separately named Account Managers were involved in the conduct outlined in this notice. During the Relevant Period, FXTB employed an average of 51 Account Managers, suggesting that the misconduct outlined in this Notice was undertaken by a significant proportion of FXTB's Account Managers.

4.22. Frequently, the Account Manager would then encourage the customer to make an initial cash deposit to open an account prior to commencing trading.

4.23. The Account Managers provided a personal point of contact at FXTB for customers during the time their accounts were operative. Most contact between customers and their Account Managers was by telephone and often this would be the means through which information about FXTB and its products were relayed to customers. It was a reasonable expectation for customers to rely on Account Managers to act in their best interests. Account Managers were able to provide technical support on using FXTB's platform, often claimed to have knowledge and experience of trading and, as outlined in more detail below, frequently offered customers advice on transactions in CFDs. As such, they performed an important role in engaging with customers on FXTB's behalf.

4.24. Many of the customers who subsequently complained had little or no previous experience of trading CFDs and were consequently potentially susceptible to the influence of those with apparently more knowledge and expertise. FXTB was obliged to determine whether its customers had the necessary experience and knowledge to understand the risks involved in trading CFDs and to provide clear information on the products being offered, including the risks attached to them. In respect of trading CFDs, this information should have included clear warnings to customers about the significant risks of losing large proportions of, or all, monies invested.

4.25. Given their position as the initial, and often ongoing, point of contact with customers on behalf of FXTB, ensuring that customers were appropriately informed about the nature of CFDs and the risks attached to trading them should have been a fundamental part of the role of Account Managers and FXTB should have ensured that the Account Managers were performing it appropriately.

4.26. However on occasion, customers were unaware of, or confused over, the nature of the products offered by FXTB, indicating that Account Managers failed to provide a sufficiently clear explanation of the nature and features of CFDs. An example of a customer who was unaware was Customer 5 who stated "*I told* [the Account Manager] *that I have no knowledge of trading and I thought it was an investment from Amazon.* [The Account Manager] *was courteous and very convincing and (they) said that (they) will guide, give advice and support me. Everything about trading is new to me*".

4.27. Some customers did not know what margin was, or what margin trading involved. For example, Customer 33 explained "[The Account Manager] *was fully aware that in the 10 days I was a client of FOREX TB I did not understand trades, PIPs, Margins, Leverages Risks and ways to mitigate risks. But he neglected all my* *concerns each and every time I raised these concerns"*. This inexperience can be seen further when margin calls happened. For example, Customer 6 explained "[the Account Manager] *would always call me and tell me that I need to put more, because the margin was going down. I even did not know what it meant, but he scared me so much that I would lose everything, that I had no choice but to put more as he told me.*"

Provision of advice

4.28. FXTB did not have the requisite permissions to provide financial advice. As a consequence, it was not permitted to provide its customers with advice on investment strategies or on what transactions in CFDs it may be beneficial for them to make.

4.29. Despite this, customers of FXTB consistently described receiving advice from their Account Managers. This advice often amounted to instructions on what trades to make.

4.30. Account Managers advised customers on specific CFDs to purchase. For example, Customer 40 said: "*…* [The Account Manager] *guided which assets to trade and what positions to take… he told me to invest in crude oil and Forex pairs like Euro-GBP or USD-GBP, etc.".* Customer 30 was told *"You need to consider the follow. In order to build the account and the recover to a huge profit that now is moment.[sic] 0.1 SP500. 0.05 Nasdaq. Now is the moment to turn all this to the best and show also to your self that all this count"*. Another customer, Customer 34 gave examples in their account of specific trades they were instructed to make: *"Some specific trades which* [the Account Manager] *instructed me on…Trade 28213343… opened on 7.1.2021 for SILVER and closed on 8.1.2021 and caused the loss of 1,711.71 GBP."*

4.31. In some instances, Account Managers advised customers not to use risk management tools such as stop-loss orders. A stop-loss order is a risk management tool that automatically closes a CFD once it reaches a certain price. It is designed to limit losses in case the CFD's price drops or rises to that price level on a long or short open position. For example, Customer 29 said "[The Account Manager] *instructed me to open trades on Nasdaq, on Forex and on Crypto.* [The Account Manager] *also instructed me to open trades on oil causing me to lose my money.* [The Account Manager] *also instructed me to never put a stop loss on my trades.*"

4.32. The number and consistency of complaints by FXTB customers demonstrate that FXTB failed to prevent Account Managers from giving advice in breach of its permissions.

Customers pressured and advised to deposit funds and borrow monies

Pressure to deposit further funds

4.33. Given the significant risks attached to trading CFDs, the Authority considers that there are unlikely to be circumstances when it would be appropriate for a CFD provider actively to encourage, let alone to put pressure on, customers to deposit additional funds for the purposes of trading CFDs. Yet, numerous FXTB customers described being pressured, in a variety of ways, to deposit further funds by Account Managers.

4.34. Once a customer had made their initial deposit, they were on occasions encouraged to deposit further funds on the basis that their initial deposit had made a profit. For example, Customer 39 explained how "…[the Account Manager] *called me to tell me to buy nasdaq and palladium very expensive as I didn't know about these [I] just followed his advice. Made small profit initially. [The Account Manager] called me to deposit whatever money I have and gave me an hour and he will call me after one hour. I told him I don't have any and I have some family money deposit for property. [The Account Manager] said think big I will make you buy very nice house after the profit…*".

4.35. In other cases, Account Managers encouraged customers to deposit further funds on the promise of large profits. Customer 28 explained that "*[The Account Manager] call* [sic] *me time and time again [to convince] me to deposit my money to get high profit by trading with them…*".

4.36. Customer 40 explained that "*…the pressure to deposit was so intense…* [the Account Manager] *would call me every morning between 8:30 and 9 AM with "deposit, deposit, deposit" …*". Several customers also experienced a high volume of calls.

4.37. The pressure to deposit was exacerbated by the fact that customers were frequently told that they were missing out on making large profits due to not depositing enough. For example, Customer 8 "*received a telephone call from* [the Account Manager who] *was again trying to convince me to invest more money.* …[The Account Manager] *told me I could make a profit of between £200 and £300 on a daily basis or even more some days.*"

4.38. Customers were also pressured to deposit funds as a means of recovering losses. Customer 14 explained how two FXTB Account managers said that working together with them, they would: *"…make sure that we make up for this loss. [The Account Manager asked] How much do you think you can put in? And I said, Well basically I don't have any money. I said, I might be able to put £1,000 together. And [they] said, Well that isn't really enough to get things started with what we want to do. Can you get your hands on £5,000?"* which the Customer then explained led to a further call later in the day to chase this £5,000.

4.39. The combined use of pressure, with the promise of unrealistic returns, was a clear failure by FXTB to treat its customers fairly.

Pressure to deposit funds due to lack of margin

4.40. Customers of FXTB described experiencing pressure from Account Managers to get them to deposit further funds due to a lack of margin. Furthermore, when Account Managers pressured customers to invest further funds, they did not explain the risks of doing so.

4.41. When margin calls occurred, Account Managers pressured customers to deposit further funds to maintain their margin. For example, Customer 6 described their experience as *"Constant pressure to deposit funds despite enormous losses, promising it would bounce back;* [the Account Manager] *would always call me and tell me that I need to put more, because the margin was going down. I even did not know what it meant, but he scared me so much that I would lose everything, that I had no choice but to put more as he told me"*. While margin calls are a common occurrence when margin trading, customers who complained to the Authority were surprised when margin calls occurred, showing a clear lack of experience.

4.42. Account Managers used the fear of potential losses due to lack of margin to pressure customers to deposit funds. Customer 3 explained his conversation with an Account Manager as follows: "*they said 'Put money into NASDAQ'. I put money into NASDAQ, and they said, 'your account's going to close. Your margin's gone down. If you don't put money into NASDAQ now. So that money, that £10,000 you're crawling back from Amazon, keep it in there. And we can actually use that for NASDAQ and get you your money back, because you need to get, you know, you've lost a lot of money'."* In another instance, Customer 10 explained that an Account Manager used a lack of margin to try and pressure them to deposit further funds, they explained "…*I didn't know what a margin call was, no one explained* *what this term meant, when the value of the trades drop below a certain level, I was pressured to put more money into the account to keep the margin and protect the account. …However, the following day 5th Jan 2021 the trades outstanding did not move a great deal and at 7am on 6th Jan 2021 the [Account Manager] called me and said I need to put more money into the account to save it*".

Encouraging Borrowing

4.43. Customers were pressured to invest more money and, in some cases, encouraged to borrow money. This pressure resulted in customers borrowing to keep depositing with FXTB. Given the risks involved with trading CFDs, and the strong possibility of losing money, there are unlikely to be any circumstances in which a CFD provider would be justified in advising its customers to obtain credit to invest in CFDs.

4.44. Account Managers pressured customers to borrow money from family and friends for further deposits. For example, Customer 33 explained that "*[the Account Manager] was fully aware of my financial situation and multiple times I was panicky and nervous and told him I have borrowed this money from family and friend his response 'I hear this all the time I borrowed money from friends family and my dog but now these clients are earning thousands and you will tell me a different story when you see this huge returns. [sic] He discarded my financial situation completely and lured me into more and more debt*". Customer 46 was also pressured to ask friends for money, and said *"…I was so stressed I starting crying* [sic] *and I said we don't have money, he said to go to borrow from friends…".*

4.45. Account Managers also pressured customers to obtain credit and borrow money from their businesses. Customer 2 explained that "…*during the phone call [the Account Manager] was asking me to take credit cards out or take equity out in my company*…". Customer 40 said *"… [the Account Manager] would pressure me to deposit money from my business which I consistently told him I could not lose as it was my business funds. Not only did he tell me not to worry that I would make a profit, but he qualified it by telling me that if it lost it would be a tax write-off".*

Elective Professional Client Status

4.46. Numerous customers of FXTB described either being pressured to apply for Elective Professional Client Status or as having been inappropriately categorised as such by their Account Managers.

4.47. As outlined above, the Product Intervention Measures, which provide protection to retail clients trading CFDs, do not apply to Elective Professional Clients, meaning, in particular, that firms are able to offer Elective Professional Clients products with higher leverage. Retail clients at FXTB had a leverage limit of up to 30:1, but Elective Professional Clients could choose a limit of up to 400:1. This higher leverage meant that trading losses would be magnified by comparatively small movements in the price of the underlying asset.

4.48. For example, a Retail Client with £10,000 investing in a CFD in GBPUSD, using the maximum leverage of 30:1, can take a position in GBP300,000. An Elective Professional Client investing the same £10,000, but using leverage of 400:1 (which was offered by FXTB to Elective Professional Clients) could take a maximum position of GBP4,000,000. If GBPUSD then fell by just 0.25% the Elective Professional Client would lose GBP10,000, 100% of their invested funds. By comparison, the retail client would lose GBP750, 7.5% of their invested funds, still a significant percentage loss but not in the same magnitude as that suffered by the Elective Professional Client as a result of exposure to high leverage.

4.49. For that reason, a CFD provider may only treat those individuals who would otherwise be categorised as retail clients, as Elective Professional Clients if it has first undertaken an adequate assessment of the expertise, experience and knowledge of the client that gives reasonable assurance, in light of the nature of trading CFDs, that the client is capable of making their own investment decisions and understanding the risks involved. This is known as the "qualitative test".

4.50. In addition, a firm must take all reasonable steps to ensure that such a client meets a "quantitative test" which is that at least two of the following criteria are satisfied:

- *the client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters;*
- *the size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments exceeds EUR 500,000; and, or*

- *the client works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged.*

4.51. During the Relevant Period, FXTB's Client Categorisation Policy appropriately identified these criteria.

Categorising clients as Elective Professional Clients inappropriately

4.52. FXTB purported to fulfil its regulatory obligations by requiring a customer to undergo a "test" before being categorised as an Elective Professional Client.

4.53. Given the protections lost as a result of being categorised as an Elective Professional Client, and the risk of losses being magnified in the event of adverse price movements, it was incumbent on FXTB to ensure that such assessments were properly and fairly undertaken and that clients were categorised as Elective Professional Clients only when they properly met the criteria.

4.54. Instead, the accounts of various customers showed that Account Managers put pressure on customers who were unlikely to meet the criteria to upgrade to Elective Professional Client status and that the "tests" were not properly carried out. For example, Customer 29 explained how "*[The Account Manager] persuaded me to upgrade my account to a professional account being fully aware I was not qualified. To pass the test in order to "qualify", [the Account Manager] gave me all the answers to the test*."

4.55. Furthermore, in a lot of cases, customers explained that they had expressly stated to FXTB that they did not have investment knowledge or experience. Therefore, FXTB could not have satisfied itself that the customer was capable of making their own investment decisions and that they understood the risks involved. This means that the qualitative test would not have been met, and as such, FXTB could not have categorised these customers as Elective Professional Clients. For example, Customer 36 explained that they were pressured into providing false information in order to satisfy the quantitative assessment stating "*…I was then called by a supervisor who passed the test for me, after the 4th or 5th attempt,* [the Account Manager] *had told me to answer that 'yes, I have assets to the value of £500,000 and above' as it is the main criteria for a the professional account and I wouldn't have to prove it, so just pretend I do despite me telling [them] that I don't have such sums of money. I was also told to answer that I have conducted more than 15 to 20 trades by this time, which I hadn't but it was the criteria to pass. I failed* *the test a number of times but each time the supervisor and account manager would point me to the page of answers and encourage me to use those responses even if they weren't true. [They] was [sic] answering the questions for me."*

Pressurising clients to apply for professional categorisation

4.56. Account Managers did not pay due regard to the interests of customers or treat them fairly when they pressured retail clients to apply for Elective Professional Client status in circumstances where these customers clearly did not have sufficient experience, expertise and knowledge in CFDs. This increased the risks of customers sustaining significant losses in the event of even small adverse price movements in the underlying assets.

4.57. In some cases, Account Managers were telling customers how to answer the "test" so that they would be categorised as Elective Professional Clients. For example, Customer 29 said "[The Account Manager] *also persuaded me to upgrade my account to* [Elective Professional Client status] *being fully aware I was not qualified. To pass the test…* [the Account Manager] *gave me all the answers to the test."*

4.58. Some customers failed the assessment multiple times, resulting in their Account Manager intervening to help them pass. For example, Customer 21 explained: *"Over the next few days and weeks, I received multiple telephone calls strongly coercing me to register for professional status on the FXTB website/platform as this provided me better terms and protection. [The Account Manager] also got a colleague to literally tell me the answers to the questions on the [(application form], the completion of which would grant me professional status…".*

4.59. A further example of the pressure Account Managers applied is demonstrated through the experience of Customer 39, who explained that *"Even when I was not willing to [apply for Elective Professional Client status the Account Manager] keep calling me [sic] to deposit 5000 and I will automatically be given [Elective Professional Client status]. That didn't happen. Then [the Account Manager] arranged [for] another [FXTB] colleague to call to help me through the assessment [even] though I clearly said I don't qualify. [The Account Manager] told me if you have traded 10 positions and traded for two weeks I qualify for [Elective Professional Client status]. I tried the assessment and failed twice… [the Account Manager then] passed me to colleague and he helped me with the answers to have [Elective Professional Client status]".*

4.60. Account Managers encouraged customers to embellish their experience to meet the criteria for Elective Professional Client status. In some instances, customers were encouraged to exaggerate the amount of money they had, as well as their experience with CFDs. For example, Customer 36 said "…*[the Account Manager] then pressured me to upgrade to a professional account even after I was very clear [sic] I was not interested and not qualified, I was then called by a supervisor who passed the test for me, after the 4th or 5th attempt, the account manager had told me to answer that 'yes, I have assets to the value of £500,000 and above' as it is the main criteria for a the professional account and I wouldn't have to prove it, so just pretend [sic] I do despite me telling her that I don't have such sums of money. I was also told to answer that I have conducted more than 15 to 20 trades by this time, which I hadn't but it was the criteria to pass. I failed the test a number of times but each time the supervisor and account manager would point me to the page of answers and encourage me to use those responses even if they weren't true. [The Account Manager] was answering the questions for me*".

4.61. The number of consistent customer accounts alleging that they were pressured into being improperly categorised as Elective Professional Clients strongly suggests that this was a tactic used by Account Managers to induce customers to invest increasing sums of money. This was despite the significant risk that adverse price movements would lead to substantial losses.

Effect on customers

4.62. Numerous customers described losing significant sums of money as a result of trading through FXTB. There were at least 62 customers who each lost over £10,000. In some cases, these losses were life changing: one customer described losing their "*entire life savings*" of almost £50,000. Another customer lost £25,000 they had saved as a deposit for a house. Several customers referred to what they considered to be the significant breach by the Firm of the trust they had placed in it. Unsurprisingly, several customers described their mental health having suffered as a result of their experiences with the Firm.

5. FAILINGS

5.1. The regulatory provisions and guidance relevant to this Notice are referred to in Annex A.

5.2. Based on the facts and matters above, the Authority considers that FXTB breached Principle 6 of the Principles and carried on a regulated activity, namely advising on investments, otherwise than in accordance with its regulatory permission.

Breach of Principle 6

5.3. FXTB breached Principle 6 during the Relevant Period by failing to pay due regard to the interests of its customers and treat them fairly.

5.4. In particular:

(1) FXTB failed to ensure that its customers were provided with clear information on the nature of CFDs and the risks attached with trading them. In particular, its Account Managers frequently emphasised the potential benefits which might accrue to customers through trading CFDs without providing any, or any adequate, information on, or explanation of, the risks of losing significant parts of, or all, their investments;

(2) FXTB failed to ensure that its customers had the necessary experience and knowledge to understand the risks involved in trading CFDs;

(3) FXTB enabled its Account Managers to use their positions, apparently as knowledgeable and experienced financial professionals acting on behalf of the customers, to exert improper influence on customers to trade CFDs using FXTB;

(4) FXTB improperly encouraged customers to deposit additional funds for the purposes of trading CFDs; this encouragement included the use of improper pressure to deposit funds which, given the risks of trading CFDs and the likelihood of customers losing money, should never have been made;

(5) Where customers did not have ready access to monies to fund investments, FXTB encouraged them to borrow money from friends or family or to seek finance; given the risks of trading CFDs and the likelihood of the customers losing money, such encouragement should never have been provided;

(6) FXTB provided advice to customers on specific CFD trades to make in order to encourage them to trade CFDs using FXTB;

(7) FXTB improperly encouraged customers to apply for re-categorisation as Elective Professional Clients, despite having no reasonable basis for considering that they met the criteria for such a categorisation;

(8) In assessing whether customers met the criteria for re-categorisation as Elective Professional Clients, FXTB failed to conduct assessments appropriately, including, variously, Account Managers providing customers with the answers to assessments and encouraging them to provide information which the Account Managers knew to be false;

(9) By re-categorising customers as Elective Professional Clients improperly, FXTB unfairly deprived those customers of the protections provided by the Product Intervention Measures.

Carrying on a regulated activity otherwise than in accordance with permission

5.5. FXTB's permission to carry on regulated activities did not include permission to advise on investments, including CFDs. Despite this, on numerous occasions, FXTB's Account Managers provided its customers with advice, instruction and/or direction on the opening, closing and management of CFDs entered into with FXTB. This advice amounted to personal recommendations to, variously, buy, sell, redeem or hold relevant investments, namely CFDs, and which were presented as suitable for the persons to whom the recommendations were made.

6. SANCTION

Financial penalty

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. The financial benefit associated with FXTB's failings is quantifiable by reference to the revenue FXTB generated from UK consumers from their CFD product line.

6.3. In relation to the period 01 January 2021 to 12 April 2021, the sums paid out by FXTB as compensation to affected UK consumers exceeded the revenues earned by FXTB in relation to UK consumers.

6.4. As a result, the Authority considers that during the Relevant Period there was no net financial benefit derived from UK Consumers.

6.5. Step 1 is therefore £0**.**

Step 2: the seriousness of breaches

6.6. 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.

6.7. The Authority considers that the revenue generated by FXTB is indicative of the harm or potential harm caused by its breach. The Authority has therefore determined a figure based on a percentage of FXTB's relevant revenue.

6.8. Pursuant to DEPP 6.5A.2G(2) where the breach lasted fewer than 12 months, the relevant revenue will be that derived by the firm in the 12 months preceding the end of the breach. Therefore, the relevant period for calculating FXTB's relevant revenue for FXTB is the 12 month period ending 12 April 2021. FXTB's relevant revenue during this period was £1,972,732.

6.9. 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 breaches 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 breaches. The more serious the breaches, 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%

6.10. In assessing the seriousness level for the purposes of Step 2, the Authority takes into account various factors which reflect the impact and nature of the breach, and whether it was committed deliberately or recklessly. DEPP 6.5A.2G(11) lists factors likely to be considered 'level 4 or 5 factors'. Of these, the Authority considers the following factors to be relevant:

1) The breach caused a significant loss to consumers, with UK consumers of FXTB losing a total of £4,426,023, (DEPP 6.5A.2(11)(a)) and individual consumers frequently suffering significant losses, inconvenience and distress. Without the Authority imposing a requirement pursuant to section 55L (5)(a) of the Act on FXTB on 12 April 2021, customer losses would have been £7,670,593.

2) The misconduct committed by FXTB was persistent, frequent, often in direct contravention of rules specifically directed at CFD providers and designed to protect vulnerable consumers and was not prevented by FXTB's procedures. This reveals systemic weaknesses in the firm's procedures and internal controls relating to all or part of the firm's business. (DEPP 6.5A.2(11)(b)).

6.11. Taking all of these factors into account, the Authority considers the seriousness of the breach to be level 5 and so the Step 2 figure is 20% of **£1,972,732**.

6.12. Step 2 is therefore **£394,546**.

Step 3: mitigating and aggravating factors

6.13. 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.

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

1) The Authority has issued numerous public statements highlighting the risks of poor practices by CFD providers. These include:

a) A Dear CEO Letter in February 2016;

b) A Consultation Paper in December 2016;

c) The outcome of an appropriateness assessment in June 2017;

d) A Dear CEO Letter in January 2018;

e) A Public Statement in August 2018;

f) A Consultation Paper issued in December 2018;

g) A Policy Statement issued in July 2019.

2) In June 2020, the Authority took regulatory action against four Cypriot CFD providers and published First Supervisory Notices in respect of each. These outlined the conduct the Authority had found to have been committed by each, including conduct of a similar nature to that found to have been committed by FXTB.

3) Each of these publications was readily available to FXTB which, as a provider of CFDs in the UK should have paid appropriate heed to them.

6.15. The Authority considers that there are no factors that mitigate the breach.

6.16. The Authority considers that these factors would generally result in an increase to the Step 2 figure of 10%. This would result in a Step 3 figure of £434,000. However, FXTB has provided verifiable evidence that payment of a sum greater than that reached after Step 2 (and taking account of the settlement discount applied at Step 5) would result in serious financial hardship. As a result, the Authority has decided not to increase the penalty at Step 3.

6.17. Step 3 is therefore **£394,546.**

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. Were it not for the provision by FXTB of verifiable evidence that payment of a sum greater than that reached after Step 2 (and taking account of the settlement discount applied at Step 5) would cause it serious financial hardship, the Authority considers that it would have sought to increase the penalty at Step 4. In assessing the appropriate increase, the Authority has considered:

a. the duration, persistence and egregiousness of the misconduct involved;

b. its significant effect on the customers affected;

c. the potential for significant benefit through breaching regulatory requirements to be made by firms operating in the sector;

d. despite numerous public calls by the Authority for an improvement in standards in the sale of CFDs to retail consumers, including those referred to in paragraph 6.14 above, together with a portfolio letter dated 1 December 2022, and regulatory action against several CFD providers, the Authority continues to observe examples of poor practices in the sector; and

e. in light of the above, an insufficiently substantial penalty may lead firms to consider that the potential financial benefits in breaching regulatory requirements outweigh the risks of enforcement action.

6.20. Having taken into account these factors, were it not for the provision by FXTB of verifiable evidence that payment of a sum greater than that reached after Step 2 (and taking account of the settlement discount applied at Step 5) would cause it serious financial hardship, the Authority considers that it would be appropriate to apply a multiplier of 4 to the sum reached after Step 3. This would have resulted in a Step 4 figure of £1,736,000. However, since FXTB has provided verifiable evidence that payment of a sum greater than that reached after Step 2 (and taking account of the settlement discount applied at Step 5) would cause it serious financial hardship, the Authority has decided not to increase the penalty at Step 4.

6.21. Step 4 is therefore **£394,546.**

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 FXTB reached agreement at stage 1 of the settlement process and so a 30% discount applies to the Step 4 figure.

6.24. Step 5 is therefore **£276,182**.

Penalty

6.25. The Authority hereby imposes a financial penalty of **£276,100** (rounded down to the nearest £100) on FXTB for breaching Principle 6 and for carrying on the regulated activity of advising on investments otherwise than in accordance with permission, in breach of section 20(1) of the Act.

7. PROCEDURAL MATTERS

7.1. This Notice is given to FXTB under and in accordance with section 390 of the Act.

7.2. The following statutory rights are important.

Decision Maker

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

Manner and time for payment

7.4. The financial penalty must be paid in full by FXTB to the Authority no later than 6 September 2024.

If the financial penalty is not paid

7.5. If all or any of the financial penalty is outstanding on 7 September 2024, the Authority may recover the outstanding amount as a debt owed by FXTB and due to the Authority.

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 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.

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

Authority Contacts

7.8. For more information concerning this matter generally, contact Natalie Rivett at the Authority (direct line: 020 7066 4166/email: natalie.rivett@fca.org.uk).

Deidre O'Sullivan

Interim Head of Department

Financial Conduct Authority, Enforcement and Market Oversight

<u>Annex A</u>

1. RELEVANT STATUTORY AND REGULATORY PROVISIONS

1.1. The Authority's statutory objectives, set out in section 1B(3) of the Act, include securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.

1.2. Section 20(1) of the Act provides: *"If an authorised person… carries on a regulated activity in the United Kingdom, or purports to do so, otherwise than in accordance with permission— (a) given to that person under Part 4A, or (b) resulting from any other provision of this Act, he is to be taken to have contravened a requirement imposed on him by the* [Authority] *under this Act."*

1.3. Section 206 of the Act provides that, if the appropriate regulator considers that an authorised person has contravened a relevant requirement imposed on that person, it may impose on him a penalty, in respect of the contravention, of such amount as it considers appropriate.

1.4. The EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 ("the TPR Regulations") created the TPR. In particular, regulation 8(1) of the TPR Regulations provides that a person to whom that regulation applied shall be treated as if the person has permission to carry on a regulated activity in the UK under Part 4A of the Act.

2. RELEVANT REGULATORY PROVISIONS

Principles for Businesses

2.1. The Principles are a general statement of the fundamental obligations of firms under the regulatory system and are set out in the Handbook.

2.2. During the Relevant Period, Principle 6 stated: *"A firm must pay due regard to the interests of its customers and treat them fairly."*

2.3. PRIN 3.1.9R provides that the Principles apply to a firm in the TPR.

Conduct of Business Sourcebook ("COBS")

2.4. COBS 3 provides the following rules and guidance in COBS (as were in place during the Relevant Period) are relevant to assessing suitability of Pension Transfer advice given to customers.

2.5. COBS 2.1.1 (1) A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).

2.6. COBS 3.4.1 A retail client is a client who is not a professional client or an eligible counterparty.

2.7. COBS 3.5.1 A professional client is a client that is either a per se professional client or an elective professional client.

2.8. COBS 3.5.3 A firm may treat a client other than a local public authority or municipality as an elective professional client if it complies with (1) and (3) and, where applicable, (2):

(1) the firm undertakes an adequate assessment of the expertise, experience and knowledge of the client that gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the client is capable of making his own investment decisions and understanding the risks involved (the "qualitative test");

(2) in relation to MiFID or equivalent third country business in the course of that assessment, at least two of the following criteria are satisfied:

(a) the client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters;

(b) the size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments, exceeds EUR 500,000;

(c) the client works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged; (the "quantitative test"); and

(3) the following procedure is followed:

(a) the client must state in writing to the firm that it wishes to be treated as a professional client either generally or in respect of a particular service or transaction or type of transaction or product;

(b) the firm must give the client a clear written warning of the protections and investor compensation rights the client may lose; and

(c) the client must state in writing, in a separate document from the contract, that it is aware of the consequences of losing such protections.

2.9. COBS 3.8.1 A firm must implement appropriate written internal policies and procedures to categorise its clients.

2.10. COBS 4.5.2 (2) A firm is accurate and always gives a fair and prominent indication of any relevant risks when referencing any potential benefits of relevant business or a relevant investment.

2.11. COBS 9.2.1 (1) (1) A firm must: (a) take reasonable steps to ensure that a personal recommendation, or a decision to trade, is suitable for its client; and (b) ensure that any life policy proposed is consistent with the client's insurance demands and needs.

2.12. COBS 9.2.1 (2) When making the personal recommendation or managing his investments, the firm must obtain the necessary information regarding the client's: (a) knowledge and experience in the investment field relevant to the specific type of designated investment or service; (b) financial situation; and (c) investment objectives; so as to enable the firm to make the recommendation, or take the decision, which is suitable for the client and for a life policy, to propose a contract that is consistent with the client's insurance demands and needs.

2.13. COBS 10A.2.1 A firm must ask the client to provide information regarding that client's knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded to enable the firm to assess whether the service or product envisaged is appropriate for the client.

2.14. COBS 14.3A.3 A firm must provide a client with:

(1) appropriate guidance on, and warnings of, the risks associated with investments in financial instruments or in respect of particular investment strategies;

(2) information on whether a particular financial instrument is intended for retail or professional clients, taking account of the identified target market in accordance with the rules in PROD 3; and

(3) the information required by this section in a comprehensible form in such a manner that the client is reasonably able to understand the nature and risks of the investment service and of the specific type of financial instrument that is being offered and, consequently, to take investment decisions on an informed basis. That information may be provided in a standardised format.

2.15. COBS 22.5.6 Restrictions on the retail marketing, distribution and sale of contracts for differences and similar speculative investments

DEPP

2.16. 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

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

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