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SFC reprimands and fines FXCM Asia Limited HK\$4 million

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The Securities and Futures Commission (SFC) has reprimanded and fined FXCM Asia Limited (HK FXCM) (now known as Rakuten Securities Hong Kong Limited) HK\$4 million for regulatory breaches in relation to its order execution practice for foreign exchange (Forex) trading (Notes 1 & 2).

An SFC investigation found that from December 2006 to December 2010, HK FXCM and its affiliate kept profits totalling US\$1,452,926.69 from favourable price movements in Forex trading that occurred between receipt of client orders and execution of orders, while unfavourable price movements were passed on to clients (Note 3).

The SFC considers that HK FXCM did not treat its clients fairly, and failed to execute their orders on the best available terms and to act in their best interests as required by the Code of Conduct (Note 4).

HK FXCM also inaccurately represented to its clients that their orders would be executed at the best available prices when in practice, its clients were deprived of receiving benefits of price improvements in relation to their trades.

The SFC further found that HK FXCM did not have proper internal policies and controls in place to ensure its order execution practice effectively complied with all regulatory requirements applicable to a licensed corporation.

In deciding the sanctions, the SFC took into account that HK FXCM:

- co-operated with the SFC in resolving the SFC's concerns;
- has voluntarily agreed to make full restitution to the affected clients in the amount of US\$1,452,926.69;
- is now under new ownership of which 100% shares are held by Rakuten Securities, Inc. in Japan from September 2015 and the failures were attributable to the former management of HK FXCM which has been replaced; and
- has no previous disciplinary record with the SFC.

HK FXCM's clients who did not benefit from price improvements in their trades as a result of the firm's order execution practice will have their accounts credited within 30 days. HK FXCM will contact clients who no longer hold an account to notify them that their accounts have been temporarily reopened for this purpose.

End

Notes:

1. HK FXCM is licensed under the Securities and Futures Ordinance (SFO) to carry on Type 3 (leveraged foreign exchange trading) regulated activity.
2. The business of HK FXCM was acquired by Rakuten Securities, Inc. in September 2015. HK FXCM changed its company name to Rakuten Securities Hong Kong Limited in April 2016 and is under new ownership and management.
3. A total of 3,739 accounts of HK FXCM were affected.
4. Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission.

[A copy of the Statement of Disciplinary Action is available on the SFC website](#)

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Statement of Disciplinary Action

The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has reprimanded FXCM Asia Limited¹ (**HK FXCM**) (now known as Rakuten Securities Hong Kong Limited) and fined it HK\$4,000,000 pursuant to section 194 of the Securities and Futures Ordinance (**SFO**).
2. The SFC found that during the period from December 2006 to December 2010 (**Relevant Period**), HK FXCM had:
 - (a) treated clients' orders in foreign exchange (**Forex**) trading unfairly;
 - (b) failed to execute orders for its clients on the best available terms and to act in their best interests;
 - (c) inaccurately represented to its clients that their orders would be executed at the best available prices; and
 - (d) failed to put in place proper policy, internal controls and procedures to ensure its order execution practice effectively complied with all regulatory requirements applicable to a licensed corporation.
3. The SFC is of the view that HK FXCM was guilty of misconduct, calling into question its fitness and properness as a licensed person.

Summary of Facts

4. HK FXCM has operated a no dealing desk (**NDD**) execution model since December 2006. It is a model which provides investors with immediate access to the interbank market where Forex is traded. HK FXCM displays the pricing provided by the external liquidity providers on its platform for its clients. Once a client placed a trade order, HK FXCM and/or its affiliate(s) immediately executes an order which is identical to the client's order directly with the external liquidity providers in the market.
5. Three possible outcomes would occur:
 - (a) "**No Slippage**" – if the price received by FXCM Group in its trade with the external liquidity provider was equal to the price displayed and originally requested by the client, then the client received the order at the requested price.
 - (b) "**Positive Slippage**" – if FXCM Group executed an order with the external liquidity provider at a price that was better than the price when the client placed the trade order, i.e. a price favorable to the client, the client still received the original requested price. FXCM Group including HK FXCM kept the Positive Slippage which is the difference between the original requested price and the better price.

¹ HK FXCM is licensed under the Securities and Futures Ordinance to carry on business in Type (leveraged foreign exchange trading) regulated activity.

- (c) “**Negative Slippage**” – if FXCM Group executed an order with the external liquidity provider at a price that was worse than the price when the client placed the trade order, i.e. a price unfavorable to the client, then the client received the order at the worse price. The Negative Slippage which is the difference between the worse price and the original requested price was bore by the client.
6. The cause of slippages is due to time latency between the placement of the client’s trade order and the subsequent execution of the corresponding order by FXCM Group in the market.
7. The difference in the treatment of Positive Slippage and Negative Slippage is referred to as “**Asymmetric Treatment of Slippage**” in this statement.

Unfair treatments to clients’ orders and failures to execute clients’ orders on the best available terms

8. General Principle 1 (Honesty and fairness) of the Code of Conduct² requires a licensed person to act honestly, fairly, and in the best interests of its clients and the integrity of the market.
9. General Principle 2 (Diligence) of the Code of Conduct requires a licensed person to act with due skill, care and diligence, in the best interests of its clients and the integrity of the market in conducting its business activities.
10. Paragraph 3.2 (Best execution) of the Code of Conduct requires a licensed person when acting for or with clients should execute client orders on the best available terms.
11. Paragraph 3.10 (Best interests of clients) of the Code of Conduct requires a licensed person to act in the best interests of its clients in providing services or recommending the services of an affiliated person to its clients.
12. HK FXCM admitted the existence of Asymmetric Treatment of Slippage in the order execution practice of the FXCM Group including HK FXCM during the Relevant Period. HK FXCM acknowledged that when there was a Negative Slippage, the client would receive the worse price, whereas when there was a Positive Slippage, the client would receive the originally requested price.
13. During the Relevant Period, a total of US\$1,452,926.69 Positive Slippage was retained by the FXCM Group including HK FXCM.
14. The SFC considers that during the Relevant Period, HK FXCM failed to:
- (a) treat its clients fairly and in their best interests, in breach of General Principle 1 (Honesty and fairness) and paragraph 3.10 (Best interests of clients) of the Code of Conduct, by engaging in Asymmetric Treatment of Slippage; and
 - (b) execute client orders on the best available terms, in breach of General Principle 2 (Diligence) and paragraph 3.2 (Best execution) of the Code of Conduct, by not giving the best available prices to clients where slippages occurred.

² Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission.

Inaccurate representations made by HK FXCM on its Forex pricing

15. Paragraph 2.1 (Accurate representations) of the Code of Conduct requires a licensed person to ensure that any representations made and information provided to the client are accurate and not misleading.
16. HK FXCM made representations in its website and email notification to its clients that it maintained a model whereby it sourced Forex pricing from external liquidity providers and that the orders would be executed at the next best market price. Extracts of the representations are presented below:

Website

If the trader elects to accept a range of permissible slippage to raise the probability of having his order executed, the order will be filled at the best price available within the specified range ...

Email notification

Since you are trading with banks, FXCM will no longer be able to provide you with a no-slippage guarantee. After a stop-loss, limit order, or entry order is triggered, the order will be executed at the best market price provided by the banks which may involve slippage ...

17. HK FXCM had made representations to its clients that if they accepted a range of slippage, their orders would be filled at the best price available within the specific range. However, these representations were inaccurate when HK FXCM, in practice, failed to give the best available prices to its clients when slippage occurred.
18. The SFC considers that during the Relevant Period, HK FXCM failed to ensure that representations made to its clients are accurate and not misleading, in breach of paragraph 2.1 (Accurate representations) of the Code of Conduct, by making representations which was inconsistent with the way it handled Positive Slippages.

Inadequate policies, systems and controls to ensure client orders were executed in a fair manner, in the best available price and in best interests of clients

19. General Principle 3 (Capabilities) of the Code of Conduct requires a licensed person to have and employ effectively the resources and procedures which are needed for the proper performance of its business activities.
20. Paragraph 4.3 (Internal control, financial and operational resources) of the Code of Conduct requires a licensed person to have internal control procedures and financial and operational capabilities which can be reasonably expected to protect its operations, its clients and other licensed or registered persons from financial loss arising from dishonest acts, professional misconduct or omissions.
21. Paragraph 12.1 (Compliance: in general) of the Code of Conduct requires a licensed person to comply with, and implement and maintain measures appropriate to ensuring compliance with the law, rules, regulations and codes administered or issued by the SFC, and the requirements of any regulatory authority which apply to the licensed person.

22. The Compliance Manuals of HK FXCM which were effective between the Relevant Period did not have specific provisions governing best execution, client order handling or dealing practice.
23. HK FXCM also relied on its overseas affiliate in its management and monitoring of its trading platform, including their testing before launch and post-launch review during the Relevant Period. HK FXCM did not conduct any independent assessment on whether HK FXCM, in using the platform to conduct Forex trading for clients in particular, its order execution practices, were in compliance with the regulatory requirements in Hong Kong.
24. The SFC considers that HK FXCM failed to establish or implement adequate policies, internal controls and procedures to ensure the proper compliance of the rules and regulations as required of a licensed corporation, in breach of General Principle 3 (Capabilities), paragraph 4.3 (Internal control, financial and operational resources) and paragraph 12.1 (Compliance: in general) of the Code of Conduct.

Conclusion

25. In reaching the decision to take disciplinary action set out in paragraph 1 against HK FXCM, the SFC has taken into account that HK FXCM:
 - (a) co-operated with the SFC in resolving the SFC's concerns;
 - (b) has voluntarily agreed to make full restitution of Positive Slippage to its clients in the amount of US\$1,452,926.69;
 - (c) is now under new ownership and the failures were attributable to the former management of HK FXCM which has been replaced; and
 - (d) has no previous disciplinary record with the SFC.