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Lessons From the FCA’s Fine of Infinox Capital

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The FCA has **fined** Infinox Capital, a London-based broker, for breach of MiFIR transaction reporting requirements. Infinox failed to submit reports for some 46,053 transactions executed by its single-stock CFD (contract for difference) desk. The fine illustrates the risks of business change without adequate governance, and of failing to deal with the FCA in a sufficiently timely and transparent manner.

Assurance failings following business change

Infinox predominantly traded index CFDs until October 2022, when it established a new line of business in single-stock CFDs. This change was implemented without adequate regulatory risk controls. A single individual was responsible for identifying 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 a third party review was conducted that identified the potential issue.

The FCA has previously put firms on notice that many are not devoting adequate focus and resource to regulatory governance arrangements. Firms may therefore wish to take this opportunity to re-consider such arrangements, especially if there has been recent business change, or if material changes are planned.

Transparency and timeliness of dealings with the FCA

Following the third party review mentioned above, Infinox was advised that it should investigate the duration and volume of its underreported transactions, as a breach notification to the FCA and back-reporting would be required. Seven weeks then passed, at which point Infinox was contacted by the FCA, who had identified the reporting issue. Infinox’s failure to self-report in a timely manner is listed as an aggravating factor in the final notice.

In addition to this, the FCA noted significant issues with the speed and nature of Infinox’s responses to the FCA. The below paragraph from the final notice is worth reading in full:

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.

Firms should expect the FCA to be particularly sensitive at present to delays in the provision of information, especially at the enforcement stage. The latitude that some case officers have previously shown in agreeing that additional time for the provision of information has been diminished by: (i) the FCA’s publicly stated **commitment** to increasing the speed of enforcement, and (ii) more centralised control and decision-making in respect of ongoing investigations, aided by the FCA’s pruning of cases that do not fit its enforcement priorities.