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FTI Consulting (Australia) Pty Limited

ABN 49 160 397 811 | ACN 160 397 811 | AFSL Authorised Representative # 001269325

Level 47, Central Park | 152-158 St George's Terrace | Perth WA 6000 | Australia

Postal Address | PO Box Z5486 | Perth WA 6831 | Australia

+61 8 9321 8533 telephone | fticonsulting.com

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Forex Capital Trading Pty Ltd (In Liquidation) - Update

Dear Sir / Madam

Forex Capital Trading Pty Limited ACN 119 086 270 (In Liquidation) (“Company” or “Forex CT”)

We refer to our previous correspondence about the liquidation of Forex CT and provide the following update.

Liquidation update

On 7 December 2021, the liquidation transitioned to an insolvent liquidation and Nathan Stubing, Ross Blakeley and I were appointed liquidators by the Court. The liquidation transitioned to an insolvent liquidation, as we formed the view that Forex CT was insolvent and an insolvent liquidation allowed us to investigate other ways to recover funds for creditors.

Since our last update, we have undertaken significant investigations and identified several potential claims.

We have prepared a report, which we have summarised below. The full report can be accessed at <https://www.fticonsulting.com/creditors/forex-capital-trading-pty-ltd>.

Potential Claims

Invesus Group Ltd (“Invesus”)

Invesus is Forex CT’s ultimate parent company. It provided a Letter of Comfort (“LOC”) to Forex CT, which requires Invesus to provide financial support to Forex CT to meet any debts of Former Clients.

We believe Former Clients may have claims against Forex CT, given the nature of the Company’s conduct in dealing with them, and that the LOC requires Invesus to provide funds to Forex CT to meet valid claims.

Any claim under the LOC must be lodged by 30 June 2022, as the LOC terminates on this day. Significant work is required to prepare and lodge a claim. A summary of our investigations is provided in our report.

As we do not have sufficient funds to undertake this work, we engaged with three litigation funders about funding the Invesus claim and have now reached commercial terms with one of these funders.

The final agreement with the funder will be subject to either creditor or Court approval. After the agreement is finalised and approved, we will need to investigate the books and records of the Company, and prepare a report to creditors, including Former Clients, regarding the potential claims of Former Clients (“Investigation Report”). We may then:

- invite proofs of debt from Former Clients who believe they may have claims against the Company that may be covered by the LOC; and
- consider making an application to the Court for directions regarding an expedited adjudication process to allow the claims of Former Clients to be adjudicated as efficiently as possible (given the large number of Former Clients that have registered potential claims), and a demand on Invesus under the LOC before 30 June 2022.

Unfair Preferences

In an insolvent liquidation, a liquidator can recover funds for creditors where there has been an unfair preference. The legal principles of an unfair preference can be extremely complex; however, broadly, an unfair preference is when a creditor receives payment(s) during a certain period and the payment is more than they would have received through the liquidation process.

We are investigating whether the following payments may be unfair preferences:

Related Parties

Forex CT paid the Related Parties ~\$48m in the four years leading up to liquidation, as follows:

Party	Jurisdiction	FY17	FY18	FY19	FY20	(\$)
Invesus	Gibraltar	-	792,890	1,678,467	607,620	3,078,977
Naxex Belize Limited	Belize	5,208,066	11,126,400	19,738,224	-	36,072,690
Naxex Limited	Bulgaria	1,956,680	3,230,678	3,884,794	51,463	9,123,615
Total		7,164,746	15,149,968	25,301,485	659,083	48,275,282

ASIC

ASIC received ~\$21.5m as follows:

- \$20m as a Pecuniary Penalty, which was paid on 25 June 2021;
- ~\$1.18m as Court Costs, which was paid on 25 June 2021; and
- \$351k for ASIC's investigation costs, which was paid on 12 July 2021.

Further work is required to determine whether the payments to the Related Parties and ASIC were Unfair Preference payments and recoverable. We will continue to keep creditors updated on our investigations.

Committee of Inspection and Meeting of Creditors

Because of the size and complexity of the liquidation, we would like to form a Committee of Inspection ("COI").

A COI is smaller group of creditors appointed to represent all creditors. The COI consults with the Liquidators, receives reports on the liquidation and considers and, if thought appropriate, approves resolutions to help the Liquidators.

We believe a COI will allow us to manage the liquidation more efficiently, particularly given the number of creditors and complexity of claims discussed above.

To form a COI, we must hold a meeting of creditors, where creditors will vote on whether to form a COI and who the members will be.

Creditors' Meeting

A Creditors' Meeting will be held on Wednesday, 16 March 2022. At the meeting, we will, among other things:

- provide an update on the liquidation; and
- vote on forming the COI.

Instructions on how to attend the meeting are provided in our report. If you would like to nominate yourself as a member of the COI, please email your request to fxct@fticonsulting.com by Friday, 11 March 2022.

Importantly, to attend the meeting, you must complete a meeting registration form before the meeting, which can be accessed at <https://forms.office.com/r/Rq5EyQgn4V>. This is a link to Microsoft Forms, which we are using to monitor meeting registrations.

Lodge notification of claim

If you think you have suffered a loss from trading with Forex CT, **we strongly encourage** you to lodge your contact details at www.forexctclaims.com.au. If you have already lodged your details, you are not required to lodge your details again.

Why am I receiving this email?

We understand you are a former client of Forex CT. As a result of the findings made by the Court about Forex CT, you may potentially have a claim against Forex CT for, among other things, the loss and damage you have suffered as a client due to Forex CT's "unconscionable system".

Link Market Services ("Link")

You may have noticed that this update has been sent by Link, rather than FTI Consulting. This was due to the increased volume of emails required to be sent. We decided to use Link's services to ensure this update reached everyone in a timely manner.

Our Forex CT Claims Team email is still operational and, if you have any queries that are not addressed in our Frequently Asked Questions, you should continue to send them to us at fxct@fticonsulting.com.

Is this a scam?

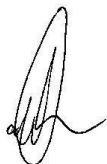
We have been asked by a number of former clients whether this is a scam. This is not a scam. The Court appointed liquidators are regulated by ASIC and are required to contact all parties they believe might be owed money by Forex CT. These communications are consistent with the Court appointed liquidators' legal obligations.

Where can I get more information?

We have prepared a Frequently Asked Questions ("FAQ"), which you can access from this link. We will continue to update the FAQs, which can be accessed at both www.forexctclaims.com.au or <https://www.fticonsulting.com/creditors/forex-capital-trading-pty-ltd>.

Please review the FAQs first to see whether your question is answered. If the FAQs do not answer your question, you can email your question to fxct@fticonsulting.com.

Yours faithfully



Daniel Woodhouse

Joint and Several Liquidator

Forex Capital Trading Pty Limited (In Liquidation)

Form 5011

Corporations Act 2001

s436E, 439A

Insolvency Practice Rules (Corporations) 2016

s75-145(1)(c)

Copy of minutes of meeting

Liquidator details

Registered liquidator number

500854

Registered liquidator name

DANIEL HILLSTON WOODHOUSE

Company details

Company name

FOREX CAPITAL TRADING PTY LTD

119 086 270

Section under which minutes are lodged

Date of meeting

16-03-2022

Are the minutes being lodged for a meeting convened under s436E, or
s439A of the Corporations Act 2001?

No

Certification

I certify that the attached minutes of meeting are a true copy of the original
minutes of meeting signed by the chair of the meeting as identified in the
minutes.

Yes

Authentication

This form has been authenticated by	
Name	DANIEL HILLSTON WOODHOUSE
This form has been submitted by	
Name	Starli SMITH
Date	03-05-2022

For more help or information

Web	www.asic.gov.au
Ask a question?	www.asic.gov.au/question
Telephone	1300 300 630

Minutes of meeting of creditors
Forex Capital Trading Pty Ltd (In Liquidation)
ACN 119 086 270 ("the company")

Held virtually at FTI Consulting, Level 47, 152-158 St Georges Terrace, Perth WA 6000

On 16 March 2022 at 11:00am (AWST)

In attendance	Daniel Woodhouse	The Chairperson
	Andrew Clowes	FTI Consulting
	Renae Stirling	FTI Consulting
	Jiin Choong	FTI Consulting
	Andrew Vacca	FTI Consulting
	Claire Rees	FTI Consulting
	Conor Robson	FTI Consulting
	Sam Dundas	King & Wood Mallesons
	Patrick Mackenzie	King & Wood Mallesons
	Creditors and other persons as per the attached attendance and observer registers.	
Chairperson	Daniel Woodhouse The Chairperson introduced himself and informed the meeting that pursuant to Insolvency Practice Rule ("IPR") 75-50 he was presiding over the meeting as the Liquidator.	
Opening	The Chairperson opened the meeting at 11:07am (AWST). The Chairperson advised the proceedings were to be recorded to facilitate an accurate account of the meeting and preparation of minutes and confirmed there were no objections.	
Attendance	The signing record of persons present in person, by proxy or attorney is contained in Appendix A .	

Electronic facilities

The Chairperson advised that:

- Notice of electronic facilities had been given pursuant to IPR 75-35 and the electronic facilities were available and operating.
- They had received the required statements and that the participants using the electronic facilities were taken to be present in person at the meeting pursuant to IPR 75-75 and were included in the record of persons present which will form part of the minutes of the meeting and lodged with ASIC.

Proofs of debt and proxies

The Chairperson noted that they had received proofs of debt and proxies for the meeting. He advised:

Priority / Trade Creditors

- Proofs of debt received from priority / trade creditors for voting purposes had been assessed in accordance with IPRs 75-85 to 75-100 and the creditors participating in the meeting had proofs of debt admitted for voting purposes only.

Former Clients

- Former Clients were not required to lodge a proof of debt and would be admitted to vote for \$1. This was merely for voting purposes only and did not represent the estimated value of Former Clients' claim for the purpose of a dividend.
- Proxies received were in order in accordance with IPR 75-150 and valid for this meeting only. The Chairperson declared the following proxies valid for the purposes of this meeting.

Creditor	Represented By	Amount Admitted for Voting (\$)
JOHRIN Superfund	John Freeman	1.00
Neville Scott	Wayne Korn	1.00

The Chairperson also noted to the meeting that he held the following special proxy in his favour:

Creditor	Represented By	Amount Admitted for Voting (\$)
Deputy Commissioner of Taxation ("ATO")	Chairperson	125,567.62

The Chairperson advised that he would not use any general proxy to vote in favour of any resolution which would place him, his partner or employer in a

	<p>position to receive any remuneration (directly or indirectly) out of the assets of the company pursuant to IPR 75-97.</p>
Voting	<p>The Chairperson advised the meeting that all votes would be taken on a 'show of hands' unless a poll is requested by the Chairperson or by a person participating and entitled to vote at the meeting.</p> <p>A 'show of hands' was broadly defined and would include any electronic mechanism used to indicate a person's intentions in respect of the votes. This could include an attendee clicking a 'raise hand' or similar button on a virtual meeting computer program, as well as verbally indicating their vote if dialling-in to the meeting on the telephone.</p> <p>The convenor of a virtual meeting must also specify in the notice of the meeting whether the vote must be taken on a poll. If the notices did not require votes to be taken on a poll, votes must be taken on a show of hands unless a poll was requested.</p> <p>On the voices, each person had only one vote, regardless of whether they held proxies on behalf of other creditors.</p> <p>The Chairperson advised that, where a resolution was requested to be decided in a poll in accordance with IPR 75-115, then a majority in number and a majority in value of creditors would be required for the resolution to pass.</p> <p>The Chairperson would vote any general proxies as appropriate or special proxies as directed. He would not use a general proxy to vote in favour of any resolution which would place him, his partners or employer in a position to receive any remuneration (directly or indirectly) out of the assets of the company pursuant to IPR 75-97.</p> <p>If there was not a majority in both number and value, then no result was reached.</p> <p>If no result was reached, as Chairperson, he may exercise a casting vote in favour of the resolution, or against the resolution, or may abstain.</p> <p>The Chairperson would not exercise a casting vote in relation to remuneration and would not vote against a resolution relating to the removal of the Liquidators pursuant to IPR 75-115(4).</p> <p>The Chairperson would inform the meeting of any reasons for exercising, or not exercising a casting vote and it would be included in the minutes pursuant to IPR 75-115(6).</p>

Quorum	The Chairperson advised that a quorum was present pursuant to IPR 75-105 as at least two creditors were present at the meeting in person, by proxy, by power of attorney or participating by electronic means.
Notice of meeting	The Chairperson tabled a copy of the Notice of Meeting and advised it was sent and made available by electronic means to all known creditors on 28 February 2022, in accordance with IPRs 75-10 to 75-25. It was also published with ASIC in accordance with IPR 75-40.
Declaration of convenience	The Chairperson declared the meeting was convened at a time and place convenient to the majority of creditors in accordance with IPR 75-30.
Dirri	The Chairperson tabled the Declaration of Relevant Relationships and Indemnities (DIRRI), which was provided to creditors on 10 December 2021 and also made available by electronic means.
Purpose of meeting	<p>The Chairperson advised that the purpose of the meeting was to:</p> <ul style="list-style-type: none"> ■ To receive a report by the Liquidators about the business, property, affairs and financial circumstances of the Company; ■ To determine whether to appoint a committee of inspection and if so, who are to be the committee members; and ■ Any other business that may lawfully arise.
Liquidators' report	<p>The Chairperson tabled the Liquidators' report and discussed the key content.</p> <p>The Chairperson advised that creditors in attendance would be given an opportunity to ask questions and vote for the resolution.</p> <p>The Chairperson also discussed the timeline of events leading to the liquidation of the Company and the following:</p> <p><u>Progress of liquidation to date</u></p> <ul style="list-style-type: none"> ■ On review of the Federal Court Judgement and Statement of Agreed Facts ("SAFA"), the Liquidators identified: <ul style="list-style-type: none"> ○ The Company gained from the Former Clients' losses; ○ The business model likely resulted in unconscionable, misleading and deceptive conduct towards clients; ○ The Company was ordered to pay pecuniary penalty (\$20m), court costs (\$1.18m) and investigation costs (~\$351k) to the Australian Securities and Investments Commission ("ASIC"); and

- The Director was ordered to pay \$400k and banned from being a company director for eight years.
- The Liquidators had undertaken significant investigation since their appointment and identified over 10,000 potential clients with claims in excess of \$77.6m, work undertaken including:
 - Collection of physical and electronic records;
 - Collation of contact details of Former Clients;
 - Extensive correspondence with the Company's ultimate parent, Invesus Group Limited ("Invesus"), for funding under the Letter of Comfort ("LOC");
 - Exploring funding alternatives to fund potential claims;
 - Reviewed documents obtained by ASIC; and
 - Investigated potential legal claims, including obtaining legal advice on those potential claims.
- On appointment, the Liquidators notified Former Clients of a potential claim against the Company and maintained an online registration platform (~1,420 registrations received with potential claim of ~\$37.6m to date). Further, proactive engagement was made with ASIC and AFCA and regular updates were provided to creditors.

Potential Claims

The Liquidators have identified a number of potential claims as follows:

- Invesus – Letter of Comfort ("LOC")
 - Under the LOC, Invesus provided an undertaking to pay Former Client claims that were made before 30 June 2022.
 - Significant investigations, claim quantification and legal work would be required in order to bring the claim against Invesus before the LOC expired on 30 June 2022.
 - Three litigation funders had been approached to obtain funding to pursue the claim against Invesus. The Liquidators were seeking funding alternatives. Creditors interested to fund the claim should send an e-mail to fxct@fticonsulting.com.
- Related party claims – 3 years to initiate claim
 - Payments totalling ~\$48m made to offshore related entities in the four years prior to the liquidation may be voidable and recoverable by the Liquidators.
 - Further investigations were required.
- ASIC payments – 3 years to initiate claim
 - Payments totalling ~\$21.5m made to the ASIC in three tranches that may be voidable and recoverable by the Liquidators.
 - Significant advice sought from lawyers and Counsel given the complexity of claim.

■ Other claims

- Further work was required to be undertaken to determine other claims identified.

The Chairperson asked the meeting if there were any questions, and to advise the meeting of their name and the name of the creditor they represent when addressing the meeting.

Questions and answers

Questions were asked and answered in the meeting as follows.

Roy Chippindall asked whether the Company's records showed the amount invested by him. The Chairperson advised that his staff continued to work on the claim quantification (being deposits and withdrawals made by Former Clients) and Former Clients would be notified if further information was required.

Mary Anne-Soliman asked whether she missed any correspondence, as she was not contacted by 3 December 2021 about her claim. The Chairperson advised that e-mail updates were issued on 1 December 2021, 7 December 2021 and 28 February 2022 and asked Ms Soliman to contact the Liquidators' office if those updates were not received.

Wayne Korn (on behalf of Neville Scott) stated that the pecuniary penalty was paid to ASIC prior to liquidation and queried why the amount paid was not returned to investors or the Liquidators to enable a return to creditors. The Chairperson advised that the ASIC payments have been identified and investigations were continuing into whether they would be recoverable.

Mr Korn also queried as to whether a return to creditors would eventuate. The Chairperson advised that a return to creditors would be dependent upon successful recoveries of potential claims identified.

John Goodman (representing Johrin Superfund) queried the significance of the LOC. The Chairperson advised that, under the LOC, Invesus provided undertaking to pay Former Client claims made before 30 June 2022.

Ms Soliman asked when Former Clients would be compensated and how should Former Clients inform the Liquidators of the amount owed. The Chairperson advised that the timing of compensation would be dependent upon the timing of any successful recoveries of claims. With respect to amount owed to Former Clients, the Liquidators had the Company's books and records and were able to verify amounts owed based on net deposits and withdrawals for each Former Client.

Mr Korn asked whether ASIC had a claim for \$25m against the Company. The Chairperson advised he was not aware of any further claims that ASIC had against the Company.

John Tabone asked whether the Director, Shlomo Yoshai, would surrender his personal assets to be included as recoveries for the benefit of creditors. The Chairperson advised that the Liquidators' were only appointed over the Company and that further investigations were required to determine whether a claim against Mr Yoshai existed. The Chairperson advised that Mr Yoshai was no longer in Australia and based on public records he did not own any private property in Australia.

Arjun Lath enquired as to the priority of distribution in the event there were insufficient funds in the liquidation. The Chairperson advised that employees' claim would afford priority over unsecured creditors and Former Clients pursuant to the Act.

Mike Schilling enquired as to whether employees' claim had priority over the Liquidators' costs and unsecured creditors. The Chairperson advised that, under the Act, the Liquidators' remuneration and costs had priority over all employees and unsecured creditor claims.

Mr Korn asked why Mr Yoshai was allowed to leave Australia when the Company was insolvent and expressed his view that Mr Yoshai's personal assets should be frozen or recovered. The Chairperson reiterated that the Liquidators' appointment did not extend to Mr Yoshai and that questions of confiscating Mr Yoshai's passport or freezing his personal assets prior to the Liquidators' appointment was the responsibility of certain other Government authorities.

Darren Adams asked whether all communications to Former Clients would be issued by e-mail. The Chairperson advised that communications would be issued by e-mail given the large number of Former Clients and any queries should be directed to the Liquidators' office via the nominated e-mail address and phone numbers.

Committee of inspection

The Chairperson advised the meeting that they may resolve to appoint a Committee of Inspection ("COI") whose role would be to monitor the liquidation and give assistance to the Liquidators.

The COI would meet as required and have certain rights to give directions, receive information and obtain specialist advice or assistance if appropriate.

To be eligible to be appointed as a COI member, the person must be:

- A creditor.
- An officer / employee of corporate creditor.
- A person holding the power of attorney of a creditor or a person authorised in writing by the creditor.

The Chairperson also advised that, ideally, the COI would:

- be a representation of all creditor classes, i.e. employee, trade creditor and statutory creditor; and
- have an odd number of members, being not less than three and no more than nine creditors.

Creditors / Former Clients and employees would have the right to appoint members to a COI, if established.

However, large creditors (individually or collectively) with greater than 10% of the total claims or employees (individually or collectively) with greater than 50% of total employee entitlements claims in value against the Company should not participate in the main vote if they intend to exercise their right to appoint members directly to the COI if established.

The Chairperson advised that, given the complexity of the liquidation and the large number of creditors / Former Clients impacted, it was recommended that a COI be established to assist with the effective and efficient conduct of the liquidation.

The Chairperson noted that prospective members should be aware that there are restrictions on members of a COI (or their related parties) deriving a profit or advantage from the company (other than a dividend), the administration or a creditor, unless:

- The creditors resolve otherwise; or
- It is permitted by the Corporations Act or another law; or
- The court gives leave.

These are offences of strict liability against the members (unless they did not know or could not reasonably be expected to know).

The Chairperson noted that if the creditors choose to establish a COI, then they also intended to propose a resolution that would permit arm's length transactions in the ordinary course with members of the COI and the company or its creditors, to address the requirements of IPR 80-55 and ensure that normal arm's length transactions did not result in a breach of the strict liability offence.

However, this would not be applicable in this matter as the Company ceased trading prior to the date of liquidation.

The Chairperson advised that the information sheets on the role, rights and responsibilities of the COI members were included with the notice of the

	<p>meeting and the nominated members had confirmed their understanding of the duties and obligations.</p> <p>The Chairperson asked interested creditors to consider the requirements and if they were interested, consider nomination when resolutions were proposed shortly.</p>
Resolutions	<p>The Chairperson noted there were resolutions on certain matters he would be putting to the meeting and persons participating and able to vote would also be able to propose and amend proposed resolutions in accordance with IPR 75-70.</p> <p>If a person participating proposed a resolution, they should advise the meeting of their name and the creditor they represent.</p> <p>The Chairperson advised that reasonable time would be allowed to debate any proposed resolution or amendments before putting the resolution or amended resolution to a vote.</p>
Resolution 1: appointment of committee of inspection	<p>The Chairperson person noted that he received six nominations to be appointed as the COI members but Keiron Summers had withdrawn his nomination prior to the meeting.</p> <p>The Chairperson also advised that, if a COI is formed, members would be contacted following the meeting to execute the Non-Disclosure Agreement, as COI members would be provided with confidential information and, if made public, may be prejudicial to the conduct of the liquidation and certain claims being undertaken.</p> <p>The Chairperson proposed the following amended resolution to reflect the removal of Keiron Summers as the COI member and called for a vote on the resolution as amended:</p> <p><i>“That a Committee of Inspection be established for Forex Capital Trading Pty Ltd (In Liquidation) and the appointed members would be:</i></p> <ul style="list-style-type: none"> ■ <i>Dave Williams</i> ■ <i>Govinda Kesar</i> ■ <i>Neville Scott (represented by Wayne Korn)</i> ■ <i>Xu Bian</i> ■ <i>John Tabone</i> <p>The Chairperson noted that he held a special proxy on behalf of the ATO and would abstain the resolution, as directed.</p> <p>The Chairperson declared the resolution on the voices was passed.</p>

General business	The Chairperson asked the meeting whether there were any further matters to be discussed prior to the closure of the meeting. No question was forthcoming.
Closure	There being no further discussion, the Chairperson declared the meeting closed at 12:00pm (AWST).

Dated this 1 May 2022

Signed as a correct record.

A handwritten signature in black ink, appearing to be 'D. Woodhouse', written in a cursive style.

Daniel Woodhouse

Chairperson

Forex Capital Trading Pty Ltd (In Liquidation)
Meeting of Creditors held on 16 March 2022
Appendix A - Attendance Register

Creditor Name	Proxy	Proxy Type	Claim (\$)
Daniel Linklater	-	-	1
Mary-Anne Soliman	-	-	1
Roy Chippindall	-	-	1
David Williams	-	-	1
Michael Rothschild	-	-	1
John Tabone	-	-	1
Angelo La Sala	-	-	1
Lily Lam	-	-	1
Wayne Korn	-	-	1
Chui Chui Lee	-	-	1
Steven Goodarzi	-	-	1
Jason Wall	-	-	1
Marius De Jager	-	-	1
Mike Schilling	-	-	1
Darren Adams	-	-	1
Stewart Johnston	-	-	1
Alex Wren	-	-	1
Arjun Lath	-	-	1
JOHRIN Superfund	John Goodman	General	1
Belinda Aubrey	-	-	1
Zarlasht Azizi	-	-	1
Australian Taxation Office	Chairperson	Special	125,567.62

5 May 2022



Forex Capital Trading Pty Ltd ACN 119 086 270 (In Liquidation) ("Company" or "Forex CT")

Report to Creditors

1. Introduction

- 1 I refer to:
 - a) my previous correspondence in relation to the liquidation of the Company.
 - b) the appointment of Nathan Stubing and myself as Liquidators of Forex CT on 27 June 2021 ("Previous Liquidators") ("Appointment Date"). As already reported, the liquidation commenced as a solvent process, known as a Members Voluntary Liquidation.
 - c) the appointment of Nathan Stubing, Ross Blakeley and myself as liquidators of the Company on 7 December 2021 ("Liquidators") to undertake the liquidation on an insolvent basis.
- 2 This is my fourth report to creditors on the progress of the liquidation and is in addition to the electronic updates provided to creditors.
- 3 This report should be read in conjunction with my previous communications to creditors, which can be accessed at our website: <https://www.fticonsulting.com/creditors/forex-capital-trading-pty-ltd>

2. Executive Summary

- 4 The purpose of this report ("Investigation Report") is to set out the key findings of the Liquidators' investigations into the affairs of the Company, and the potential claims former customers of the Company ("Former Customers") may have against the Company for loss or damage arising out of the conduct of the Company and its representatives in the period between 1 January 2017 and 1 April 2019 ("Relevant Period") ("Investigations").
- 5 As a result of the Investigations, the Liquidators are satisfied that Former Customers who invested with the Company in the Relevant Period are likely to have had at least one or more of the following causes of action against the Company as at 27 June 2021 (being the Appointment Date of the Previous Liquidators):
 - a) for engaging in conduct in relation to financial services that was misleading or deceptive, or was likely to mislead or deceive, contrary to s 1041H(1) of the *Corporations Act 2001* (Cth) ("Corporations Act") ("Section 1041H Claims");
 - b) for, in trade or commerce, engaging in conduct in relation to financial services that was misleading or deceptive, or was likely to mislead or deceive, contrary to s 12DA(1) of the *Australian Securities and Investments Commission Act 2001* (Cth) ("ASIC Act") ("Section 12DA Claims");
 - c) for in, or in relation to, the provision of a financial service, engaging in conduct that was, in all the circumstances, unconscionable, contrary to s 991A(1) of the *Corporations Act* ("Section 991A Claims"); or
 - d) for, in trade or commerce, in connection with the supply of financial services to a person, engaging in conduct that was, in all the circumstances, unconscionable, contrary to s 12CB(1) of the *ASIC Act* ("Section 12CB Claims").
- 6 The Section 1041H Claims and Section 12DA Claims are together referred to as the Misleading or Deceptive Conduct Claims. The Section 991A Claims and Section 12CB Claims are together referred to as the Unconscionable Conduct Claims. The Misleading or Deceptive Conduct Claims and the Unconscionable Conduct Claims are referred to together as the "Former Customer Claims". This Investigation Report sets out the findings of the Liquidators' investigations and the factual basis for the Former Customer Claims.
- 7 As a result of the Former Customer Claims, the Former Customers may have claims against the Company for loss or damage caused by the Company pursuant to the following provisions:
 - a) section 1041I of the *Corporations Act* in respect of the Section 1041H Claims;

- b) section 991A(2) of the Corporations Act in respect of the Section 991A Claims; and
 - c) section 12GF of the ASIC Act in respect of the Section 12CB Claims and the Section 12DA Claims.
- 8 As a result of these findings, the Liquidators intend to bring an application in the Federal Court of Australia (“Court”) seeking directions under s 90-15 of the *Insolvency Practice (Corporations) Schedule* being Schedule 2 of the Corporations Act, to facilitate, among other things, an expedited regime regarding the adjudication of proofs of debt in respect of the Former Customer Claims. We will write separately to Former Customers regarding this application and the orders the Liquidators propose to seek.
- 9 Subject to the adjudication of the Former Customer Claims, the Liquidators also intend to make a demand on the Company’s ultimate holding company, Invesus Group Limited (a company incorporated in Gibraltar) (“Invesus”), under the letter of comfort that was provided by Invesus to the Company on 17 March 2019 (“Letter of Comfort”). Any such claim under the Letter of Comfort must be made before the Letter of Comfort expires on 30 June 2022.
- 10 This Investigation Report is structured as follows:
- a) Background to Letter of Comfort and Investigation Report.
 - b) Investigation methodology.
 - c) Findings in respect of Misleading and Deceptive Conduct Claims.
 - d) Findings in respect of Unconscionable Conduct Claims.
 - e) Conclusion.
 - f) Annexures.

3. Background to Letter of Comfort and Investigation Report

- 11 Our previous reports to creditors set out the background to the Letter of Comfort and the Australian Securities and Investments Commission’s (“ASIC”) investigation into the Company which commenced in around March 2019 (“ASIC Investigation”).

3.1 Letter of Comfort

- 12 Under the Letter of Comfort, Invesus has irrevocably undertaken in favour of the Company that it will provide financial support to the Company to meet any debts, including judgment debts, incurred by the Company in respect of its customers. We believe the Letter of Comfort is enforceable against Invesus in respect of the Former Customer Claims set out in this Investigation Report. Without in any way waiving legal professional privilege, we have through our solicitors, King & Wood Mallesons (“KWM”), obtained the advice of senior counsel regarding the enforceability of the Letter of Comfort. The Letter of Comfort expires on 30 June 2022, and so any demand the Liquidators wish to make of Invesus in respect of the Former Customer Claims must be made prior to 30 June 2022.

3.2 Investigation Report

- 13 The ASIC Investigation resulted in the Company, and its director, Schlomo Yoshai, admitting to various contraventions of the Corporations Act and ASIC Act, including contraventions of ss 991A and 1041H of the Corporations Act and ss 12CB and 12DA of the ASIC Act. These contraventions related to the Company offering members of the public opportunities to trade in margin foreign exchange instruments (“Margin FX”) and/or contracts for difference (“CFDs”) (together, the “Products”). As a result of the conduct of the Company and its representatives towards Former Customers during the Relevant Period in offering the Products, the Previous Liquidators formed a preliminary view that

Former Customers may have had claims against the Company as at the Appointment Date. Pursuant to s 553 of the Corporations Act, such claims are admissible in the winding up of the Company.

- 14 Although the Court made declarations in relation to the Company's contraventions of the Corporations Act and ASIC Act (see *ASIC v Forex Capital Trading Pty Ltd* [2021] FCA 570 ("Judgment")), the evidence on which the declarations were made are only admissible for the purposes of those proceedings (VID 467/2020) ("Contravention Proceedings"), and cannot be relied on by the Liquidators for different purposes (such as assessing the viability of the Former Customer Claims).
- 15 Therefore, in order to substantiate the Former Customer Claims, and allow them to be adjudicated so that a demand can be made of Invesus under the Letter of Comfort before 30 June 2022, the Liquidators have undertaken an investigation into the affairs, books and records of the Company in order to understand whether all Former Customers had one or more of the Former Customer Claims as at the Appointment Date. Given the investigations must be undertaken and the Former Customer Claims adjudicated prior to 30 June 2022, it has not been possible for the Liquidators to assess each Former Customer's dealings with the Company in detail. Consequently, this Investigation Report focuses on a representative subset of Former Customers who have already registered their potential claims against the Company. This subset of Former Customers is referred to as the "Selected Former Customers".
- 16 The methodology relating to the selection of the Selected Former Customers is set out in more detail in the following section.

4. Investigation Methodology

4.1 Introduction

- 17 The methodology used by the Liquidators as the basis for the Investigations that have been undertaken was prepared in close consultation with KWM. KWM prepared a number of briefing materials to assist the Liquidators in instructing their staff as to how to approach the Investigations, as well as attending several meetings with the Liquidators and key personnel to discuss the approach to the Investigations.
- 18 A bundle of the briefing materials prepared by KWM and shared with FTI staff are annexed to this report as **Annexure 1**.

4.2 Information available to be considered by the Liquidators

- 19 As explained earlier, the Liquidators must make any claim under the Letter of Comfort in respect of the Former Customer Claims by 30 June 2022.

Raw data

- 20 Since their appointment as liquidators of the Company, the Previous Liquidators, and the Liquidators have had access to the following information in relation to the affairs of the Company:
 - a) Approximately 2 terabytes of email and file data preserved from the Company's Melbourne Data Centre and "365" online platform. Based upon FTI's extensive experience in processing and reviewing large data populations, we estimate each GB of data represents 2,000 documents. On that basis, this represents approximately 4 million documents.
 - b) Approximately 6 terabytes of audio data identified within the Company's Melbourne Data Centre. Based upon our sampling of the audio data, the average hours per gigabyte of data loaded into Relativity is 19.14 hours. On that basis, this audio data represents approximately 115,000 hours of audio data.

- c) ASIC has also provided the electronic materials they held in relation to the ASIC Investigation. These materials were provided across 14 physical pieces of encrypted storage media. Although this information has been interrogated at a high level, the volume and quantity of this data set has not been assessed by the Liquidators.
- 21 The Liquidators' preliminary investigations demonstrated that between 28 June 2015 and the Appointment Date, the Company had in excess of 10,200 Customers who traded in the Company's Products. As a result of the Letter of Comfort expiring on 30 June 2022, the volume of information that has been provided to the Liquidators and the number of potential Former Customers who may have claims, the Liquidators have formed the view that it was not, and will not, be possible for the Liquidators to assess all of the Company's books and records in respect of each of the potential claims that Former Customers may have (including those outside the Relevant Period) before the Letter of Comfort expires. Rather, in order to discharge their duties to act in the best interests of the creditors of the Company and maximise the potential of a return to some creditors, the Liquidators have focused on investigating the conduct of the Company towards the Selected Former Customers and the Former Customers who were the focus of ASIC's investigations into the Company, and were the subject of the Judgment ("Judgment Customers"). The Liquidators intend to seek directions from the Court allowing them to admit all Former Customer Claims as a result of the findings set out in this Investigation Report in respect of the Selected Former Customers and Judgment Customers, without needing to individually adjudicate each of the Former Customer Claims ("Directions Application").
- 22 Further, the information available to the Liquidators in respect of the Former Customers who traded prior to the Relevant Period is largely incomplete and does not contain enough information about these Former Customers to allow for their potential claims to be investigated adequately. Based on the Liquidators' investigations to date, it appears the number of Former Customers who traded after 28 June 2015 (noting our data only goes back to 1 March 2016, excluding April 2016 (being the latest date a claim could have arisen to still be on foot as at the Appointment Date, and therefore admissible) and before 1 January 2017 is only 1,107. This represents approximately 9.9% of the total pool of Former Customers with potential claims.
- 23 Initially, the Liquidators were granted access to the Company's information stored in PROfits. However, Invesus subsequently revoked the access credentials of FTI staff to the PROfit system, and the Liquidators no longer have access to this information.

4.3 Rationale for Selected Former Customers

- 24 The Liquidators formed a view that it was appropriate to focus on the conduct of the Company during the Relevant Period, as, *prima facie*, Former Customers who invested with the Company are likely to at least have claims for loss or damage for Section 12CB Claims (see Judgment at [132]). To date, the Liquidators have had over 1,300 Former Customers with potential claims in the Relevant Period register their potential claims against the Company. To substantiate the Former Customer Claims, and to do so as efficiently as possible, the Liquidators chose the Selected Former Customers from the pool of Registered Former Customers. This ensured the Investigations were representative of the conduct experienced by all Former Customers during the Relevant Period, and that the contravening conduct by representatives of the Company ("Representatives") towards the Selected Former Customers was representative of the conduct of all Representatives during the Relevant Period.
- 25 In identifying Former Customers to comprise the Selected Former Customers, the Liquidators, on the information available to them, identified three objective characteristics of Former Customers which may have in some way influenced the conduct of the Company towards those Former Customers. These characteristics were:
- a) **Time Period:** Recognising it was possible conduct of the Company may have changed over time, the Liquidators considered it important to ensure the Selected Former Customers comprised Former Customers who traded with the Company at different points in time through the Relevant Period, as well as across the whole of the Relevant

Period. The time periods were determined by separating the Relevant Period (of 27 months) into three equal periods across the Relevant Period:

- i) only between 1 January 2017 and 30 September 2017;
 - ii) only between 1 October 2017 and 30 June 2018;
 - iii) only between 1 July 2018 and 1 April 2019; and
 - iv) throughout the duration of the Relevant Period;
- b) **Amount Invested:** Recognising the amount of money Former Customers may have invested may have influenced the conduct of the Company towards Former Customers, it was important the Selected Former Customers had different levels of loss exposure to the Company's Products. On that basis, the Selected Former Customers were chosen to span different amounts of loss, that would, in our view, have been representative of different levels of exposure as follows:
- i) less than \$5,000;
 - ii) between \$5,001 to \$20,000;
 - iii) between \$20,001 and \$100,000; and
 - iv) more than \$100,000.

The different tranches described above represent different levels of exposure, from those who have only made (and lost) an initial deposit (less than \$5,000), through to those Former Customers who have invested significant amounts of money, and are likely to represent Former Customers who may have invested superannuation savings or home loan equity to fund deposits into their trading accounts. The losses suffered by a Former Customer were capped at the amount of money the Former Customer deposited with the Company.

- c) **Trading Frequency:** The frequency with which a Former Customer traded with the Company may have impacted the way in which the Company interacted with that Former Customer. For instance, a Former Customer who was not trading frequently may have been targeted by Representatives to increase their trading frequency, whereas Former Customers who were trading frequently may have been targeted by Representatives with special incentives. In order to reflect this in the Selected Former Customers, we analysed the trading patterns of Former Customers and used the total number of trades by that Former Customer divided by that Former Customer's number of active trading months. This process delivered an approximation of a Former Customer's "Trading Intensity". Consistent with earlier groupings for the Time Period and Amount Invested metrics set out above, the Selected Former Customers were chosen from each of the four quartiles of total number of trades engaged in by Former Customers.

26 By applying each of the above three characteristics in combination, there are up to 64 possible unique combinations of the characteristics. In some instances, there was a unique Former Customer who met the three criteria in a particular way. Where there was more than one Former Customer who met a combination of criteria, a random number generator was used to randomly select a Former Customer to be a Selected Former Customer with those characteristics.

27 Using this methodology, it was possible to identify and select 58 Former Customers to comprise the Selected Former Customers. There were some combinations of these objective characteristics for which there was no Former Customer. These combinations are as follows:

- a) the amount invested was between \$20,000 to \$100,000, traded solely in the first period and was in the bottom quartile for trade volume;

- b) the amount invested was greater than \$100,000, traded solely in the first period and was in either the bottom or middle-lower quartile for trade volume;
 - c) the amount invested was greater than \$100,000, traded solely in the middle period and was in the bottom quartile for trade volume;
 - d) the amount invested was greater than \$100,000, traded solely in the last period and was in the bottom quartile for trade volume; and
 - e) the amount invested was greater than \$100,000, traded across the entire period and was in the bottom quartile for trade volume.
- 28 The “missing” categories of Former Customer largely relate to combinations where the Former Customer would need to have been in the highest band of Amount Invested, while simultaneously being in the lowest quartile of Trading Intensity. From what we have observed to date, it appears most, if not all, Former Customers who invested significant sums made a number of small deposits and also had a high Trading Intensity. Therefore, it is not surprising to find there are no examples of Former Customers who incurred significant losses, but only traded infrequently. In our view, this does not undermine the methodology used to select the Selected Former Customers.
- 29 The Selected Former Customers have been drawn from the Former Customers who lost money by trading with the Company. Of the 11,174 Former Customers, the books and records of the Company show that during the Relevant Period 7,250 Former Customers lost money, while only 1,176 Former Customers made a net profit by trading with the Company (2,748 Former Customers broke even). Based on the conduct of the Company that has been identified in this Investigation Report, those Former Customers who have made a net profit while trading with the Company may still have claims against the Company for loss or damage caused by the conduct of the Company (i.e. as a result of being pressured to avoid making a withdrawal from the Company and subsequently losing the amount of money that was to be withdrawn). However, these claims are more complex and require substantiation on an individual basis. Former Customers who may be in this category will be invited to submit proofs of debt along with any substantiating materials.

4.4 The Judgment Customers

- 30 The Liquidators also included the Judgment Customers in the pool of Former Customers in the Investigations. The Judgment Customers were the eight Customers put forward by ASIC to substantiate its claims against the Company in the Proceedings following the initial ASIC Investigation. Relevantly, the Judgment Customers are eight Former Customers who:
- a) have losses ranging between \$0 and \$366,650 (and in every tranche of losses set out above);
 - b) traded across the entire Relevant Period (and in each of the time periods set out above);
 - c) traded intensively (but include examples of at least one Former Customer in each of the top three trade intensity quartiles set out above);
 - d) have incomes ranging between less than \$50,000 to between \$100,000 to \$249,999; and
 - e) have ages ranging between 43 and 76.

4.5 General characteristics of the Former Customers

- 31 In assessing the factual basis of the Unconscionable Conduct Claims it was important to establish the general characteristics of Former Customers that are relevant in assessing the appropriateness of conduct towards them, and any special vulnerabilities they may have as a group. When creating an account with the Company, Former Customers were invited to provide certain information about themselves regarding their qualifications and experience with

trading in the types of financial products similar to those offered by the Company (the “Suitability Assessments”). This information included questions regarding:

- a) income.
- b) age.
- c) whether the Former Customer had previous experience in trading OTC margin products or exchange traded derivatives.
- d) whether the Former Customer had attended any educational seminars or courses on financial products similar to those offered by the Company.
- e) whether the Former Customer had any relevant work experience that would give them a good understanding of leverage, margin, volatility and other “qualification criteria”.
- f) whether the Former Customer has any professional or academic qualification that would give them a good understanding of leverage, margin, volatility and other “qualification criteria”.

32 The Company’s books and records only contained responses regarding age and income information from roughly 2,200 Former Customers, and only approximately 1,800 responses in relation to the Suitability Assessments. A detailed comparison of the relevant demographic and qualification statistics of the Selected Former Customers compared to the same statistics for the body of Former Customers has been prepared in order to ensure the Selected Former Customers are broadly representative of the Former Customers more generally. This analysis has been summarised in **Annexure 2**.

33 In summary, it appears Former Customers have the following characteristics:

- a) **Income:** a weighted average income of approximately \$92,270.
- b) **Age:** an average age of 47.
- c) **Experience in trading Products:** more than 75% of Former Customers had never or rarely traded in financial products similar to the Products offered by the Company.
- d) **Education about Products:** only 28% of Former Customers had attended any sort of course relating to Products in the previous 2 years.
- e) **Relevant Work Experience:** less than 20% of Former Customers had relevant experience from within the last 10 years that assisted them in understanding the Products.
- f) **Relevant Qualifications:** nearly 75% of Former Customers did not have any relevant professional or academic qualifications to assist them in understanding Products.

34 Further, as Middleton J observed in the Judgment at [151]:

I accept that the affected clients were vulnerable in that they had little or no trading experience of trading in derivatives, and generally did not have any relevant professional or educational qualifications in relation to complex financial products, which was known to Forex CT. Some of the individual customers were in circumstances of financial stress, and some were, at times, relying on credit or superannuation savings to fund deposits to their trading accounts.

35 Based on the Company’s books and records and our investigations, including the characteristics as summarized above, we agree with this general observation about the Former Customers.

4.6 Telephone review methodology

- 36 In preparing this Investigation Report, the Liquidators have reviewed 113.96 hours of phone calls (being 686 individual phone calls) between the Company's Representatives and the Selected Former Customers. The Liquidators have had access to 1,420 recorded telephone calls that relate to 32 of the Selected Former Customers. This initial batch of calls was reduced by excluding 698 telephone calls that were less than 1 minute (which either rang out or went to voicemail), and calls with three Selected Former Customers that were in Chinese and were not capable of being reviewed (36 calls).
- 37 Although there are 58 Selected Former Customers for the purposes of the Investigation Report, it is important to note that despite their best endeavours, the Liquidators were only able to identify telephone records in respect of 32 of the Selected Former Customers (including three in Chinese). The majority of telephone records relied on by the Liquidators were provided by ASIC. As the ASIC Investigation was predominantly focused on investigating the misconduct toward Former Customers who had lost over \$10,000, the telephone recordings, particularly in respect of the Former Customers who have lost less than \$10,000 were either missing or incomplete. Of the 26 Selected Former Customers without telephone records, 19 Selected Former Customers have losses of less than \$10,000.
- 38 Notwithstanding this apparent information gap, the Liquidators remain satisfied their conclusions, which are based on qualitative assessments of the telephone recordings set out in this Investigation Report, remain applicable to all Selected Former Customers, and in turn all Former Customers. The Liquidators have reached this view on the basis of the following:
- a) over the Relevant Period there were 97 unique Representatives of the Company assigned to manage the Selected Former Customers, representing nearly half of the 209 Representatives employed by the Company over the Relevant Period;
 - b) Representatives received on either a daily or weekly basis an "Alerter" email that set out their work plans for the day/week, and which set out which Former Customers should be contacted;
 - c) Alerter emails characterised Former Customers into four different categories as to why they were being contacted:
 - (i) **"1-Give Offer and follow up"** - where the Representative was to call the Former Customer and offer them credit or bonuses to encourage further deposits. These were typically Former Customers with equity in their account and trading regularly.
 - (ii) **"2-Assist with info and training according to the KPI"** – where the Representative was to call the Former Customer and offer them further information and training in order to "improve" the Former Customer's trading as per the KPIs (i.e. placing at least 3x trades per day, or increasing the equity in the account to facilitate larger trades). These were typically Former Customers with some equity in their account, but where they were not trading as often as the Company would have liked.
 - (iii) **"3- Confirm why, train and assist"** – where the Representative was to call the Former Customer to encourage them to place a trade, or encourage further deposits. These were typically Former Customers who had some equity in their account, but where they had not traded or deposited in over a week.
 - (iv) **"4-Train assist and support give offer for reload"** – where the Representative was to call the Former Customer and offer them incentives to make a further deposit to the Company. These were typically Former Customers who had low, zero, or negative equity in their account and who had not traded for some period of time.
 - d) every Selected Former Customer who the Liquidators did not have telephone recordings for are listed as a targeted Selected Former Customer in at least one "Alerter" email, along with a Selected Former Customer the Liquidators

have reviewed telephone records of (i.e. the same Representative would have made a call to both Selected Former Customers); and

- e) given the volume of calls expected to be made by Representatives, and the scripts provided to Representatives, the Liquidators believe the conduct of Representatives is reflective of the types of strategies (both in terms of content and frequency) that would have been visited upon all Former Customers.

- 39 These phone calls were exported and uploaded into a Relativity database controlled by the Liquidators, which is a document management system commonly used in investigations of this nature to house large volumes of material. A plugin called “Amazon Transcribe” was utilised to provide a computer translation of the telephone calls. This was used to allow the telephone calls to have search strings applied to them in order to assist with identifying potentially relevant recordings. As Amazon Transcribe is an uncalibrated and “off the shelf” product, it has relatively limited accuracy. In this Investigation Report where relevant parts of phone calls have been transcribed, they have been manually transcribed by staff listening to the recording.
- 40 The telephone review methodology involved junior staff employed by the Liquidators conducting a “tier one review” by listening to all phone calls and identifying potential instances of either misleading or deceptive conduct or unconscionable conduct. As set out above in paragraph 36, this review did not include phone calls that had an indicative timeframe of less 1 minute, as a preliminary review of these recordings illustrated these phone calls were either unanswered or went to voicemail. The junior staff conducting these reviews recorded their findings in a spreadsheet that set out an identifying timestamp of potential misconduct and a brief description of the misconduct. These findings were then passed to more senior staff employed by the Liquidators who then conducted a “tier two review” of the phone calls by confirming the instances of the wrongful conduct. The transcript of the relevant part of the phone call was then extracted and placed in a table summarising instances of conduct by the Representatives that demonstrate the existence of the Former Customer Claims.
- 41 Based on the telephone reviews, we also made the following general observations about the conduct of the Company:
- i) Once a Former Customer liquidated or was close to liquidating, their Representative was usually switched to someone else. The new Representative often made comments similar to “this is my specialty” and “this would never have happened if you were my client”;
 - ii) There was no consistency with the incentives/credit/bonuses offered to Former Customers. One Former Customer was told they would receive a 100% credit on a \$10,000 deposit, while Former Customers were told they can only receive a 50% credit on a \$10,000 deposit, and a 100% credit on anything above \$10,000.
 - iii) Representatives often pushed Former Customers to put on higher trade positions (i.e. increase their equity that was being used to trade) up to a point where the Former Customer had to put in more money otherwise their margin would have become too small and they were then at risk of liquidating their account.
 - iv) There was a general lack of general advice warnings in the calls, and when they were given (rarely), they were incomplete or inaccurate summaries of a general advice warning.
- 42 A detailed report into the findings of the telephone review is annexed to this Investigation Report as **Annexure 3**. Specific findings in relation to the telephone review are set out in this Investigation Report.

4.7 Documents and other supporting materials

- 43 The Liquidators have also had regard to a variety of other documents and supporting materials of the Company that are of general application to Former Customers. Access to these materials was facilitated through the Court Book prepared for the Contravention Proceedings and the books and records of the Company generally. These materials include:

- a) entries in the Company's customer relationship management system ("CRM System");
- b) the Company's code of conduct for employees (such as Representatives);
- c) the Company's disclosure materials such as client agreements and product disclosure statements (as updated from time to time);
- d) the Company's remuneration and bonus policies for Representatives (as updated from time to time);
- e) internal emails and correspondence regarding performance incentives and bonuses for Representatives;
- f) the Company's KPI documents and performance management protocols for Representatives;
- g) the training materials provided by the Company to Representatives and guidelines to be followed around interactions with Former Customers;
- h) the Company's policies and documents in relation to issues of compliance and governance; and
- i) correspondence between the Company and third parties regarding generating leads for customers.

44 A memorandum setting out the Liquidators findings in relation to these documents has been included with this report as **Annexure 4**. Specific findings in relation to the document review are set out in this Investigation Report. Annexure 4 also includes a bundle of documents that provides an example of each of the different types of documents that were referred to or considered when compiling the report. The documents have been redacted to remove personal information of individuals involved in the conduct of the business of the Company (such as names or contact information). This information has not been redacted where the conduct of the individual has already been made publicly available, including in related court proceedings.

5. Findings in respect of Misleading or Deceptive Conduct Claims

45 Based on the Investigations into the conduct directed towards the Selected Former Customers, including the telephone review ("Targeted Investigations"), and the review of the other information available regarding the Company's policies, processes and procedures ("General Investigations"), the Liquidators have formed a view that all Former Customers during the Relevant Period would, assuming causation, be able to establish the factual basis for both Section 1041H Claims and Section 12DA Claims against the Company.

5.1 Elements of Misleading or Deceptive Conduct Claims

46 Section 1041H(1) of the Corporations Act prohibits conduct, in relation to a financial product or service, that is misleading or deceptive, or is likely to mislead or deceive. It states:

A person must not, in this jurisdiction, engage in conduct, in relation to a financial product or a financial service, that is misleading or deceptive or is likely to mislead or deceive.

(Notes omitted.)

47 Similarly, section 12DA of the ASIC Act prohibits conduct of the same kind, in trade or commerce, in relation to financial services. It states:

A person must not, in trade or commerce, engage in conduct in relation to financial services that is misleading or deceptive or is likely to mislead or deceive.

48 In order to establish a breach of these sections, an individual must satisfy each element of the above provisions. The relevant elements for misleading or deceptive conduct are that a person has:

- a) engaged in *conduct*;

- b) in relation to *financial services* (or, additionally, *financial products* under s 1041H of the Corporations Act); and
 - c) that was misleading or deceptive or was likely to mislead or deceive.
- 49 A person will engage in conduct where, for example, that person makes representations as to a state of affairs: *Campbell v Backoffice Investments Pty Ltd* (2009) 238 CLR 304, 341-342 (Gummow, Hayne, Heydon and Kiefel JJ).
- 50 The term financial services relevantly refers to providing financial product advice, or dealing in financial products: s 766A(1) Corporations Act; s 12BAB(1) ASIC Act. A product is a financial product where it involves the investor giving money to another person, intending that the other person will use the money to generate a financial return, even if no return or benefit is in fact generated (i.e., the making of a financial investment): s 1023B Corporations Act; s 12BAA(1),(4) ASIC Act.
- 51 As to whether conduct is misleading or deceptive or is likely to mislead or deceive, the central question is whether the impugned conduct, viewed as a whole, has a sufficient tendency to lead a person exposed to the conduct into error (that is, to form an erroneous assumption or conclusion about some fact or matter): *Parkdale Custom Built Furniture Pty Ltd v Puxu Pty Ltd* (1982) 149 CLR 191, 198 (Gibbs CJ). This question is to be answered with the following principles in mind:
- a) As to the threshold that must be met, there must be a real and not remote risk of its doing so: *Australian Securities and Investments Commission (ASIC) v Camelot Derivatives Pty Ltd (in liq)* (2012) 88 ACSR 206.
 - b) There is no requirement that the representation or conduct was intentionally misleading or deceptive, or was made negligently: *Parkdale Custom Built Furniture Pty Ltd v Puxu Pty Ltd* (1982) 149 CLR 191 at 197–198.
- 52 Whether conduct is misleading or deceptive or is likely to mislead or deceive is to be assessed objectively, and in the context of all the evidence and surrounding circumstances, including the nature of the parties, the character of the transaction contemplated and the contents of any relevant documents: *Butcher v Lachlan Elder Realty Pty Ltd* (2004) 218 CLR 592, 605 [40] (Gleeson CJ, Hayne and Heydon JJ).

5.2 Previous findings in relation to Misleading or Deceptive Conduct Claims

- 53 In the Judgment, the findings in relation to Misleading or Deceptive Conduct Claims were largely based on findings that the Company, or its Representatives made the following representations to Former Customers (Judgment, [65]):
- a) the interests of Forex CT or its representatives were aligned with the interests of the customer (“Interests Aligned Representation”);
 - b) the representative did not benefit from the customer’s deposit of funds into the customer’s trading account with Forex CT (“No Personal Benefit Representation”);
 - c) the risk of trading losses would be reduced if further funds were deposited in the customer’s trading account with Forex CT (“Risk Representation”);
 - d) the customer was likely to or might reasonably expect to generate profits by trading in Margin FX or CFDs in the order of magnitude indicated by the Representative (“Profit Representation (General)”) and in some instances by reference to a particular trading position or strategies identified by the Representative (“Profit Representation (Specific)”); and / or
 - e) it was in the best interests of the customer to make a particular trade or to deposit additional funds (“Best Interests Representation”).
- 54 In the context of the Company, the above representations made by Representatives were false, and were misleading or deceptive, or likely to be misleading or deceptive. They are referred to in this Investigation Report as the

“Misrepresentations”. As set out in our findings below, at least one of the above Misrepresentations were made to each of the Selected Former Customers on one or more occasions. Certain Misrepresentations, such as the Risk Representation and the Profit Representation (General), were also included in the Company’s standard scripts that were provided to Representatives.

5.3 Findings of Targeted Investigations

- 55 In respect of the Selected Former Customers, the Liquidators found, in all instances, examples of conduct by Representatives to Selected Former Customers that was misleading or deceptive, or was likely to mislead or deceive, contrary to section 1041H of the Corporations Act and section 12DA of the ASIC Act (“Misleading or Deceptive Conduct”). This is because the Liquidators have identified that the Company made at least one of the Misrepresentations to each and every Selected Former Customer on at least one occasion. A summary of the results of the Targeted Investigations and the Misrepresentations being made to the Selected Former Customers is contained in **Annexure 5**. By way of overview, of the 32 Selected Former Customers for whom we have telephone records and have been able to listen to the calls between them and the Representatives:
- a) 16 Selected Former Customers received at least one phone call in which a Representative made an Interests Aligned Representation;
 - b) 5 Selected Former Customers received at least one phone call in which a Representative made an No Personal Benefit Representation;
 - c) 26 Selected Former Customers received at least one phone call in which a Representative made a Risk Representation;
 - d) 26 Selected Former Customers received at least one phone call in which a Representative made a Profit Representation (General);
 - e) 15 Selected Former Customers received at least one phone call in which a Representative made a Profit Representation (Specific); and
 - f) 21 Selected Former Customers received at least one phone call in which a Representative made a Best Interests Representation.
- 56 Based upon the telephone calls, where there was sufficient information able to be identified in respect of the Selected Former Customers, the Targeted Investigations have, where there has been sufficient information to allow investigations to be conducted, confirmed all Selected Former Customers received one or more of the above Misrepresentations.
- 57 In respect of those Selected Former Customers where there were no phone calls to review (for the reasons explained in section 4.6 above), the Liquidators have, based on the information available to them, still formed a view that these Selected Former Customers will have still had at least one of the Misrepresentations made to them through their interactions with the Company’s Representatives.
- 58 Although the Targeted Investigations identified myriad examples of Misleading or Deceptive Conduct, there are several instances of egregious misconduct that should be highlighted:

Interests Aligned Representation

- a) Stating the Representative only wants to help and wants what is best for the customer (FOR.0001.0002.0451). This Former Customer subsequently deposited money with the Company and lost \$154,000 over a 5-month period.

- b) Telling a customer “I just want to protect you my friend” (FOR.0001.0002.0397). This Former Customer subsequently deposited \$1,000 with the Company on the same day, and lost \$171,500 trading with the Company over a 4 month period.

No Personal Benefit Representation

- c) Telling customers that it is in the Representative’s best interests for the investor to do well as their success is directly tied to one another (FOR.0001.0002.0705). This Former Customer subsequently deposited money with the Company and lost \$17,200 over a 4-month period.
- d) The Representative stating that they were paid on performance and therefore it was not in their interests to make sure the client did not do well and that a customer’s trading did not impact the Representative either way (FOR.0001.0002.0427). This Former Customer subsequently deposited money with the Company and lost \$59,350 over an 8-month period.
- e) Misrepresenting the Company’s business model and stating that the Company acted as an intermediary between the buyer and seller to the trade (FOR.0001.0001.0226). This Former Customer subsequently deposited \$15,000 with the Company the next day and ultimately lost \$33,900 over a 3-month period.
- f) The Representative that the Company only made money as a result of the spread on the trade, and that the Company only makes about \$3 per trade (FOR.0001.0002.0695). This Former Customer subsequently deposited money with the Company and lost \$15,331 over a 4-month period.

Risk Representation

- g) Indicating that a higher margin will be safer and a way to protect equity in the account (FOR.0001.0002.015). This Former Customer subsequently deposited money with the Company and lost \$21,000 over a 3-month period.
- h) Stating that a Former Customer needed to be trading with at least \$200,000 in order to minimise risk (FOR.0001.0002.0824). This Former Customer ultimately deposited with the Company and lost \$9,900 over an 8-month period.
- i) Misrepresenting the level of risk in transactions by stating “9/10 you are making money on this trade” (FOR.0001.0001.0248). The Former Customer deposited \$10,000 on the same day and ultimately lost \$33,900 over a 3-month period (same Former Customer as (e) above).
- j) The best way out of debt is to trade your way back out (FOR.0001.0001.0128). The Former Customer deposited \$5,000 on the same day and their account was liquidated 8 days later. They did not return to trading and ultimately lost \$42,000 over a 3-month period.

Profit Representation (General)

- k) Indicating that previous clients who were in a similar situation and had liquidated were now trading again (FOR.0001.0002.0824). The Former Customer subsequently deposited money with the Company and lost \$9,900 over an 8-month period.
- l) Indicating to a Former Customer that they would be able to earn an income by trading in the Products (FOR.0001.0002.0587). The Former Customer subsequently deposited money with the Company and lost \$80,749 over a 2-month period.

Profit Representation (Specific)

- m) Stating a particular trading strategy would guarantee a return of 10% per month (FOR.0001.0001.0073). The Former Customer subsequently deposited money with the Company and lost \$24,543 over a 2-month period.

- n) Telling a Former Customer that they had the chance to “make a fortune” (FOR.0001.0002.0684). The Former Customer subsequently deposited money with the Company and lost \$33,000 over a 4-month period.
- o) Stating that some clients are making \$5,000 a day with a particular trading strategy (FOR.00001.0001.0031). The Former Customer subsequently deposited money with the Company and lost \$17,200 over a 4-month period (same Former Customer as (c) above).

Best Interests Representation

- p) Stating to a Former Customer that “if you have good capital, you have better chances of bigger trades and less exposure” (FOR.0001.0002.0868). The Former Customer subsequently deposited money with the Company and lost \$36,318 in an 18-month period.
- q) It is in your best interests to put all of your income and your pay checks into your trading account as it doesn’t cost money to have it sitting in your trading account and makes it less likely you will have a margin call if you have lots of equity sitting in your account (FOR.0001.0001.0493). The Former Customer subsequently deposited money with the Company and lost \$154,000 in a 5-month period (same Former Customer as (a) above).
- r) Delaying a withdrawal from an account was in the best interests of the customer (FOR.0001.0002.0673). The Former Customer cancelled their withdrawal request. The Former Customer lost \$2,637 over a 10-month period.

59 Some specific examples of the Misrepresentations being made are as follows:

Profit Representation (General)

Representative: Yeah. Let me tell you something, [Former Customer]. Um, regarding the trades, I tell you, I've got a client that makes 10 to about 20 grand per day, regardless, as in, like, he makes it that- that margin. Um, now I can say to clear- I'll say this pretty confidently, that if you started with me with \$150 (thousand) then there would've been a different story right now. Totally different story... Um, now, in regards to what- obviously, [other Representative], he, um he asked me to take you over to my portfolio. It was obviously a specific reason. My speciality is helping clients recoup previous amounts. I've had a client made about \$380,000 loss on their portfolio before they came onto my portfolio. I'm not saying I'm a wizard or a magician, but in four months' time, yeah, I'm not saying that I am, but I'm saying four months' time, four months after that, he made half a million...

This Former Customer subsequently deposited money with the Company and lost \$154,000 over a 5-month period.

Best Interests Representation / Profit Representation (General) / Risk Representation:

Representative: It will take a little deposit from you, a little bit of a deposit from your side to extend your account equity. Okay? Essentially you're buying time, okay. You're buying another month and you're waiting for it to turn, okay? Ideally okay, it's probably gonna cost you...probably gonna cost you 20 grand, okay?

[Former Customer Sighs]

Representative: But you're gonna be saving 50

Former Customer: Nah, yeh nahhh. Look mate...Look mate... (repeats) I'm sorry now I'm getting really, every time I seem to speak to one of you guys it always is 'put money in', what do you think I am, a bank? You know, its just. No chance sorry.

Representative: I'm trying to save you losing 50, that's what I'm trying to do.

...

Representative: I'm giving you the best way to get out of it, now I'm going...

Former Customer: You've already asked me for more money and that's not what I'm going to be doing.. (cut off)

Representative: This is your way out [Former Customer],

Former Customer: Yeh....

Representative: This is your way out, I mean weigh it up, putting in 10 that you can withdraw later, or losing 50. Okay. I mean it's pretty simple to me.

Former Customer): It's still the same, it's still the same scenario mate. I could lose it 10, like I said, I don't need to make money anyway it doesn't, that doesn't. Like I said, If it is, it is what it is, if you can't help me.

Representative: In 2 or 3 days you've already lost 50, you may as well try and extend that by 10, try and get it to turn, okay. And then go for that, imagine, imagine if it turned and you're up 20 to 30 grand, that's a 80 grand turnaround, for what, the 10 that you put in. it's a no-brainer for me.

Profit Representation (General), Best Interests Representation, Risk Representation

Representative: Just, uh, just wanted to say give them a call and find out exactly what it is. I really wanna get you on this because I think you know you in particular need to do something like this. So I'm gonna do everything that I can to the absolute best deal in terms of credits and the special credit as well ah, to help you help you make back that, all of that money that you lost.

This Former Customer then deposited more money with the Company, and ended up losing \$80,749 over a 2-month period.

- 60 Further, more detailed examples of misleading or deceptive conduct identified in the telephone review, and the resulting consequences for the Selected Former Customer, are set out in **Annexure 3**.
- 61 In summary, the Liquidators observed that in their dealings with the Company, all Selected Former Customers received multiple phone calls containing at least one of the above types of Misrepresentations. Invariably, these Misrepresentations were made in the context of trying to encourage the Selected Former Customers to increase the size of their deposits, enter into particular trades, or discouraging, delaying or deferring the Selected Former Customer from making a withdrawal from their account. In particular, the Liquidators have observed a high number of phone calls in which the Representatives made repeated Best Interests Representations by making baseless assertions as to what was in a Former Customer's best interests, Risk Representations, by telling Former Customers there were ways to make trades risk free and Profit Representations (Specific), by telling Former Customers that certain profits could be guaranteed or that certain positions would definitely generate a profit for the Former Customers.
- 62 As demonstrated in paragraphs 58 and 59 above, the Misrepresentations had the effect of encouraging and causing (among other things) the Selected Former Customers to make deposits with the Company, to place certain trades that resulted in losses being incurred, and the Selected Former Customers from delaying, deferring or cancelling their withdrawal requests. The only instances in which the Misrepresentations did not have this effect was when a Selected Former Customer ceased trading with the Company, although from what we have observed, this usually only occurred when a Selected Former Customer's account was liquidated (and had a balance of \$0).
- 63 Our Investigations therefore support a conclusion that all Selected Former Customers, and in turn all Former Customers, would be able to establish that the Company engaged in conduct (in trade or commerce / in relation to a financial product) that was likely to mislead or deceive.

5.4 Findings of General Investigations

- 64 The Liquidators have also identified a number of documents or scripts supporting a conclusion that the Company encouraged Representatives to make the Misrepresentations to Former Customers. Examples of this include:

Risk Representation / Profit Representation (General)

- a) In the Employee Key Concepts Document (FCT.2003.0006.7465) the “Capital Management” script suggests Representatives use the following phrase:

“In fact, you are more likely to lose money in the market with \$500 or \$1,000 than \$10K or \$20K aren’t you?” (at .7475)

- b) In the Employee Key Concepts Document the “Asking for a Deposit” script suggests Representatives use the following phrase:

“Unfortunately on an account of this size that is something you must do but it often causes what I like to call a death of a thousand cuts” (at .7476)

- c) In the Employee Key Concepts Document the “Withdrawal” script suggests Representatives use the following phrase:

“Talk about the advantages of compounding. The majority of successful customers will trade on a 6 or 12 months cycle to take advantage of compounding between withdrawal of profits” (at .7476)

Best Interests Representation

- a) In the “Margin Call” document (FXC.010.001.0013), Representatives were trained to use Margin Calls (when a Former Customer’s account equity dropped below a level that would allow them to keep a particular position in a Product open unless the position was closed or additional equity was placed in the account) as an opportunity to elicit further deposits from Former Customers, by telling them it was in their best interests to avoid the margin call by holding their positions open, closing their open positions or hedging their positions, all of which would require the Former Customer to make deposits to their account.
- b) In the “Trading Services Daily Work Flow” document (FXC.010.001.0063), Representatives were encouraged to call Former Customers if there was a withdrawal request, and ask questions such as “Are you aware you will lose your Deposit Credit Bonus when you withdraw?” and “Do you actually need the money?” do suggest to the Former Customer that cancelling the withdrawal would ultimately benefit the Former Customer.

- 65 These examples demonstrate the Company encouraged Representatives to make Misrepresentations to Former Customers through the scripts. Further, as a result of these Misrepresentations, Former Customers are likely to have increased the size of their deposits with the Company, and in turn, increased their losses. As set out in paragraphs 58 and 59, the telephone review has demonstrated that not only were these scripts and tactics implemented by the Representatives, but they also had the impact of causing Former Customers loss or damage.

- 66 The documents referred to in paragraph 64 are included in the bundle of documents provided with **Annexure 4**.

5.5 Conclusion on Misleading or Deceptive Conduct Claims

- 67 The Liquidators have therefore formed a view that each of the Former Customers of the Company would be able to establish the Company engaged in conduct that was misleading or deceptive, or likely to mislead or deceive, and breached s 1041H of the Corporations Act and s 12DA of the ASIC Act. As a result, the Liquidators have formed a view Former Customers would, in turn, have valid claims against the Company for loss or damage pursuant to s 1041I of the Corporations Act or s 12GF of the ASIC Act as a result of these contraventions.

6. Findings in respect of Unconscionable Conduct Claims

68 Based on the Targeted Investigations and General Investigations undertaken, the Liquidators have formed a view that all Former Customers during the Relevant Period would be able to establish the Section 991A Claims and Section 12CB Claims against the Company, and in turn, have valid claims for loss or damage as a result of the Unconscionable Conduct Claims.

6.1 Elements of Unconscionable Conduct Claims

69 Section 991A(1) of the Corporations Act and s 12CB of the ASIC Act each prohibit engaging in conduct that is, in all the circumstances, unconscionable.

70 Section 991A(1) of the Corporations Act states:

A financial services licensee must not, in or in relation to the provision of a financial service, engage in conduct that is, in all the circumstances, unconscionable.

71 Section 12CB of the ASIC Act relevantly states:

(1) *A person must not, in trade or commerce, in connection with:*

(a) *the supply or possible supply of financial services to a person; or*

(b) *the acquisition or possible acquisition of financial services from a person; engage in conduct that is, in all the circumstances, unconscionable.*

72 In order to establish a breach of these sections, an individual must satisfy each element of the above provisions. The relevant elements for contravening these provisions are that a person has:

- a) engaged in *conduct* (or, additionally, *supply* or *possible supply* under section 12CB of the ASIC Act);
- b) in relation to *financial services* (or *financial products* or *financial services* under s 1041H of the Corporations Act); and
- c) that was in all the circumstances, *unconscionable*.

73 As to engaging in *conduct*, the law stated at paragraph 49 is applicable here. As to *supplying* or *possibly supplying*, this includes circumstances where the financial service was, in fact, supplied, and where the financial services were ultimately not supplied: *ASIC v Australian Lending Centre Pty Ltd* [2012] FCA 43, [176].

74 As to the meaning of financial services and financial products, the law stated at paragraph 50 is also applicable here.

75 Whether conduct is *unconscionable* is assessed objectively, by asking whether what is being done is being done in good conscience, as guided by the human values that inform an Australian business conscience: *Australian Competition and Consumer Commission v Quantum Housing Group Pty Ltd* [2021] FCAFC 40, [87] (Allsop CJ, Besanko and McKerracher JJ). Relevant factors to be considered *may* include (s 12CC(1) ASIC Act):

- a) the relative strengths of the bargaining positions of the supplier and the customer;
- b) whether the customer was able to understand any documents or information provided to them;
- c) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the customer;
- d) the extent to which the supplier unreasonably failed to disclose to the customer any intended conduct of the supplier that might affect the interests of the service recipient;
- e) the extent to which the supplier acted in good faith;

- f) the supplier's compliance with any applicable industry codes or guidelines; and
- g) the taking advantage of a lack of understanding or experience.

76 The above list is not exhaustive, and there is no requirement that each of these factors be satisfied. Rather, they provide a useful indication as to whether unconscionable conduct has occurred.

6.2 Previous findings in relation to Unconscionable Conduct Claims

77 In the Judgment, the findings in relation to Unconscionable Conduct Claims were largely based on findings that the Company, or its representatives had engaged in the following types of conduct:

- a) the Company had breached s 991A of the Corporations Act and s 12CB by providing financial product advice to, and dealing in financial products with, each of the Judgment Customers in circumstances where:
 - i) each of the Judgment Customers had no prior experience, or limited prior experience, in trading in the Products;
 - ii) it ought to have been reasonably apparent from the conversations between each of the Judgment Customers and the Representatives that the Judgment Customers did not adequately understand the Products and the risks inherent in them, and was heavily reliant on the advice and recommendations of the Representatives and were therefore at a disadvantage in dealing with the Company as the counterparty to each transaction in relation to the Products;
 - iii) the Representatives did not conduct thorough assessments of the Judgment Customers' objectives, financial situations and needs to determine whether the Products were appropriate;
 - iv) the Judgment Customers informed the Company they had limited financial resources;
 - v) the Company engaged in Misleading or Deceptive Conduct (by making the Misrepresentations);
 - vi) the Company employed unfair tactics by:
 - A) providing advice to each customer to place more trades or to place bigger trades, with the consequence of creating a "margin call" situation for the customer that could then be used by the Company to elicit a further deposit from the customer to the customer's trading account to avoid liquidation of the customer's account;
 - B) providing advice to each customer to engage in trading strategies that exposed that customer to a risk of loss that was materially greater than if the customer had not adopted that strategy;
 - C) responding to requests by each customer to withdraw funds from their trading account in a way that was intended to delay or prevent the withdrawal;
 - D) using sales tactics such as offering incentives (credits and rebates) to encourage the customer to transfer more money to their trading account before a certain time, even after the customer had told the account manager that they could not afford to invest more money, or were reluctant to do so;
 - E) placing pressure on the customer in lengthy and/or multiple telephone conversations to open additional positions, or to deposit further funds to the customer's trading account;
 - F) receiving financial benefits when the customer incurred financial losses on positions that the Company had advised the customer to open;

- G) recommending strategies that were inappropriate to the customer, such as placing more trades or trading with greater volume, leaving open trades that were in a loss, and using a credit card to fund further deposits to the customer's Forex CT trading account;
- H) in respect of certain Judgment Customers only, advising those customers who had already incurred a loss to deposit further funds in the customer's trading account in order to be able to open further trading positions and thereby recover some or all of the customer's losses;
- vii) the Company implemented an employee remuneration scheme that rewarded account managers according to, amongst other things, their customers' net deposits, which created a conflict between the interests of the customers and the interests of account managers,

such that the Company had engaged in conduct in connection with the supply or possible supply of financial services that was in all of the circumstances unconscionable, in contravention of s 991A of the Corporations Act and s 12CB of the ASIC Act; and

- b) the Company, engaged in an unconscionable system of conduct in contravention of s 12CB of the ASIC Act by:
 - i) engaging in the conduct described above;
 - ii) facilitating trading in the Products;
 - A) in circumstances where many of the customers of the Company did not have a sufficient understanding of the nature of the Products and the risks inherent in them, and were reliant on the advice and recommendations of the Representatives; and
 - B) without conducting a thorough assessment of the customer's objectives, financial situation and needs to determine whether the Products were appropriate for the customer;
 - iii) providing inadequate or inappropriate training and guidance to Representatives, including:
 - A) training Representatives to use the fact a client was in a negative situation in relation to their trading of the Products (either in a "margin call" or liquidation) as an opportunity to persuade the customer to deposit more funds into their trading account, without consideration of whether that was in the customer's best interests;
 - B) training Representatives to follow scripts designed to persuade customers to cancel requests to withdraw funds from their trading account;
 - iv) implementing an employee remuneration scheme and key performance indicators that rewarded account managers according to, amongst other things, their customers' net deposits and trading volume, which was likely to provide an incentive to Representatives to encourage customers to deposit funds and to discourage them from withdrawing funds and to recommend trades or trading strategies that were not necessarily in the customers' best interests;
 - i) implementing and encouraging a trading floor culture that was directed towards maximising trading volume and customer deposits rather than promoting a culture of compliance with applicable legal requirements; and
 - ii) failing to ensure compliance with financial services laws (as identified in the SAFA).

78 The Liquidators have found ample evidence to support the conclusion that all Former Customers would have valid Unconscionable Conduct Claims against the Company that would have caused the Former Customers to have suffered loss or damage.

6.3 Findings of General Investigations

Policies and training

- 79 The Liquidators have set out their findings in relation to the Company's various policies regarding the Company's remuneration policy, training of Representatives and compliance framework in the memorandum contained at **Annexure 4**. A summary of these findings are set out below.
- 80 The Company's remuneration policy:
- a) created direct incentives for Account Managers to maximise deposits being made by Former Customers (i.e. Representatives would push for deposits of over \$1,000 even when a customer indicated they could not);
 - b) required Account Managers to place very high numbers of phone calls to Former Customers every day;
 - c) created direct incentives for Account Managers to delay, defer or discourage withdrawals from being made by Former Customers;
 - d) created incentives for Account Manager Team Leaders to push their Account Managers to achieve maximum financial outcomes;
 - e) created direct incentives for Acquisition Agents to maximise the number of "first-time deposits" they could obtain;
 - f) created direct incentives for Acquisition Agents to delay, defer or discourage withdrawals from being made by Former Customers; and
 - g) provided ad hoc incentives to incentivise all Representatives to focus on maximising new customer, amounts deposited, or trades placed (or a combination of these outcomes).
- 81 This structure created a culture within the Company of Representatives aggressively pursuing Former Customers, regardless of the personal or financial circumstances of the Former Customer, including whether the Former Customer was an eligible or suitable person to be trading in these products.
- 82 The Company's training of Representatives:
- a) focused on maximising obtaining a first deposit from Former Customers;
 - b) focused on maximising deposits from Former Customers, including specific training targeting margin calls and using these as opportunities to push for further deposits to be made;
 - c) established guidelines relating to an aggressive schedule on which Former Customers were to be contacted (and in some instances daily);
 - d) was geared towards encouraging upselling tactics, including how to use credit and other gifts to reward customers for making certain deposits;
 - e) included dedicated training sessions on how to handle objections and deal with withdrawal requests;
 - f) expected Representatives to be creating urgency within Former Customers; and
 - g) encouraged high-pressure sales tactics to be utilised in order to secure some activity on a Former Client's account.
- 83 This training demonstrates the Company engaged in high pressure sales tactics, which, in the context of customers who generally had very little formal training or understanding of the Products offered by the Company, can be characterised as unfair, and therefore unconscionable, sales tactics.
- 84 The Company's customer base (the Former Customers):

- a) were targeted through online campaigns for people who were seeking to make “fast money”;
 - b) were generally unqualified and unsuitable people to be trading in complex financial products such as those offered by the Company;
 - c) were targeted with advertising coordinated overseas to deliberately avoid regulatory oversight in Australia; and
 - d) were aggressively targeted once they had come into contact with the Company, with the Company’s policy requiring a minimum of 28 phone calls from two different Representatives within 90 days.
- 85 The Company’s own Head of Legal and Compliance observed there were systemic shortcomings within the Company’s compliance regime. They identified, and expressed concern as to the Company’s lack of:
- a) adequate and continuous training of agents regarding compliance with policies and procedures, products and services;
 - b) overall risk assessments and analysis required to build frameworks;
 - c) understanding of breaches and lack of compliance with reporting obligations;
 - d) policies and procedures and periodic reviews of those policies and procedures (many of the Company’s policies and procedures either did not exist and/or required a detailed review);
 - e) enforcement of policies and procedures, (such as failing to impose consequences on Representatives in accordance with the bonus structure for breaches of the Company’s compliance policies and procedures); and
 - f) clearly identified compliance obligations.

Conclusion on policies and procedures

- 86 Based on these findings, the Liquidators have formed a view that the Company established a system of unconscionable conduct by:
- a) establishing conflicted remuneration policies that incentivised Representatives to pursue high pressure sales tactics to achieve bonuses by maximising their number of deposits, value of deposits, and trading volumes of Former Customers they were managing;
 - b) training Representatives in high pressure sales tactics such as:
 - i) delaying, deferring or discouraging Former Customers from making withdrawals (and incentivising this approach through bonuses);
 - ii) providing advice to each customer to place more trades or to place bigger trades;
 - iii) providing advice to each customer to engage in trading strategies that exposed that customer to a risk of loss that was materially greater than if the customer had not adopted that strategy;
 - iv) using sales tactics such as offering incentives (credits and rebates) to encourage the customer to transfer more money to their trading account before a certain time, even after the customer had told the account manager that they could not afford to invest more money, or were reluctant to do so;
 - v) placing pressure on the customer in lengthy and/or multiple telephone conversations to open additional positions, or to deposit further funds to the customer’s trading account;
 - c) receiving financial benefits when the customer incurred financial losses on positions that the Company had advised the customer to open;

- d) recommending strategies that were inappropriate to the customer, such as placing more trades or trading with greater volume, leaving open trades that were in a loss, and using a credit card to fund further deposits to the customer's Forex CT trading account;
- e) providing inadequate or inappropriate training and guidance to Representatives;
- f) measuring Representatives' performance solely by reference to financial outcomes;
- g) aggressively pursuing potential customers through scheduling daily phone calls and schedule for at least a phone call every other day in the first month, which was recycled if no deposit was made;
- h) deliberately targeting vulnerable customers through targeted advertising campaigns to internet user who were interested in making "fast money"; and
- i) facilitating a poor compliance culture with respect to the Company's obligations as an AFSL holder.

87 As set out in the findings of Targeted Investigations in section 6.4 below, the Liquidators have also found sufficient evidence to demonstrate that not only did the Company's policies and procedures establish an unconscionable system (including through the high-pressure sales tactics and conflicted remuneration regimes), but that this system also caused Former Customers to suffer loss or damage. This loss or damage is demonstrated by the way in which the Company's system operated to encourage Former Customers to (among other things):

- a) open an account to trade in Products they clearly did not understand;
- b) make additional deposits with the Company despite not being able to afford the deposits, and in some instances foregoing essential expenditure to make deposits (such as bills, rent and groceries);
- c) make additional deposits utilising sources of funds inappropriate to be utilised for high risk financial products such as those offered by the Company (such as credit cards, loans, superannuation or insurance payouts);
- d) pursue particular trades or trading strategies that were inappropriate in their circumstances;
- e) continue trading in Products despite expressing an unwillingness to continue, or a positive statement they no longer wished to continue; and
- f) delay, defer or cancel their withdrawals.

6.4 Findings of Targeted Investigations

88 In light of the Company's policies and procedures, and the unconscionable system established, the Liquidators have undertaken Targeted Investigations including a review of the available telephone records of the Selected Former Customers, which revealed:

- a) the Representatives clearly implemented the unconscionable high pressures sales tactics and other aspects of their training towards all of the Selected Former Customers;
- b) the Representatives continued to promote the Products to the Selected Former Customers in circumstances where it was clear that a number of the Selected Formed Customers did not understand the nature of the Products and the inherent risks of trading in these Products, and were heavily reliant on the advice and recommendations of the Representatives;
- c) the Representatives did not have any, or sufficient regard to the Selected Former Customers' objectives, financial situations or needs when promoting the Products or encouraging further deposits being made;
- d) the Representatives followed the aggressive schedules to contact Selected Former Customers in circumstances where withdrawals had been requested, or where they had not traded recently; and

e) the Representatives followed the scripts in respect of margin calls to use this as an opportunity to extract further deposits from the Selected Former Customers, regardless of their capacity to provide further deposit.

89 Based on these Targeted Investigations in respect of the Selected Former Customers, the Liquidators have found, in all instances, examples of conduct and phone calls (either individually, or taken together) by Representatives to the Selected Former Customers that was, in all the circumstances, unconscionable, contrary to section 991A of the Corporations Act and section 12CB of the ASIC Act (“Unconscionable Conduct”), and that the Unconscionable Conduct caused the Selected Former Customers to suffer loss or damage.

Content of phone calls

90 The Targeted Investigations identified the following salient examples of Unconscionable Conduct that was engaged in by the Company. In addition to the general observations regarding the high-pressure sales tactics set out at section 4.6 above, the following instances demonstrate the Company’s unfair sales tactics:

a) Example One:

Former Customer: Well I thought about it, you’ve got 2 choices: 1 you can be debilitated, upset and cry over money lost, or you can have a good holiday. I thought seriously about it and thought, man harden up, harden up. It’s gone, [Representative] and I will get it back, whatever timeframe it takes, we will get it back. I am very, very positive towards getting it back. I know that you and I can do it. I know that you and I can do it.

Representative: Definitely, definitely, 100%. It’s an unfortunate time but if it can go that quick it can be made back that quick. We just need to be patient. You’re sitting on two good trades there and there’s a heap more. One thing I wanted to talk about, so I sent you an email yesterday and this was the really important one I wanted you to read, your emails aren’t working so that’s fine. Yesterday, because it’s the end of the year and we only have a week/two weeks left, the CEO came out and he’s doing a really big promo on deposit credits. This is really valuable to clients that may have lost a lot, due to a bad trade. So if you were to deposit 50k into your account, they will give you 50k in credit, they will match it. Or this, and this was the one I was looking at for you, if you were to invest 100k into your account they will give 120k in credit, 120k! So I sat there and went shit, [Former Customer] had a 100k dip, if we can give him 120k in credit, I can give him the confidence for him to go “holy shit it’s all been covered”. The money has been completely covered and that trade never happened and that was for yesterday only but I went into the CEO’s office and said “hey I’ve got a client that needs this 120k credit, because he had a really bad loss” and we went through your account, and I was like “can I do it today for him?” and he goes “yep alright, but keep me posted”. So I wanted to see about that? I did this once before with a client who lost 100k on a trade because it was an unexpected dip, so I asked the CEO if I could get the same amount of credit back that he lost to say “here we go lets alleviate it from my end and lets work at building it back in actual cash, but at least we know our account is being completely alleviated”. So it could really help you. I’d like to offer it to you and would really like you to take it so I can be like “there you go mate, that loss never happened lets call it flat”. I want to know what your thoughts on that [Former Customer]?

Former Customer: I’ll tell you the truth, at the moment in my bank account there is 67k, that’s it. And I live off that bank account, that’s all I’ve got, 67k, 67k.

Representative: Ok, alright, so would it be more viable to do the 50k for 50k credit? And bang on some big trades and start pulling out the profits?

Former Customer: Look if I give 50k I’ve only got 17k. My rent is \$800 per week.

Representative: Yep, yep we would just have to get on some good trades now so we can try and get some profit and then we can take the profit. If you did 50k and we did 50k, you could have a big stab at some Litecoin and Ethereum. I had a client yesterday making 20k and 30k off trades, and you could try and do the same and then you can take out some profit. It’s up to you mate, but you’ll never get a match of 50k so

the balls in your court. If you can't do 50k, we can work something out but I want to try and get you some credit back to help.

Former Customer: Yeah, [Representative], work it as best you can, Work it as best as you can. Work for me please, please. Like I said to you, I'm being totally honest, I've got 67k left which I'm living off.

Representative: Yep, yep, ok. What amount of that could you do and I can see if I can match it.

Former Customer: I can throw 30k, that leaves me 37k, my rent is \$800 a week and in the next 6 months that 20k so I can just scrape by.

Representative: We can spend the next month doing some solid trades and pulling the profit. Let me see what I can do for 30k. They might not do a match but I reckon I can get it close You're going to love this, I got you 25k in credit, that is huge.

The Former Customer deposited \$30,000 later that day. The Former Customer lost \$61,500 over the next six months.

b) Example Two:

Representative: So buddy with your portfolio at the moment now. When was the last time you did anything to it? I think it was 3 weeks, or a month ago? Yeah a month ago. Would you be able to do anything today?

Former Customer: Nah

Representative: Still nothing!? [Former Customer] we need to be building this up buddy. We got up to 100k before you need to have that same state of mind as before, do you know what I mean? I want to get you back up there. At the moment now we are talking a small portfolio of 5k right? But if it goes up to 10k, 10k easily gets up to 20k, 20k easily gets up to 30k. By the time we get to 50k, 50k to 100k. And then you/re back ... and you'll say "lucky I did do that". Don't let the previous past give you discouragement. At the moment now you can build it back up again.

Former Customer: I just have too many bills. I've put all of my money into this last year.

Representative: But even anything small, even 2k, before you did 4k, 5k, 6k. At the moment even a small 2k and I'll do 2k, and then your account will be at 9k. You can open 200k positions. You've placed some trades, and we've placed some together, on the 17th, 18th, 20th, 20th, 25th, 27th and on the 1st of May, all of them are on good profits, \$596, \$246, \$233, but if these trades were on bigger positions it would be \$5,960k, \$2,460, \$2,330. But you're holding yourself back by putting yourself on small positions, you're still earning good profits, but you are holding yourself back by putting small positions. Whereas before you would open 100-500k position. Do you know what I mean?

Former Customer: I know, I understand. I will think about it.

Representative: Even just 2k to sit you up higher just under that 10k leverage, I will put another 2k in with you. It will make a big difference. Instead of 100k position it will be a 200k position.

Former Customer: I don't even have that in my bank mate.

Representative: Yeah ok.

Former Customer: I'll get back into it once I can afford it.

Representative: At the moment the market is moving well. It's a good opportunity to make something now, do you know what I mean? See what you can grab a hold of and see what you can do. Give me a call back Monday/Tuesday, or if you can do it today give, just let me know and I'll put 100% credit on for you

so you sit at a higher leverage and we will go from there. Buddy, don't sit on the fine line and wait and wait and wait the quicker you act, the sooner you will make something...

...

Representative: Don't cut yourself short, meaning give yourself enough space. The last trade you closed was \$162 in loss but that went down further than what you opened it at, so that would have been a profit as well.

Former Customer: I thought it would go back up in a hurry.

Representative: Give it some space, give it some room, but because your account is sitting at 5k it's a bit scarce, if you know what I mean? Buddy try and get 1k together, try and get 2k together, sit a little bit higher and you'll be safe on these trades and make more. In a matter of 4 days you made \$246, \$596, \$432, \$426.

Former Customer: Yeah I know, Im enjoying it, but...

Representative: A tad higher to be a little be safer when you trade, that's all I'm saying. That will help you to boost your account a little bit higher. I do this every single day [Former Customer]. I know what amount works and I know what amount would help you further. If is 1.3k or 1.5k whatever you can add right now and I'll add that with you, your account will sit higher and you will trade safer, alright? So look, I'll let you decided on what you want to do in the next couple of hours, and I'll match it with you but you can make a lot of money right now because the market is going very well. You think any Aussie \$ at the moment will make you this much last month, or the month before that? (You got) \$426 on a 100k position that was \$10\$ do you know what I mean? \$10 made you \$400, 10\$ made you \$596 again. Any other month don't pay attention too much, but this month a lot of currencies and commodities are going crazy. A lot of people are making good money, a lot of people are making good money. A client made 50k yesterday selling gold, just yesterday, in a 4 hour timespan. His account is a big account though, but in your situation, sit it a little bit higher to take some better positions and sit on good trades, which you have been.

Former Customer: Yeah, nah.

Representative: You can make 2k, 3k in a week buddy! 2-3k in a week! You can do that, just sit a little bit higher mate, that's all ok?

Former Customer: I've got bills.

Representative: Of course you have bills, but you could make 2-3k today and then Monday, Tuesday, Wednesday next week you make another 2-3k. That would be another 4k right? You can take out a couple of grand and you can pay your bills off but that's free money because you made profit. Do you see what I'm trying to tell you? Do whatever you can, even a couple of grand I'm not saying 5-6k like before, chuck in 1k or 1.5k. I'll leave it with you and if i see anything go in I'll match it, ok buddy?

The Former Customer subsequently deposited \$2,000 and lost \$49,700 over the next thirteen months.

c) Example Three:

Representative: I'll tell you what some clients, I'll tell you what some of my VIP clients do. This is just what some of them do, okay. So, clearly we don't want to take, like some of them take out investor loans, they pay interest on it. What I see amongst most of them, which are pretty damn smart, to be honest with you is that, okay, they use their credit cards and they use their credit cards for a reason. Why? Okay, I'll tell you what you do. Okay? I used to work at a bank as well. So with the credit card, with the credit card, um,

what you look for is a lot of clients what they'll do is, for example, if you max out your credit card, then you move your balance to a zero percent balance transfer credit card. Does that make sense? So then, essentially, on the balance that you've put in, you pay 0% for however long. Usually you can find month one 12 months or two years. Just search balance transfer deal 0% in Google. Five of them will come up, easy. That's what they do. So they'll, a lot of them will have high balances, they'll deposit 100,000, you know they, um and then they'll, you know, maybe they'll get points for it, they'll buy something off it straight away. Then they'll find the balance transferred deal and essentially, for 24 months, they get 0%. That's just what some of my clients have mentioned to me that they've done. and then they're saying, oh I'm doing an investment loan for 0%. That's essentially what it is because it goes as a purchase, not a cash advance. Does that make sense?

Former Customer: Yeah

Representative: So you've saved on all the interest on your credit card and you've moved it over, and then you've got 24 months at 0%. Now, the way you've been going, so you know, you know. That well, it's not that it covers it, everyone wants a 0% loan, essentially, that's what you're doing. That's why a lot of them, that's what, that's what a lot of them mentioned to me that they do. So they deposit, you know, when they deposit like \$100,000 on things and they do it off their credit card. They go yeah I'll just balance transfer it to one, to card, to card, to card at 0% and I never pay interest. So they're doing investment loans at 0%.

Former Customer: Hm.

Representative: And then you just keep going and going. If you don't pay it back in two years, you move it to the next one that offers it, do you understand how it works. That's what some of them do. So that's a way of doing it essentially with, and they're moving it and they're not having to pay interest. That's just one way. I'm just I'm just trying to think of options for you. You should do that anyway if you've got a balance on your credit card anyway.

The Former Customer subsequently deposited \$3,000 later that day. The Former Customer lost \$4,000 in one month.

d) Example Four:

Representative: As I said I can help you with equity so because you have no equity in your account anymore I can probably match you 100% like last time.

Former Customer: Yeah look I just don't want to. I'm not making any money really and I can't really devote much time to this, unless I'm doing it and know what's going on full time. See you're putting in a lot of time to it so you know what's going on at any point. See I'm only getting sporadic information from you and the news and I'm guessing what I'm doing. I don't want to be guessing what I'm doing.

Representative: Given that you're doing that. Do you think it's wise to put on 1 or 2 trades and that's it?

Former Customer: Yeah look, I just don't want to put any more equity in.

Representative: Yeah, I would obviously agree with you 100% but it's more about taking advantage of the equity I can give you. You're not putting in 2k, I'm putting in 1k.

Former Customer: Yeah look I'm not putting another 1k into it mate, I've already lost 1.2k. You know what I mean?

Representative: You haven't lost 1.2, the trades are still open?

Former Customer: Well that's right, but on paper I'm down 1.2k.

Representative: Well yeah you are right, but these trades do go up and down, they can go up and down.

Former Customer: Well yeah if I close out the US/JPY one now, that's mostly a loss of \$800.

Representative: Yeah \$700.

Former Customer: Yeah, so. If I close that one out what happens to the margin then?

Representative: The margin will slightly increase, but it won't be much.

Former Customer: Yeah. Yeah look I don't want to do anything at this stage. I'm at work, I don't want to talk about it.

Representative: Yeah let me know, I obviously I want to help you out.

The Former Customer received a further 17 calls over the next 10 weeks and deposited \$1,000. The Former Customer lost \$37,000 over the next two years.

e) Example Five:

Former Customer: [reading out a question in the qualification quiz] When trading forex CT what will happen to you to your open...so I don't know what that what, and I didn't understand that, I didn't get that one.

Representative: All right so Forex CT offers many risk management tools to assist clients, some features include guaranteed stop loss on individual trades for all forex, gold and silver. Another is negative balance protection which ensures you never lose more than your cash balance.

Former Customer: All right is that, is that on the app is it, that you can set?

Representative: Sorry?

Former Customer: is that on the app that is it? You said is it? You said so it doesn't....

Representative: (cuts investor off) No so, okay, I just explain it briefly. If in umm, if in a scenario where umm let's say you place a trade where it umm, where it just went everything not in your favour right? Your position would lock out because you've only got \$500 equity or \$1000 equity in your account. It would stop when it hits zero, okay so that way you never become in debt to us, and owe us any money. Yep.

Former Customer: yep okay, so it will automatically close out then,

Representative: correct

Former Customer: Yep... Yep... Cool. Umm, how does leverage play a role into trading with Forex? [Reading next question]

Representative: what did you select?

Former Customer: Umm... How does leverage play a role [Re-reading the question to Representative] I don't really know hang on.... Leverage does not play a role? Ummm... The CFD products we offer are leveraged products meaning that you'll only have to deposit a small percentage of.. (inaudible) I don't know, I don't really know much about it I just say leverage.

Representative: Yep, so we will be trading CFD's which stands for Contract for Difference, when you are trading CFD's is it typically during volatile periods, leverage trading and traded as a short term investment.

Former Customer: Ahh okay, alright so yes [reading one of the possible answers] so CFD's product we offer are leverage products meaning that you'll have to deposit a small percentage.

Representative: Yep okay cool, put that in. and we will see how you go.

The Former Customer deposited \$500 that same day and lost \$80,000 in one month.

- 91 Further examples of Unconscionable Conduct in the telephone review are contained in in **Annexure 3**.
- 92 Such transcripts and phone calls referred to above further demonstrate that Former Customers were subject to the Company's unconscionable conduct, and demonstrate the nature and extent of the Company's operation of an unconscionable system.
- 93 It is also important to note that the existence of the unconscionable system is sufficient in order for a breach of s 12CB of the ASIC Act to have occurred. Pursuant to s 12CB(4) of the ASIC Act, it is not necessary for an individual to show how they have been disadvantaged by the unconscionable system in order to establish the breach of s 12CB of the ASIC Act.

Context of phone calls

- 94 In addition to the transcripts that reveal the content of the conversations, it was also important to consider the context in which these phone calls occurred (including as set out in section 4.6 above). This context included the notes contained in the CRM System in relation to particular Former Customers, as well as the volume / frequency of phone calls. There are numerous examples of the context of phone calls that, in the Liquidators' opinion, further demonstrate the unconscionable conduct of the Company. For instance:

a) Example One:

CRM System notes show one Selected Former Customer would not be trading for "the next 2 months possibly longer as he doesn't have more funds and he needs to save to get back into it." The Selected Former Customer received four calls over the next four weeks. Notes for the fourth call state that the Selected Former Customer "wont be ready to trade". However, two more calls are placed that same day and the Selected Former Customer deposits \$5k into his account.

Four days later, CRM Systems notes again note that the Selected Former Client "wont be ready to trade". However, he receives three calls over the next four days and deposits \$3,000 on the third call.

The Selected Former Customer lost \$154,000.

b) Example Two:

One Former Customer, in his 80s, received in excess of 200 calls in an 11-month period, with numerous entries on the CRM System referencing that he does not know how to trade or withdraw his money, or comments that he is "bad with technology", "ancient" or "struggles to understand".

The Former Customer lost \$22,000 over this 11-month period and \$28,000 over the Relevant Period.

c) Example Three

A Selected Former Customer placed a withdrawal request for \$1,000 in order to pay rent, and received a telephone call the next day to cancel the withdrawal. The Selected Former Customer cancelled the request and, instead, deposited an additional \$1,000 into his account. Within one day, he lost the \$1,000 he had intended to withdraw and the additional \$1,000 he had deposited.

Over the next two years, the Selected Former Customer received over 230 calls and messages. The CRM System includes notes that he was "tight with funds", "hasn't the cash for a week", "waiting for money – selling van", "can't put any more funds in yet".

While the Selected Former Customer went through several periods where he did not answer calls from Representatives, he consistently relented and deposited further funds into his account. During the Relevant Period, he made 104 deposits into his account, ranging from \$50 to \$10,000, and totalling \$112,000. The Selected Former Customer lost \$104,000 during this period.

d) Example Four:

One Former Customer received 50 phone calls over a seven month period when they did not have an active account. 44 of these calls went unanswered. After the 51st call, the Former Customer opened an account and deposited \$1,000.

The Former Customer lost \$6,500 over a 2 month period.

6.5 Conclusion on Unconscionable Conduct Claims

95 Based on the Liquidators' Investigations, and having regard to the characteristics of the Former Customers, as well as the complex nature of the Products offered by the Company, the Liquidators have formed the view that the Company engaged in conduct that was, in all the circumstances, unconscionable. Further, the Liquidators have formed the view that the Company was, during the Relevant Period, operating an unconscionable system. This conclusion is supported by the following:

- a) the Company engaged in the Misleading or Deceptive Conduct discussed in section 5 above;
- b) in the vast majority of cases the Selected Former Customers were not appropriately qualified to be trading in high-risk financial products of this nature;
- c) the Selected Former Customers' lack of understanding of the products would have been readily apparent to Representatives, however Representatives in many instances coached Selected Former Customers through the qualification assessment, and even when told of the Selected Former Customer's poor understanding, continued to promote the trades and Products to Selected Former Customers;
- d) the Selected Former Customers were pressured to continue making deposits when they had indicated they no longer had financial resources to continue trading, including instances where:
 - i) the Selected Former Customers were being pressured to, for example, take out loans, ask friends to borrow money, being told to use credit cards or withdraw superannuation in order to make deposits in short timeframes (usually hours); or
 - ii) the Selected Former Customers indicated they needed a withdrawal to meet basic living expenses such as rent, groceries or mortgages, and then still being pressured to make deposits, or given incentives to cancel the withdrawal and continuing to trade;
- e) the Company deployed, and encouraged, unfair and high-pressure sales tactics towards Selected Former Customers to encourage further deposits, while simultaneously discouraging and delaying withdrawals;
- f) the Company operated a highly conflicted remuneration scheme that meant the Representatives' interests were often in direct conflict with those of the Selected Former Customers, including through bonus structures and ad hoc incentive schemes; and
- g) the Company's training of Representatives was geared solely towards maximising deposits, while disregarding the interests of Selected Former Customers and compliance obligations.

96 For the reasons set out above, the unconscionable system and the unconscionable conduct both caused Former Customers to suffer loss or damage, which the Former Customers can seek to recover from the Company by claims pursuant to s 991A of the Corporations Act or s 12GF of the ASIC Act.

7. Loss or damage

- 97 As a result of the above findings regarding the Former Customer Claims, the Liquidators have also considered the question of loss or damage that may be recoverable by Former Customers as a result of the Former Customer Claims.
- 98 As set out in section 2 above, the Former Customer Claims give rise to statutory entitlements to recover loss or damage where the loss or damage has been *caused* by the misleading or deceptive conduct or the unconscionable conduct.
- 99 Consistent with earlier decisions regarding similar claims against an FX trading company similar to ForexCT, the Liquidators have formed a view that it is appropriate to calculate the loss or damage of former customers on a “net loss” basis, by taking the total deposits a customer has made with the FX trading company, less any withdrawals the customer made or other amounts received from or owed by the FX trading company to the customer (see *ASIC v AGM Markets Pty Ltd (No 4)* [2020] FCA; (2020) ACSR 511). This approach was adopted by the court to put the customers of the FX trading company in the same position they would be in had they not traded with the Company.
- 100 Further, in the Judgment, Middleton J held the net losses of Former Customers over the Relevant Period were \$77,619,914 (Judgment, [153]). This amount has been substantiated by our review of the audited financial accounts of the Company.
- 101 The Liquidators have determined a Former Customer’s Net Loss can be calculated based on the total money deposited with the Company, less any money withdrawn by the Former Customer. Each individual Former Customer’s financial position with respect to the Company was set out in an Account Statement. An example of an Account Statement is included as **Annexure 6** (with personal information redacted). A summary of the overall financial position is set out at the end of the Account Statement. This summary of a Former Customer’s financial position includes additional line items that reflect the impact of the Former Customer’s trading and bonuses applied to their account by the Company. These additional entries **do not** impact upon the Former Customer’s actual cash position, and are liable to confuse what is an otherwise straightforward methodology. They are therefore included for the sake of completeness, and may be comfortably disregarded when calculating a Former Customer’s net loss.
- 102 Based on our conversations with the former financial controller of the Company, we understand the different line entries in the Account Statement correspond to the following:

Line Entry	Description
Deposits	This line entry reflects the total amounts received from the Former Customer into Forex CT’s customer trust account (i.e. cash paid from the Former Customer to Forex CT to fund the Former Customer’s trading account)
Withdrawals	This line entry reflects the total amounts withdrawn by the Former Customer (i.e. cash paid from Forex CT to the Former Customer)
Closed Trade P&L	This line entry reflects the Former Customer’s net gains or losses made on closed trades during the period of the statement
Rollover	This line entry reflects the interest charged to the Former Customer as an Overnight Financing Fee (paragraph 9.2 of the PDS). This fee was applied to positions that remained open overnight. At appointment, the fee was 0.015% of the US dollar exposure of all open positions.

	Any cash impact of this line entry will be reflected in the withdrawal line as the fee would reduce the Former Customer's withdrawable equity.
Bonus	<p>This line entry reflects the amounts added to the Former Customer's account under specific promotions or offers, which was withdrawable as cash by the Former Customer in certain instances (section 5.5.9 of the PDS).</p> <p>Any cash impact of a bonus is reflected in the withdrawal line of the statement as the bonus increased the amount of cash Former Customer could withdraw from their account.</p>
Manual Adjustment	<p>This line entry reflects manual adjustments to a Former Customer's account balance. These entries have been described by the Company as typically being applied where a Former Customer closed their account with a negative balance and Forex CT covered the loss, so that the balance is returned to zero (i.e. Forex CT would not chase the customer for the loss).</p> <p>While we have seen examples of this, our review does not support that this is the typical use of manual adjustments.</p> <p>Manual adjustments were used for a variety of reasons and, from our review of the records, were often used to credit Former Customers' accounts to resolve a complaint. Examples of these complaints include refunding account inactivity fees, adjusting for the failure of Representatives to add promotions to accounts, correcting stop loss slippage, and compensation/remediation payments made following a complaint.</p> <p>Notwithstanding this, any cash impact of manual adjustments is reflected in the withdrawals line. Where a manual adjustment resulted in a refund to a Former Customer, the Former Customer was then able to withdraw those funds from their account. This withdrawal runs through the withdrawal line of the statement.</p>
Credit	<p>This line reflects amounts added to a Former Customer's account, generally after a deposit is made. Credit was not withdrawable as cash, unless specific conditions are met (typically meeting certain trade volumes within six months of deposit). Credit was often used to incentivise further deposits.</p> <p>Any cash impact of a credit will be seen in the withdrawals line as, if the specific conditions are met, the credit will become part of a customer's withdrawable equity.</p>
Transfer	This line reflects amounts carried over from Forex CT's previous trading platform (MetaTrader). This will only apply to a small number of Former Customers who had accounts from the previous trading platform.

103 Based on this understanding of the information in an Account Statement, it is possible to calculate a Former Customer's Net Loss as follows, using the Account Statement in **Annexure 6** for a particular Former Customer as an example:

Description	Calculation (\$)	Running balance (\$)
Deposit	5,500.00	5,500.00
Plus bonus (withdrawable as cash)	5,500.00 + 261.23	5,761.23

Less trading loss	5,761.23 – 8,257.44	(2,496.21)
Less rollover fees	(2,496.21) – 2,410.55	(4,906.76)
Add back manual adjustments	(4,906.76) + 5,155.24	248.48
Less withdrawals	248.48 – 248.48	0
NET LOSS (Deposit less withdrawals)	5,500 – 248.48	(5,251.52)

104 In this situation, the Former Customer has deposited \$5,500 with the Company, yet has only withdrawn \$248.48 in order for the account to be at \$0.00. Therefore, as shown above, in this situation, the Former Customer's Net Loss is \$5,251.52.

105 In order for this Former Customer to be able to bring a claim against the Company for loss or damage in the amount of \$5,251.52, the Former Customer needs to establish the loss or damage was *caused* by either the misleading or deceptive conduct or the unconscionable conduct of the Company.

106 Although the Liquidators believe every Former Customer would be able to demonstrate the causal link between the misleading or deceptive conduct or the unconscionable conduct of the Company and their Net Loss, this would require the Former Customer to provide proof substantiating such causation. The Liquidators intend to seek directions from the Federal Court of Australia to allow the Liquidators to apply a modest discount to Former Customer Claims on a global basis in return for not requiring Former Customers to substantiate the causation element when the Former Customer Claims are being adjudicated by the Liquidators.

107 While Former Customers may still submit a proof of debt for 100% of the value of their claim, the Liquidators advise that it may not be possible to adjudicate the claim prior to serving a demand on Invesus under the Letter of Comfort.

108 The Liquidators will write to Former Customers, and Invesus, separately regarding this Application, and will provide them with the time and date of the hearing of any application.

8. Conclusion

109 For the reasons set out above, the Liquidators believe each and every Former Customer would be able to make out the Misleading or Deceptive Conduct Claim or Unconscionable Conduct Claim against the Company.

110 Because of the manner the business of the Company was run, the Liquidators consider each and every Former Customer's loss or damage has been caused by the Company's misleading or deceptive conduct or the Company's unconscionable conduct or the Company's unconscionable system. The features of the Company's business that lead to this conclusion are (among other things), the fact that:

- a) the Company engaged in the Misleading or Deceptive Conduct described above;
- b) every Former Customer must have engaged with the Company in order to open their account;
- c) every Former Customer was subject to high-pressure sales tactics by representatives of the Company; and
- d) the Company deliberately structured its policies and procedures to encourage Representatives to encourage, unfair and high-pressure sales tactics while simultaneously discouraging, delaying or otherwise deferring Former

Customers from making withdrawals, and these policies and procedures were implemented by Representatives, with the effect of influencing the behaviour of Former Customers in such a way that they suffered loss or damage.

111 As a result of the Investigations set out in this Investigation Report, the Liquidators are overwhelmingly satisfied that those Former Customers who suffered loss or damage as a resulting of trading with the Company (i.e. the Net Loss), would have suffered the loss or damage either directly or indirectly as a result of the wrongful and illegal actions of the Company. On that basis, the Liquidators are satisfied every Former Customer has a valid claim against the Company for that loss or damage.

Dated this 5 May 2022

A handwritten signature in black ink, appearing to be 'Daniel Woodhouse', written in a cursive style.

Daniel Woodhouse

Liquidator

Annexures

1. KWM Briefing Materials
2. Statistical Summary of Former Customers cf. Selected Former Customers
3. Telephone Review Summary Report
4. Document Review Summary Report
5. Summary Table – Misrepresentations to Selected Former Customers
6. Redacted Former Customer Account Statement



Annexure 1 – KWM Briefing Materials

A copy of the bundle of materials prepared by KWM to assist the Liquidators and their staff starts on the next page.

Investigation Briefing Report | Claims of Former Clients against Invesus

23 February 2022

To Daniel Woodhouse, FTI Consulting
From Sam Dundas and Patrick Mackenzie, King & Wood Mallesons (“KWM”)

1 Introduction

On 7 December 2021, the Federal Court of Australia (“**Court**”) made orders that Forex Capital Trading Pty Ltd (“**ForexCT**” or the “**Company**”) be wound up in insolvency pursuant to section 459A of the *Corporations Act 2001* (Cth) (“**Corporations Act**”). You, Nathan Stubing and Ross Blakeley of FTI were appointed as joint and several liquidators of the Company (“**Liquidators**”).

The purpose of this note is to set out the information and examples of wrongful conduct that the Liquidators should seek to identify in the books and records of the Company in order to substantiate the potential claims of former customers of the Company. This information will underpin the report to creditors (“**Investigation Report**”) and ultimately any application made by the Liquidators seeking directions from the Court pursuant to s 90-15 of the *Insolvency Practice Schedule* (“**IPS**”), being Schedule 2 of the Corporations Act similar to the directions sought in *Re ION Ltd (subject to deed of company arrangement)* (2010) 80 ACSR 302 (“**Re ION**”) to facilitate an expedited regime to assist the Liquidators to assess the Former Client Claims. Consistent with these claims being provable in the winding up in accordance with s 553(1), the claims that are discussed in this note are all claims *the circumstances giving rise to which occurred before the Appointment Date*.

This note should be read in conjunction with the Senior Counsel opinion dated 23 December 2021 (“**Opinion**”), and the steps plan that has previously been prepared by KWM setting out how the Liquidators may pursue a claim against Invesus under the Letter of Comfort (“**Steps Plan**”). Defined terms in this note have the meaning given to them in the Steps Plan.

As set out in the Steps Plan, the former customers of the Company may have claims against the Company on one or more of the following bases:

- (a) claims against the Company for loss or damage pursuant to section 1041I of the Corporations Act for contraventions of section 1041H of the Corporations Act (see section 3);
- (b) claims against the Company for loss or damage pursuant to section 961M of the Corporations Act for contraventions of sections 961K and/or 961L of the Corporations Act (see section 4);
- (c) claims against the Company for loss or damage pursuant to section 953B of the Corporations Act for contraventions of section 946A of the Corporations Act (see section 5);
- (d) claims against the Company for loss or damage pursuant to section 991A(2) for contraventions of section 991A(1) of the Corporations Act (see section 6); and
- (e) claims against the Company for loss or damage pursuant to section 12GF of the *Australian Securities and Investments Commission Act* (Cth) 2001 (“**ASIC Act**”) for contraventions of sections 12CB and/or 12DA of the ASIC Act (see section 7).

2 Executive summary

This note details the information that the Liquidators should seek in the books and records of the Company in order to substantiate these claims. The potential breaches and entitlements to loss

and damage are summarised in the table set out in Annexure A. A detailed summary table showing the supporting evidence required to be obtained by the Liquidators in relation to each cause of action is contained in Annexure B (provided separately).

Although there are several causes of action that may be available to former customers, we are of the view that it may be possible to substantiate claims of former customers for breaches of s 12CB and loss and damage under s 12GF of the ASIC Act without a discount. Further, Beach J in AGM (No 4) held at [153] that a “net loss” approach was a suitable methodology for calculating compensation for a breach of s 12CB for foreign exchange losses, albeit in the context of compensation awarded under s 12GNB and not s 12GF. This claim is discussed in more detail in section 7.4 below.

We have not conducted an exhaustive review of the calculation of loss or damage applicable to other causes of action that may be available to former customers on the basis that they require causation to be established, and we expect there would need to be some discount applied to such claims. Further, we have not considered any alternative means of calculating loss or damage beyond a simple “net loss” calculation as this would generally require substantiation of the damages (except for the claims brought under s 12CB and 12GF of the ASIC Act).

3 Claims for loss or damage pursuant to section 1041I of the Corporations Act

3.1 Provision breached

Section 1041H of the Corporations Act provides:

A person must not, in this jurisdiction, engage in conduct, in relation to a financial product or a financial service, that is misleading or deceptive or is likely to mislead or deceive.

Further, s 1041I of the Corporations Act provides:

1041I Civil action for loss or damage for contravention of sections 1041E to 1041H

(1) A person who suffers loss or damage by conduct of another person that was engaged in in contravention of section 1041E, 1041F, 1041G or 1041H may recover the amount of the loss or damage by action against that other person or against any person involved in the contravention, whether or not that other person or any person involved in the contravention has been convicted of an offence in respect of the contravention.

It is important to note that s 1041I(1B) imports a proportionate liability defence, and is subject to the “professional standards” defence in s 1044B. Due to these complexities, it may be best to avoid bringing claims under s 1041I.

3.2 Elements

The former customers of the Company will have to establish that there was a breach of s 1041H, and that they suffered loss or damage by that conduct. Again, it should be sufficient here to argue that the misleading representations made by the Company, and its representatives, were so widespread that they were likely to have affected all former customers. In the Decision the Company admitted to 180 instances of false or misleading statements, which Middleton J summarised into six different categories:

[65] On 180 occasions, Forex CT representatives made false or misleading statements and representations to the effect that:

*(a) the interests of Forex CT or its representatives were aligned with the interests of the client (**‘Interests Aligned Representation’**);*

*(b) the representative did not benefit from the deposit by the client of funds into the client’s trading account with Forex CT (**‘No Personal Benefit Representation’**);*

*(c) the risk of trading losses would be reduced if further funds were deposited in the client’s trading account with Forex CT (**‘Risk Representation’**);*

*(d) the client was likely to or might reasonably expect to generate profits by trading in Margin FX or CFDs in the order of magnitude indicated by the Representative ('**Profit Representation (General)**') and in some instances by reference to a particular trading position or strategies identified by the Representative ('**Profit Representation (Specific)**'); or*

*(e) it was in the best interests of the client to make a particular trade or to deposit additional funds ('**Best Interests Representation**').*

3.3 Examples in the Decision

In the Decision, Middleton J identifies a number of specific examples setting out how each of the above representations were made.¹ Further, Middleton J found that in each instance of a representative giving personal advice to a customer, there was an implied representation that that investment was in the best interests of the customer.²

3.4 Evidence to be obtained

Therefore, obtaining any scripts prepared by the Company, or any meetings that record staff being directed to use these tactics would be valuable in establishing this conduct, and the misrepresentations, were systemic and applicable to all of the former customers of the Company. This would allow the former customers to establish their entitlement for claims under s 1041I(1) of the Corporations Act.

4 Claims for loss or damage pursuant to section 961M of the Corporations Act

4.1 Entitlement to recover loss or damage

961M Civil action for loss or damage

(1) This section applies if the client suffers loss or damage because of a contravention of a provision of this Division.

(2) A Court may order that one or more of the following persons compensate the client for the amount of the loss or damage:

(a) if the person who contravenes the provision is a financial services licensee—that licensee;

(b) if the person who contravenes the provision is a representative of a financial services licensee, or 2 or more financial services licensees—the, or a, responsible licensee in relation to the contravention.

(3) The Court may make the order under this section:

(a) on its own initiative, during proceedings before the Court; or

(b) on the application of ASIC; or

(c) on the application of the client.

(4) In determining the damage suffered by the client, the Court may include profits resulting from the contravention that are made by:

(a) if the person who contravenes the provision is a financial services licensee—the licensee; or

(b) if the person who contravenes the provision is a representative of a financial services licensee, or 2 or more financial services licensees:

(i) the representative; and

¹ Decision, [66].

² Decision, [67].

(ii) where the Court's order under subsection (2) relates to a financial services licensee that is the, or a, responsible licensee in relation to the contravention—the licensee.

(5) An order under this section may be made whether or not the licensee against whom the order is made (or anyone else) has been convicted of an offence, or been the subject of a civil penalty order, in respect of the matter.

(6) An action to recover the amount of the loss or damage may be begun at any time within 6 years after the contravention.

(7) An order under this section may be enforced as if it were a judgement of the Court.

(8) This section does not affect any liability that a person has under any other law.

Both ss 961K and/or 961L are within Division 2 of Part 7.7A of the Corporations Act, which means that contraventions of these sections creates a liability under s 961M.

See [27] to [59] of the Decision, for Middleton J's findings as to the contraventions of s 961K and 961L.

It is important to note that s 961M requires the causal connection in the sense that the loss or damage must be *because* of the contravention of a relevant provision. This is where the *Re ION* application is of fundamental importance. Given there is a requirement to establish the causal nexus between the breaches of 961K(2) and the loss and damage sustained by the former customers, it is likely that some sort of discount will need to be applied in order for the Liquidator to justify admitting these claims. These claims may date back to as late as 28 June 2015, being 6 years before the Appointment Date. This would mean that the former customers may have had claims against the Company for loss or damage under s 961M as at the Appointment Date (which can therefore be proved in the liquidation).

The specific nature of the ways in which s 961K(2) may have been breached by the Company and the evidence required is set out below.

4.2 Breaches of s 961K(2)

Relevantly, s 961K(2) provides:

(2) A financial services licensee contravenes this section if:

(a) a representative, other than an authorised representative, of the licensee contravenes section 961B, 961G, 961H or 961J; and

(b) the licensee is the, or a, responsible licensee in relation to that contravention.

For there to be a contravention of any of the sections in Div 2, Pt 7.7A of the Corporations Act, the contravention must relate to "personal advice": s 961(1). In this regard, Middleton J, cited a number of the relevant principles at [31] to [37], and was ultimately satisfied (at [37]):

I am satisfied that Forex CT was providing financial product advice to the eight identified clients in circumstances that satisfy the definition of personal advice in s 766B(3) of the CA. The Forex CT representatives sought information from clients regarding their objectives, financial position or needs, and had access to information about the client's trading accounts which was expressly or implicitly apparent to the client. The advice was provided to clients by representatives in the context of an ongoing relationship, usually involving numerous one-on-one telephone calls with the same account manager. It was also explained to clients that the function of the account manager was to support or guide the client in his or her trading. A reasonable person would have expected the representative to have considered the client's personal circumstances.

Therefore, to show the Company was involved in these types of contraventions, former customers of the Company need to establish that:

- (a) they had provided information to the Company regarding their financial position or needs;
- (b) representatives of the Company had access to this information;

- (c) the contact between representatives and the former customers (i.e. phone logs showing regular contact from one representative); and
- (d) the way in which the role of function of the account manager was explained to former customers, either in writing or some sort of script or pro-forma conversation that representatives were to have with former customers, was inadequate.

Turning then to the breaches of s 961B, 961G and 961J that make out the breach of s 961K, the relevant enquiries are as follows:

- (a) Did the representative fail to consider the best interests of the customer, contrary to s 961B? See [43] of the Decision.
- (b) Did the representative fail to give appropriate advice, contrary to s 961G? See [45] of the Decision.
- (c) Did the representative give advice that failed to give priority to the client's interests in circumstances where there was a conflict, contrary to s 961J? See [49] to [51] of the Decision.

Only a breach of one of these sections needs to be made out for s 961K(2) to have been contravened. This will allow the former customers to show that they had a claim for loss or damage against the Company under s 961M(3)(c) as at the Appointment Date.

4.3 Breaches of s 961B

Relevantly, s 961B provides:

961B Provider must act in the best interests of the client

- (1) *The provider must act in the best interests of the client in relation to the advice.*
- (2) *The provider satisfies the duty in subsection (1), if the provider proves that the provider has done each of the following:*
 - (a) *identified the objectives, financial situation and needs of the client that were disclosed to the provider by the client through instructions;*
 - (b) *identified:*
 - (i) *the subject matter of the advice that has been sought by the client (whether explicitly or implicitly); and*
 - (ii) *the objectives, financial situation and needs of the client that would reasonably be considered as relevant to advice sought on that subject matter (the client's relevant circumstances);*
 - (c) *where it was reasonably apparent that information relating to the client's relevant circumstances was incomplete or inaccurate, made reasonable inquiries to obtain complete and accurate information;*
 - (d) *assessed whether the provider has the expertise required to provide the client advice on the subject matter sought and, if not, declined to provide the advice;*
 - (e) *if, in considering the subject matter of the advice sought, it would be reasonable to consider recommending a financial product:*
 - (i) *conducted a reasonable investigation into the financial products that might achieve those of the objectives and meet those of the needs of the client that would reasonably be considered as relevant to advice on that subject matter; and*
 - (ii) *assessed the information gathered in the investigation;*
 - (f) *based all judgements in advising the client on the client's relevant circumstances;*

(g) taken any other step that, at the time the advice is provided, would reasonably be regarded as being in the best interests of the client, given the client's relevant circumstances.

In the Decision, the Company admitted to 595 breaches of s 961B in the context of the eight former customers that were subject of the Decision.³ In each of these instances, the Company admitted to *failing* to do each of the following, which were sufficient to establish the breach of s 961B:

- (a) identify and examine the client's current financial situation, including income, savings, assets and debts;
- (b) identify and understand the client's objective and needs;
- (c) ascertain the type of financial products that the client was interested in and that were appropriate for the client;
- (d) inform the client whether the advice was based on incomplete information regarding the client's financial situation, objectives or needs;
- (e) educate the client about the financial products;
- (f) advise the client that CFDs and Margin FX were leveraged and highly risky products; or
- (g) provide a statement of advice at the time, or shortly after providing the advice.

Therefore, the Liquidators should look to identify patterns and systems that show that these failings were not particular to the eight particular customers. For instance, the Liquidators may be able to identify whether information on the file on the system is complete for all former customers, or if there are systemic failures and missing information.

4.4 Breaches of s 961G

Related to breaches of s 961B and the 'best interests obligation' (and in turn s 961K(2)) is the 'appropriate advice obligation' in s 961G, which provides:

961G Resulting advice must be appropriate to the client

The provider must only provide the advice to the client if it would be reasonable to conclude that the advice is appropriate to the client, had the provider satisfied the duty under section 961B to act in the best interests of the client.

In the Decision, the Company admitted that each of the 595 breaches in respect of s 961B were also breaches of s 961G. His Honour relevantly summarised this as follows:

45 *Each of the instances of personal advice referred to at [43] above were recommendations for the client to do one or more of the following: deposit more funds into the client's trading account, open a particular trade, adopt a particular trading strategy, increase volume of trades or leave a losing trade open.*

46 *Forex CT admits that these recommendations were made in circumstances where it was not reasonable to conclude that the advice was appropriate to the client had the duty under s 961B(1) of the CA been satisfied because, having regard to the nature of Margin FX and CFDs as high risk leveraged products, the recommendation would expose the clients to a higher risk of loss. Forex CT thereby admits that its representatives contravened s 961G of the CA on 595 instances when giving personal advice to the eight identified retail clients.*

Therefore, the Liquidators should look to find systemic examples of recommendations to former customers:

- (a) encouraging them to deposit more funds;
- (b) open particular trades;

³ Decision, [43].

- (c) adopt particular strategies;
- (d) increase the volume of trades; or
- (e) leave trades open.

This evidence may be in the form of scripts for customers or other records that demonstrate this conduct is systemic, or otherwise applicable to all customers.

4.5 Breaches of s 961J

Further related to breaches of s 961B and the 'best interests obligation' (and again, in turn s 961K(2)) is the 'conflicts obligation' in s 961J, which provides:

961J Conflict between client's interests and those of provider, licensee, authorised representative or associates

(1) If the provider knows, or reasonably ought to know, that there is a conflict between the interests of the client and the interests of:

- (a) the provider; or*
- (b) an associate of the provider; or*
- (c) a financial services licensee of whom the provider is a representative; or*
- (d) an associate of a financial services licensee of whom the provider is a representative; or*
- (e) an authorised representative who has authorised the provider, under subsection 916B(3), to provide a specified financial service or financial services on behalf of a financial services licensee; or*
- (f) an associate of an authorised representative who has authorised the provider, under subsection 916B(3), to provide a specified financial service or financial services on behalf of a financial services licensee;*

the provider must give priority to the client's interests when giving the advice.

In the Decision, despite there being 595 breaches of s 961B and 961G, the Company only admitted to 556 instances where the representative failed to give priority to the client's interests. It is not clear what explains the reduction in number between the s 961B breaches and the 961J breaches.

As set out in the Decision, the 556 instances of conflict arose because of the Company's remuneration and bonus arrangements:

50 *This bonus structure meant that it was in the financial interests of account managers that clients in their 'trading book' maximised the amount of money deposited into their Forex CT trading account each month, minimised the amount of money withdrawn from the account, placed at least one trade per business day each month and deposited at least \$1,000 into their Forex CT trading account each month.*

51 *Forex CT, as the counterparty to each trade, had an interest in the client accepting a recommendation to open a trade as it would receive a pecuniary benefit in the event that the trade closed with a negative outcome for the client. On the other hand, the client had an interest in receiving advice that was in their best interests, appropriate to them, and not affected by any incentive for the account manager to earn bonuses or interest on the part of Forex CT as the counterparty to the trades the subject of the advice.*

Although the reduction in numbers between the breaches on s961B and 961G and 961J breaches is not entirely clear, the remuneration structure of the Company is highly likely to have caused numerous instances of advice being given that did not give priority to the former customer.

The Liquidators should interrogate the books and records of the Company to ascertain the bonus and remunerations policies, and how these may give rise to a conflict as between the Company, its representatives and the former customers.

4.6 Breaches of s 961L

Relevantly, s 961L states:

961L Licensees must ensure compliance

A financial services licensee must take reasonable steps to ensure that representatives of the licensee comply with sections 961B, 961G, 961H and 961J.

As explained by Middleton J, s 961L can be contravened without needing to establish an actual breach of one of the obligations (here, a breach of any of ss 961B, 961G or 961J).⁴

For the purposes of the Decision, it was agreed that the Company:⁵

- (a) purported to provide financial services pursuant to a general advice model, and therefore did not provide any training in relation to obligations under Div 2 of Pt 7.7A of the Corporations Act including how a representative was to discharge those obligations in the context of the financial services model deployed by Forex CT and in relation to the management of conflicts of interest;
- (b) implemented remuneration arrangements and adopted key performance indicators that incentivised representatives to provide certain advice without ensuring that representatives were complying with ss 961B, 961G and 961J of the Corporations Act in providing that advice; and
- (c) implemented a compliance framework that was inadequate to ensure that representatives complied with their obligations under Div 2 of Pt 7.7A of the Corporations Act.

The Liquidators will therefore need to interrogate the books and records of the Company with a view to establishing when these business practices (such as the general financial services model, the remuneration arrangements and the compliance framework) emerged within the Company, and whether they changed over the relevant period.

5 Claims for loss or damage pursuant to section 953B of the Corporations Act

5.1 Provision breached

953B Civil action for loss or damage

(1) *This section applies in the following situations:*

(a) *a person:*

(i) is required by a provision of this Part to give another person (the client) a disclosure document or statement (the required disclosure document or statement); and

(ii) does not give (within the meaning of section 940C) the client anything purporting to be the required disclosure document or statement by the time they are required to do so; or

(b) *a person:*

(i) gives another person (the client) a disclosure document or statement that is defective in circumstances in which a disclosure document or statement is required by a provision of this Part to be given to the client; or

(ii) is a financial services licensee and gives, or makes available to, another person (the client) a disclosure document or statement, being a Financial Services Guide or a Supplementary Financial Services Guide, that is defective, reckless as to whether the client will or may rely on the information in it; or

⁴ *Decision*, [54], citing *Australian Securities and Investments Commission v AMP Financial Planning Pty Ltd (No 2)* [2020] FCA 69; 377 ALR 55 at [105] to [107] (Lee J).

⁵ *Decision*, [55].

(c) a person contravenes section 949A or 949B.

In paragraph (b), give means give by any means (including orally), and is not limited to the meaning it has because of section 940C.

(2) *In a situation to which this section applies, if a person suffers loss or damage:*

(a) if paragraph (1)(a) applies—because the client was not given the disclosure document or statement that they should have been given; or

(b) if paragraph (1)(b) applies—because the disclosure document or statement the client was given was defective; or

(c) if paragraph (1)(c) applies—because of the contravention referred to in that paragraph;

the person may, subject to subsection (6), recover the amount of the loss or damage by action against the, or a, liable person (see subsections (3) and (4)), whether or not that person (or anyone else) has been convicted of an offence in respect of the matter referred to in paragraph (a), (b) or (c).

(3) *For the purposes of subsection (2), the, or a, liable person is:*

(a) if the person first-referred to in paragraph (1)(a), (b) or (c) is a financial services licensee—subject to subsection (4), that person; or

(b) if the person first-referred to in paragraph (1)(a), (b) or (c) is an authorised representative of only one financial services licensee—that financial services licensee; or

(c) if the person first-referred to in paragraph (1)(a), (b) or (c) is an authorised representative of more than one financial services licensee:

(i) if, under the rules in section 917C, one of those licensees is responsible for the person's conduct—that licensee; or

(ii) if, under the rules in section 917C, 2 or more of those licensees are jointly and severally responsible for the person's conduct—each of those licensees.

(3A) *For the purposes of paragraph (3)(c):*

(a) section 917C is taken to apply, despite section 917F; and

(b) section 917D is taken not to apply.

(4) *If:*

(a) paragraph (1)(b) applies; and

(b) an alteration was made to the disclosure document or statement before it was given to the client; and

(c) the alteration made the disclosure document or statement defective, or more defective than it would otherwise have been; and

(d) the alteration was not made by, or with the authority of, the person who would, but for this subsection, be the liable person because of paragraph (3)(a);

then, so far as a person has suffered loss or damage because the disclosure document or statement was defective because of the alteration, the liable person is the person who made the alteration, rather than the person referred to in paragraph (d).

(5) *An action under subsection (2) may be begun at any time within 6 years after the day on which the cause of action arose.*

(6) *A person is not liable under subsection (2) in a situation described in paragraph (1)(b) if the person took reasonable steps to ensure that the disclosure document or statement would not be defective.*

(7) *This section does not affect any liability that a person has under any other law.*

5.2 Elements

This is a relatively straightforward claim by former customers of the Company. As Middleton J set out in the Decision:

57 *Section 946A of the [Act] relevantly provides:*

(1) *The providing entity must give the client a Statement of Advice in accordance with this Subdivision and Subdivision D.*

(2) *The Statement of Advice may be:*

(a) *the means by which the advice is provided; or*

(b) *a separate record of the advice.*

58 *The main requirements for a “Statement of Advice” are set out in s 947B of the CA and include “a statement setting out the advice” and “information about the basis on which the advice is or was given”: see, eg, s 947B(2)(a), (c).*

59 *Forex CT admits that it failed to provide a Statement of Advice as required by s 946A(1) of the CA in each of the 595 instances that an account manager gave personal advice during the Relevant Period.*

On this basis, all the former customers are required to establish is that they were not given a Statement of Advice. The Liquidators will be able to quickly ascertain whether former customers were given Statements of Advice, in circumstances where the former customer has also received personal advice. The Liquidators will also need to determine when (if ever) the Company ceased the practice of providing Statements of Advice to former customers.

Again, it will be important to establish how it is that the failure to provide the Statement of Advice will have caused the loss or damage by the former customer, but it is likely that the lack of the Statement of Advice would indirectly have caused the former customers to be more likely to accept the advice of the representatives, and in turn make decisions that either caused them to suffer a loss, or to suffer worse losses than they would have otherwise suffered if they had not followed the advice of the representatives.

5.3 Examples in the Decision

Forex admitted it failed to provide statements of advice in 595 instances.⁶

5.4 Evidence to be obtained

The Liquidators should interrogate the books and records of the Company to ascertain whether statements of advice were ever provided to clients. If statements of advice were never supplied, then all former customers of the Company may have claims for loss or damage pursuant to s 953B of the Corporations Act. This should not require significant work, although will likely still require some allowance for the need to prove the causal link between the failure to supply the statement of advice and the loss. This means a discount is likely to be necessary to be applied to claims of this nature.

6 Claims for loss or damage pursuant to section 991A(2)

6.1 Provision breached

991A Financial services licensee not to engage in unconscionable conduct

(1) *A financial services licensee must not, in or in relation to the provision of a financial service, engage in conduct that is, in all the circumstances, unconscionable.*

⁶ Decision, [59].

(2) *If a person suffers loss or damage because a financial services licensee contravenes subsection (1), the person may recover the amount of the loss or damage by action against the licensee.*

(3) *An action under subsection (2) may be begun at any time within 6 years after the day on which the cause of action arose.*

(4) *This section does not affect any liability that a person has under any other law.*

This is an easier route home as the liability is in the same provision as the cause of action.

6.2 Examples in the Decision

In the specific context of the Decision, Middleton J identified the relevant threshold for “unconscionable” as follows:

*[73] In ACCC v Quantum Housing Group, the Full Court (Allsop CJ, Besanko and McKerracher JJ) in considering s 12CB of the ASIC Act and the decision of the High Court in Australian Securities and Investments Commission v Kobelt (2019) 267 CLR 1, confirmed it was not an essential ingredient of statutory unconscionability that there is some form of pre-existing disadvantage, vulnerability or disability of which advantage is taken: at [78]-[85]. **Rather, “unconscionable” has its ordinary or natural meaning of “doing what should not be done in good conscience”, as guided by the human values that inform an Australian business conscience: ACCC v Quantum Housing Group at [87]. See also Unique International College Pty Ltd v Australian Competition and Consumer Commission (2018) 266 FCR 631 (‘Unique International College v ACCC’) at [155] (Allsop CJ, Middleton and Mortimer JJ). (emphasis added).***

There were 10 factors which Middleton J identified as comprising the ‘unconscionable conduct’ for the purposes of s 991A (at [74]):

- (a) *each of the clients had an incomplete or inadequate understanding of the operation of the Products, which were complex and risky in nature;*
- (b) *all of the clients had no experience, or limited experience, of trading in the Products and were therefore at a disadvantage vis-à-vis Forex CT as counterparty to the transaction;*
- (c) *in relation to at least some of the clients, Forex CT failed to comply with guidelines published by ASIC for providers of CFDs and Margin FX. In particular, Forex CT failed to apply minimum qualification criteria when taking on new clients and, in some instances, the account manager effectively coached the client to pass the qualification quiz;*
- (d) *the explanation provided to each of the clients in relation to the risk of investing in the Products was inadequate. Given the inexperience of each of the clients, and the complexity and risk associated with leveraged products of the kind offered by Forex CT, much more was required by way of explanation of the risk of trading in the Products;*
- (e) *the account managers failed to take any steps, or any adequate steps, to assess the client’s appetite for risk or the appropriateness of the Products to the client;*
- (f) *the account managers employed high pressure sales tactics, such as offering credits and rebates to encourage the client to transfer more money to Forex CT, even after the client had told the account manager that they could not afford to invest more money, or were reluctant to do so;*
- (g) *Forex CT implemented a remuneration structure (as I have already outlined at [22] and [49] above), which was likely to provide an incentive to account managers to encourage clients to deposit funds and to discourage them from withdrawing funds;*
- (h) *the account managers made various misrepresentations to the clients (as I have already outlined at [65]-[66] above), and in particular as to the risk to the client of transferring further amounts to Forex CT and the prospect of the client profiting from particular trades;*

- (i) *the account managers recommended strategies that were inappropriate to the clients, (as I have already outlined at [45]-[46] above), such as placing more trades or trading with greater volume, or leaving open trades that were in a loss (often with predictions made as to the likelihood that the trade would turn around, which the account manager could not have had reasonable grounds for making); and*
- (j) *the account managers delayed the processing of the client's request to withdraw funds, and actively tried to dissuade the client from proceeding with the withdrawal.*

6.3 Evidence to be obtained

Although the above findings are in the context of the eight specific customers, they still reveal examples of conduct that can be considered unconscionable for the purposes of the Liquidators' report:

- (a) any examples of clients asking questions or questionnaires that revealed their experience, or inexperience in trading in the Products;
- (b) the script or emails that reveal the tactics to be used to coach people through the quiz;
- (c) the script or any information that reveals how to explain risk to clients;
- (d) any documents that set out how risk was to be assessed or the steps to assess a client's risk appetite;
- (e) any documents that demonstrate that staff were incentivised to engage in high pressure sales tactics (remuneration incentives etc);
- (f) the remuneration structure;
- (g) any scripts that contain misrepresentations about the nature of the Products that were offered by the Company;
- (h) any scripts or standard operating procedures that suggest or encourage representatives to delay, discourage or defer the approval of withdrawals by clients.

6.4 Limitations of this approach

Importantly, these findings are contextually specific, and may have a higher standard of causation to be established, which may in turn require a deeper discount for the Liquidators to be able to admit such claims. Therefore, the Liquidators should focus their energies on recoveries for "global" types of conduct, such as the loss and damage pursuant to section 12GF of the ASIC Act for breaches of s 12CB of the ASIC Act. These are discussed below.

7 Claims for loss or damage pursuant to section 12GF of the ASIC Act

7.1 Provision breached

In the Decision, the Company was held to have breached both s 12CB and s 12DA of the ASIC Act.

12CB Unconscionable conduct in connection with financial services

- (1) *A person must not, in trade or commerce, in connection with:*
 - (a) *the supply or possible supply of financial services to a person; or*
 - (b) *the acquisition or possible acquisition of financial services from a person;**engage in conduct that is, in all the circumstances, unconscionable.*
- (2) *This section does not apply to conduct that is engaged in only because the person engaging in the conduct:*
 - (a) *institutes legal proceedings in relation to the supply or possible supply, or in relation to the acquisition or possible acquisition; or*

(b) refers to arbitration a dispute or claim in relation to the supply or possible supply, or in relation to the acquisition or possible acquisition.

(3) For the purpose of determining whether a person has contravened subsection (1):

(a) the court must not have regard to any circumstances that were not reasonably foreseeable at the time of the alleged contravention; and

(b) the court may have regard to conduct engaged in, or circumstances existing, before the commencement of this section.

(4) It is the intention of the Parliament that:

(a) this section is not limited by the unwritten law of the States and Territories relating to unconscionable conduct; and

(b) this section is capable of applying to a system of conduct or pattern of behaviour, whether or not a particular individual is identified as having been disadvantaged by the conduct or behaviour; and

(c) in considering whether conduct to which a contract relates is unconscionable, a court's consideration of the contract may include consideration of:

(i) the terms of the contract; and

(ii) the manner in which and the extent to which the contract is carried out;

and is not limited to consideration of the circumstances relating to formation of the contract.

It is also important to read s 12CB of the ASIC Act in conjunction with s 12CC of the ASIC Act. In particular, the following considerations appear to be relevant in assessing the conduct of the Company:

12CC Matters the court may have regard to for the purposes of section 12CB

*(1) Without limiting the matters to which the court may have regard for the purpose of determining whether a person (the **supplier**) has contravened section 12CB in connection with the supply or possible supply of financial services to a person (the **service recipient**), the court may have regard to:*

(a) the relative strengths of the bargaining positions of the supplier and the service recipient; and

...

(c) whether the service recipient was able to understand any documents relating to the supply or possible supply of the financial services; and

(d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the service recipient or a person acting on behalf of the service recipient by the supplier or a person acting on behalf of the supplier in relation to the supply or possible supply of the financial services; and

...

The Company was also found to have breached s 12DA of the ASIC Act regarding misrepresentations that were made. Relevantly, section 12DA of the ASIC Act states;

12DA Misleading or deceptive conduct

(1) A person must not, in trade or commerce, engage in conduct in relation to financial services that is misleading or deceptive or is likely to mislead or deceive.

7.2 Entitlement to loss or damage

Breaches of s 12CB of the ASIC Act (Unconscionable conduct in connection with financial services) fall within Subdivision C of Division 2 of Part 2 of the ASIC Act. Breaches of s 12DA of the

ASIC Act fall within Subdivision D of Division 2 of Part 2 of the ASIC Act. Therefore, loss and damage for the unconscionable system under s 12CB, and the misleading or deceptive conduct can be recovered under s 12GF:

12GF Actions for damages

(1) A person who suffers loss or damage by conduct of another person that contravenes a provision of Subdivision C (sections 12CA to 12CC), Subdivision D (sections 12DA to 12DN) or Subdivision DA (sections 12DO to 12DZA) may recover the amount of the loss or damage by action against that other person or against any person involved in the contravention.

(1A) Subsection (1) has effect subject to section 12GNA.

(1B) Despite subsection (1), if:

(a) a person (the claimant) makes a claim under subsection (1) in relation to:

(i) economic loss; or

(ii) damage to property;

caused by conduct of another person (the defendant) that was done in contravention of section 12DA; and

(b) the claimant suffered the loss or damage:

(i) as a result partly of the claimant's failure to take reasonable care; and

(ii) as a result partly of the conduct referred to in paragraph (a); and

(c) the defendant:

(i) did not intend to cause the loss or damage; and

(ii) did not fraudulently cause the loss or damage;

the damages that the claimant may recover in relation to the loss or damage are to be reduced to the extent to which the court thinks just and equitable having regard to the claimant's share in the responsibility for the loss or damage.

(2) An action under subsection (1) may be commenced within 6 years after the day on which the cause of action that relates to the conduct accrued.

7.3 Examples in the Decision

In the decision, Middleton J referred to the following examples of conduct that demonstrated the Company's "unconscionable system" for the purposes of s 12CB at [77]:

- (a) *engaging in, facilitating or encouraging the unconscionable conduct in relation to the eight identified clients, as discussed above;*
- (b) *facilitating trading in Margin FX and CFDs:*
 - (i) *in circumstances where (as I have said at [18] above) many of the clients did not have a sufficient understanding of the nature of the financial products and the risks inherent in them, and were reliant on the advice and recommendations of the account manager;*
 - (ii) *without conducting a thorough assessment of the client's objectives, financial situation and needs to determine whether such financial products were appropriate for the client;*
- (c) *establishing and enforcing key performance indicators for retention team leaders, account managers and acquisition agents that resulted in a conflict between the interests of representatives and the interests of Forex CT clients;*

- (d) *implementing an employee remuneration scheme and key performance indicators that (as I have said at [55 (b)] above), was likely to provide an incentive to account managers to encourage clients to deposit funds and to discourage them from withdrawing funds and to recommend trades or trading strategies that were not necessarily in the clients' best interests;*
- (e) *implementing a bonus structure that (as I have said at [49] above) incentivised acquisition agents to maximise the number of first time deposits that they obtained from new clients and therefore created a significant risk that acquisition agents would coach prospective new clients to assist them to pass the qualification quiz;*
- (f) *implementing and encouraging a trading floor culture that was directed towards maximising trading volume and client deposits and not adequately promoting a culture of compliance with applicable legal requirements;*
- (g) *establishing and implementing incentives for clients to deposit funds and disincentives for clients to withdraw funds from their trading accounts;*
- (h) *providing inadequate or inappropriate training and guidance to representatives, including encouraging representatives to advise clients to trade more frequently and in higher volumes and training representatives to use a client in a negative situation in relation to their trading of the Products as an opportunity to persuade the client to deposit more funds into their trading account, without consideration of whether that was in the client's best interests;*
- (i) *training and encouraging representatives to deploy strategies to persuade clients to cancel requests to withdraw funds from their trading account; and*
- (j) *failing to ensure compliance with financial services laws.*

It therefore seems this is going to be the most straightforward for former customers to establish their claims against the Company.

In relation to breaches of s 12DA of the Corporations Act, Middleton J considered the contraventions of s 12DA alongside the contravention of s 1041H: see [60] to [68] of the Decision. These breaches appear to be more factually specific, and may be harder to substantiate on a global basis (see above at section 6.4)

7.4 Evidence to be obtained

The Liquidators should interrogate the books and records of the Company to identify the remuneration scheme that was offered to employees, the training that was offered and potential scripts or procedures that demonstrate that staff were encouraged to delay, discourage or defer former customers from making withdrawals, or encouraged former customers to make deposits without due regard to their financial status.

It is also critical for the Liquidators to identify the time from which this conduct, or the unconscionable system came into being. Pursuant to s 12GF(2), claims for loss or damages can be commenced within 6 years, so arguably former customers who made deposits, and experienced a net loss since 28 June 2015 may have had claims against the Company for loss or damage under s 12GF as at the Appointment Date.

This also seems to be the most viable claim to allow the former customers to claim at close the full value of their claims as s 12CB(4)(b) of the ASIC Act states that

“this section is capable of applying to a system of conduct or pattern of behaviour, whether or not a particular individual is identified as having been disadvantaged by the conduct or behaviour”.

This particular phrase was considered recently in the Federal Court by Beach J in the decision of *Australian Securities and Investments Commission v AGM Markets Pty Ltd (in liq) (No 3)* [2020] FCA 208; (2020) 275 FCR 57. His Honour analysed what was meant by the phrase and the sorts of proof that would be required to establish either a “system of conduct” or a “pattern of behaviour”: see [385] to [392]. In the context of a company offering foreign exchange and contracts for

difference, Beach J summarised several factors that substantiated the conclusion that the company had established a “system of conduct” (at [415] to [444]):

- (a) *first*, the approach of representatives was consistent across all defendants based on (among other things):
 - (i) the nature of the training received; and
 - (ii) scripts that were provided;
- (b) *second*, the purpose of account managers was to increase amounts deposited and open multiple positions, and that the purpose was for clients to lose money (and thereby the company would profit) and this purpose was advanced in relation to a material number of the company’s clients;
- (c) *third*, the account managers used software to gain remote access to client’s computers to ascertain how much money could be deposited;
- (d) *fourth*, “various aspects of the system put in place by the defendants were generic...The defendants were apparently indiscriminate to whom they were willing to provide a trading account”: see [425]);
- (e) *fifth*, each of the themes that emerge from the evidence of the interaction were probative of the system of conduct and pattern of behaviour engaged in by the company, and notwithstanding that the total number of investors whose conduct was examined, they were nonetheless representative of the conduct of the companies.

Further, in a separate trial on the question of quantum, in the decision of *Australian Securities and Investments Commission v AGM Markets Pty Ltd (In Liq) (No 4)* [2020] FCA 1499; (2020) 148 ACSR 511, at [153], Beach J held that it was appropriate to make third party redress orders under s 12GNB(1), as a result of the defendants’ breaches of s 12CB, and imposed orders that required each defendant to repay to the clients:

- (a) the total amount that the client deposited to the client’s trading account as defined in ASIC’s further amended *points of claim*; less
- (b) any amounts withdrawn, or already refunded to the client, from the client’s trading account; less
- (c) any amounts refunded to the client as a result of any arrangement; less
- (d) any statutory trust funds...

This approach provides support for the Liquidators suggested approach of admitting the claims of former customers on the basis of a “net loss” approach, which should be capable of being calculated readily based on the books and records.

Annexure A

1 Summary of causes of action available to former customers

Provision breached	Entitlement to damages	Limitation Period	Comments
Section 1041H (<i>False and misleading representations</i>) of the Corporations Act	Section 1041I: <i>Loss or damage by conduct of another person engaged in a contravention of...s1041H</i>	6 years from after the day on which the cause of action arose	S 1041I(1A) subject to professional standards defence. S 1041(1B) subject to proportionate liability defence. Discount likely to be required for claims of this nature to overcome causation issues.
Section 961K(2) of the Corporations Act (<i>Contravention by representative of licensee</i>) was breached as a result of breaches of ss 961B, 961G, 961J and 961L.	Section 961M: <i>A Court may order the [financial services licensee] compensate the client for the amount of the loss or damage.</i>	Within 6 years after the contravention	S 961M(4) means you can include the profits resulting from the contravention made by the licensee, which may justify the net loss calculation. Discount likely to be required for claims of this nature to overcome causation issues.
Section 946A of the Corporations Act (<i>Obligation to give client a Statement of Advice</i>)	Section 953B: <i>If a person suffers loss or damage because the person was not given [the disclosure statement] ... that person may recover the amount of loss or damage by action against the liable person</i>	Within 6 years after the day on which the cause of action arose	S 946AA Small investment threshold does not apply as these are derivative products (see s 761D). The threshold amount is \$15,000. Discount likely to be required for claims of this nature to overcome causation issues.
Section 991A(1) of the Corporations Act (<i>Financial services licensee not to engage in unreasonable conduct</i>)	Section 991A(2): <i>If a person suffers loss or damage because a financial services licensee contravenes subsection (1), the person may recover the amount of the loss or damage by action against the licensee.</i>	Within 6 years after the day on which the cause of action arose	Discount likely to be required for claims of this nature to overcome causation issues.

Section 12DA of the ASIC Act (Misleading or deceptive conduct)	Section 12GF of ASIC Act: <i>A person who suffers loss or damage by conduct of another person that contravenes a provision of Subdivision C (sections 12CA to 12CC), Subdivision D (sections 12DA to 12DN) or Subdivision DA (sections 12DO to 12DZA) may recover the amount of the loss or damage by action against that other person or against any person involved in the contravention.</i>	Within 6 years after the day on which the cause of action that relates to the conduct accrues	S 12GNA subject to professional standards defence Discount likely to be required for claims of this nature to overcome causation issues.
Section 12GF of the ASIC Act (Unconscionable conduct in connection with financial services)	Section 12GF of ASIC Act: <i>A person who suffers loss or damage by conduct of another person that contravenes a provision of Subdivision C (sections 12CA to 12CC), Subdivision D (sections 12DA to 12DN) or Subdivision DA (sections 12DO to 12DZA) may recover the amount of the loss or damage by action against that other person or against any person involved in the contravention.</i>	Within 6 years after the day on which the cause of action that relates to the conduct accrues	Arguable that no discount is necessary for claims of this nature due to the operation of s 12CB(4)(b): <i>this section is capable of applying to a system of conduct or pattern of behaviour, whether or not a particular individual is identified as having been disadvantaged by the conduct or behaviour</i> <i>Australian Securities and Investments Commission v AGM Markets Pty Ltd (In Liq) (No 4) [2020] FCA 1499;</i> (2020) 148 ACSR 511 provides authority that clients are entitled to the full amount of their deposits less any withdraws, any refunds, or any statutory trust funds. Arguably no discount needs to be applied.

Annexure B | Summary of evidence to be obtained by the Liquidators for the Investigation Report

23 February 2022

1 Part One – Selected Former Customers

The Liquidators will need to select, from the pool of Registered Former Customers, a subset of Registered Former Customers who represent each of the following categories (the **Selected Former Customers**):

- (a) Registered Former Customers that have traded at different points of time within the Relevant Period, namely those who traded:
 - (i) only at the beginning;
 - (ii) only during the middle period;
 - (iii) only towards the end of the period; or
 - (iv) regularly across the entire Relevant Period;
- (b) Registered Former Customers that have incurred differing levels of loss as result of the Company's conduct, for instance, examples of Registered Former Customers who have lost approximately:
 - (i) \$10,000;
 - (ii) \$50,000;
 - (iii) \$100,000; and
 - (iv) more than \$200,000;
- (c) Registered Former Customers that traded with different levels of frequency such as:
 - (i) more than daily;
 - (ii) daily;
 - (iii) weekly; or
 - (iv) monthly.

It is also important for the Liquidators to ensure that their analysis of the Selected Former Customers also incorporates a range of different representatives with whom the Selected Former Customers were engaging with. This is important to ensure that the conduct directed towards the Selected Former Customers is as representative as possible, and does not just centre around the conduct of one or two representatives.

2 Part Two – Evidence to substantiate the Former Customer Causes of Action

The Liquidators will then need to look at the books and records of the Company in respect of each of the Selected Former Customers, with a view to gathering the following evidence:

Type of Claim	Provision breached	Evidence to be obtained
MDC Claim	Section 1041H of the Corporations Act (<i>Misleading or deceptive conduct</i>)	<p>The MDC Claims rely on establishing that the Company, through its representatives, engaged in conduct that was misleading or deceptive, or was likely to mislead or deceive. Such statements may include statements to the effect that:</p> <ul style="list-style-type: none"> the interests of the representative/Company were aligned with those of the Selected Former Customers; the representative did not benefit if the Selected Former Customer deposited money or traded with the Company; there were low to minimal risks of investing, or that a positive return was guaranteed; the Selected Former Customer would make up past losses by continuing to invest in the Company's products; the Selected Former Customer would receive a particular return on a particular trade; the recommendations by the representative were appropriate for the Selected Former Customer; it was in the Selected Former Customer's best interests to enter into a particular trade, or delay a withdrawal; or any other examples of statements that are inconsistent with the nature of trading in the Company's products, or the remuneration structure of the representatives.
MDC Claim	Section 12DA of the ASIC Act (<i>Misleading or deceptive conduct</i>)	
Unconscionable Claim	Section 991A(1) of the Corporations Act (<i>Financial services</i>)	

	<i>licensee not to engage in unconscionable conduct)</i>	<p>The Liquidators should look for examples where, in respect of the Selected Former Customers, representatives of the Company have engaged in unconscionable conduct. Examples may include conduct such as:</p> <ul style="list-style-type: none"> ▪ deliberate non-disclosure of the risks of the products offered by the Company; ▪ pressure being applied to Selected Former Customers to continue investing in the Company's products, even though they had indicated they no longer wanted to do so (such as a minimum number of phone calls to a client before they were allowed to close their accounts with the Company); ▪ offering incentives to Selected Former Customers to encourage them to invest more money in the Company's products; ▪ delaying, deferring or discouraging Selected Former Customers from withdrawing their funds from the Company; ▪ a remuneration or bonus structure that rewards representatives for achieving certain levels of deposits; or ▪ deliberately targeting particular groups of people who are unsophisticated and unlikely to be able to understand the nature of the Company's products.
Unconscionable Claim	Section 12CB of the ASIC Act (<i>Unconscionable conduct in connection with financial services</i>)	

In addition to the above targeted investigations in reviewing the conduct directed to the Selected Former Customers, the Liquidators should also seek to identify documents demonstrating the Company's endorsement of the conduct of the representatives. We expect the Company will have documented its various policies, processes and procedures that may support the Unconscionable Claims. Examples of these types of documents includes scripts, remuneration and bonus policies, training manuals, strategy documents etc.

Invesus Investigation | Telephone Review Handbook

29 March 2022

To FTI Consulting

From King & Wood Mallesons

1 Introduction

1.1 Background

- (a) The purpose of this document is to set out parameters to assist the team reviewing the telephone calls between various sales representatives of Forex Capital Trading Pty Ltd (in liq) (the **Company**) (**Representatives**) to various former customers of the Company (**Former Customers**). This document should be read in conjunction with the Investigation Briefing Report prepared by KWM on 23 February 2022.
- (b) There are two broad categories of conduct to be looked for in this review:
 - (i) Misleading and Deceptive Conduct (section 2); and
 - (ii) Unconscionable Conduct (section 3).
- (c) More detail as to what is to be looked at when reviewing phone calls is set out below. A template table to use when reviewing a phone call is included in this document as annexure A.

1.2 Process

- (a) We understand the Liquidators now have access to the recordings of various telephone calls between Representatives and Former Customers.
- (b) These phone calls will be listened to in order to identify instances that demonstrate the Company was engaged in misleading and deceptive conduct, or was otherwise operating an unconscionable system in respect of the Former Customers.
- (c) To assist with this review, we have set out below some non-exhaustive examples of instances where Representatives may have engaged in misleading and deceptive conduct, or otherwise demonstrate the Company's unconscionable system. It is important to note these examples are non-exhaustive, and reviewers should note any aspects of phone calls they consider to be problematic, or that demonstrate wrongful conduct by Representatives, and not rely solely on the categories and examples below.
- (d) We also understand transcripts of these phone calls have been prepared and the relevant search terms set out below will be highlighted in order to assist reviewers in identifying instances of wrongful conduct by Representatives.
- (e) One critical aspect of the wrongful conduct is the Representatives' general failures to warn Former Customers of the inherently high risk nature of the Products offered to Former Customers by the Company. Reviewers should also consider whether a phone call fails to adequately disclose risk, or otherwise misrepresent the risk of trading in Products to Former Customers. This should be noted in the summary table, alongside any other observations about a call.

2 Misleading and Deceptive Conduct

When reviewing phone calls, please look for examples of the following:

Item	Description	Key words / phrases
1	Any representation that the interests of the Representative/Company were aligned with those of the Former Customer.	“win-win” “good for both of us” “in this together” “you make money, I make money”
2	Any representation that the Representative did not benefit from the Former Customer making deposits or continuing to trade.	“I don’t get anything out of this” “I’m doing this for you” “I’m just trying to help you”
3	Any representation to the Former Customer that investing in the Products was “low-risk”	“low-risk” “minimal risk” “can’t lose” “guaranteed return”
4	Any comparisons between the Products and other methods of investing	“it’s easier than trading in X” “you can make more money quicker than investing in X”
5	Avoiding questions about the risks of the Products, or coaching Former Customers through the client questionnaire	“the answer” “as I’ve told you before”
6	Any representation that a particular trade would generate a profit for a Former Customer	“guaranteed return” “profit” “certain win” “this trade will make you \$X”
7	Any representation that a Former Customer would be able to make up past losses by continuing to invest in Products	“you can make all of this back if you invest again”
8	Any representation that the Representative had considered that Former Customer’s personal circumstances and were appropriate for the Former Customer	“for someone like you” “I recommend you” “In your situation...” “If you’ve lost before, you can make that back” “If you want to make more money, you should increase the size of your investment”
9	Any representation that it was in the Former Customer’s best interests to trade in a particular way	“if you spend \$20,000, you can get onto the VIP platform that will allow you to trade with a smaller spread”
10	Any representation that delaying a withdrawal was in a Former Customer’s best interests	“if you leave that money in, you will be able to trade your way out” “if you take that money out, you won’t be able to trade back those profits” “if you just want to leave that money in, then it will make it easier for you to get back into it when you can”

Please note that the above table is not exhaustive and reviewers should feel free to identify other examples of conduct that should be brought to the attention of FTI and/or KWM to consider further. Reviewers should also consider whether a phone call fails to adequately disclose risk, or otherwise misrepresent the risk of trading in Products to Former Customers. This should be noted in the summary table, alongside any other observations about a call.

The following words should be highlighted to assist in identifying instances of misleading and deceptive conduct:

- | | |
|-----------------|-------------|
| ▪ win | ▪ like you |
| ▪ profit | ▪ recommend |
| ▪ guarantee | ▪ increase |
| ▪ certain | ▪ again |
| ▪ easy / easier | ▪ stay |
| ▪ low | ▪ withdraw |
| ▪ risk | ▪ VIP |
| ▪ more money | ▪ paid |
| ▪ make you | ▪ want |

3 Unconscionable Conduct

Item	Description	A positive statement?	Key words / phrases
1	Coaching Former Customers through the questionnaire they are required to complete before they are allowed to trade on the platform	No	-
2	Applying pressure to Former Customers to continue investing in Products	Yes	"if you leave that money in, you will be able to trade your way out" "if you take that money out, you won't be able to trade back those profits" "if you just want to leave that money in, then it will make it easier for you to get back into it when you can"
3	Phone calls continuing after Former Customers have indicated they do not want to continue trading / hear from Forex	Yes	"I don't have time for this" "I don't want to trade anymore" "I don't have any money" "I can't afford this"
4	Offering incentives to Former Customers	Yes	"If you invest \$X, then I can give you..." "I need you to invest / deposit \$X so that I can match it" "I can offer you..."
5	Anything to overstate the urgency or importance of making deposits	Yes	"This is really important" "You need to act quickly"

Item	Description	A positive statement?	Key words / phrases
			"This is urgent" "If you don't do this..."
6	Anything said to delay, defer or discourage Former Customers from making a withdrawal	Yes	"if you leave that money in, you will be able to trade your way out" "if you take that money out, you won't be able to trade back those profits" "if you just want to leave that money in, then it will make it easier for you to get back into it when you can" "for someone like you" "I recommend you" "In your situation..." "If you've lost before, you can make that back" "If you want to make more money, you should increase the size of your investment"

Please note that the above table is not exhaustive and reviewers should feel free to identify other examples of conduct that should be brought to the attention of FTI and/or KWM to consider further.

Reviewers should also consider whether a phone call fails to adequately disclose risk, or otherwise misrepresent the risk of trading in Products to Former Customers. This should be noted in the summary table, alongside any other observations about a call.

The following words should be highlighted to assist in identifying instances of misleading and deceptive conduct:

- | | |
|-------------|--------------|
| ▪ stay | ▪ reconsider |
| ▪ time | ▪ need |
| ▪ urgent | ▪ easier |
| ▪ important | ▪ help |
| ▪ delay | ▪ withdraw |
| ▪ offer | ▪ continue |

Annexure A – Sample Telephone Call Review Table

Call ID	From	To	Duration	Misleading Conduct	Unconscionable Conduct
###	###	###	###	Remuneration 0:12 to 0:16 “If you win, I win, so I just want the best for you, which is why I think you should make this trade”	Urgency 0:20 to 0:26 “So that I can make you that offer, I really need you to deposit another \$5,000 in the account before the end of today”

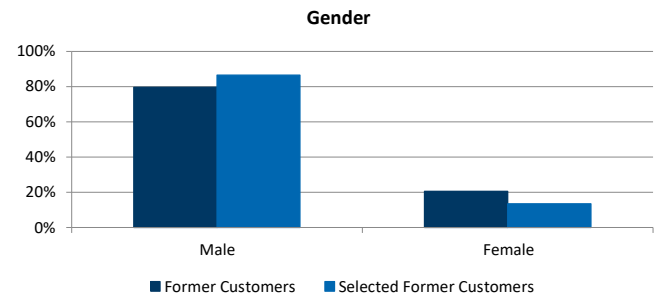


Annexure 2 – Key metrics of Selected Former Customers

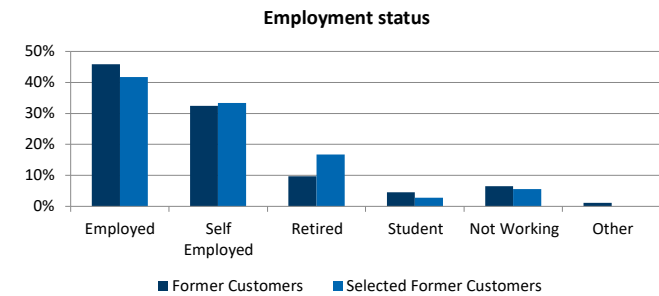
Demographic information

Below is a summary of the available statistics for the Selected Former Customers against the body of Former Customers, based on self-reported demographic and suitability survey information provided to Forex CT during the account registration process. We have limited data available for each. We have information for between 1,912 and 2,400 Former Customers, depending on the statistic, including 36 to 41 Selected Former Customers.

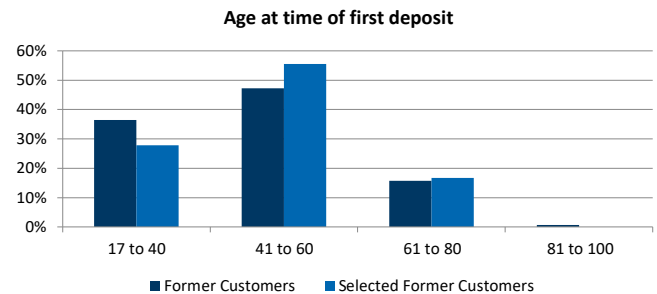
1. Gender



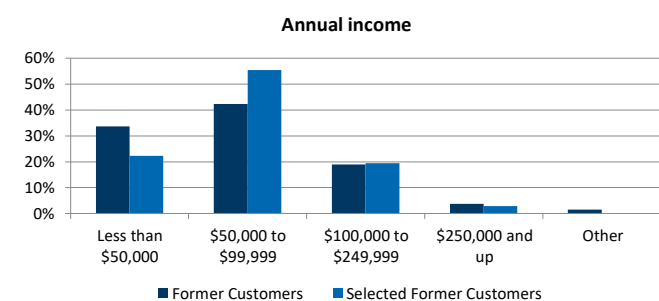
3. Employment status



2. Age at time of First Deposit



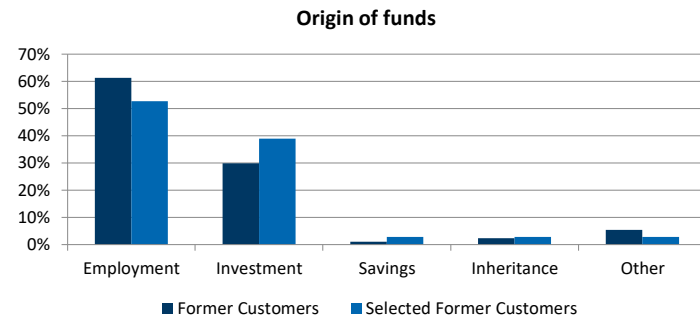
4. Annual income



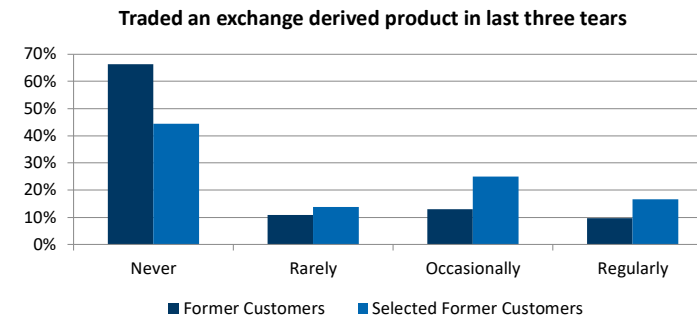
	Former Customers	Selected Former Customers
Average age	47	49

	Former Customers	Selected Former Customers
Average weighted income	92,270	93,750

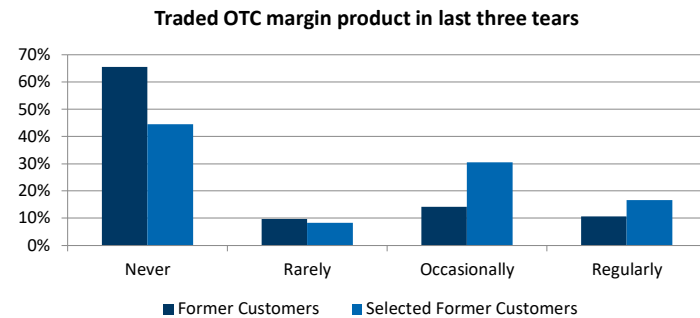
5. Origin of funds



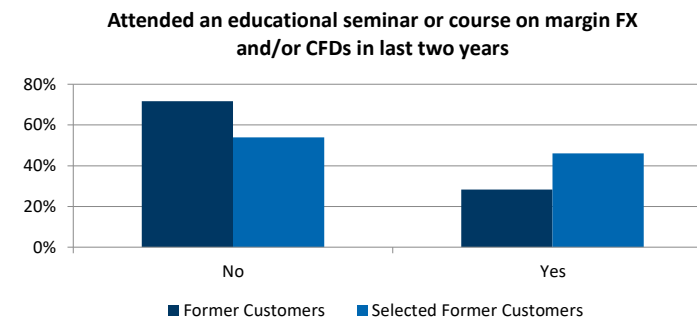
7. In the last 3 years, have you traded an exchange traded derivative (e.g. listed CFDs, warrants, futures or options)?



6. In the last 3 years, have you traded an over-the-counter (OTC) margin product (e.g. CFD or FX)?

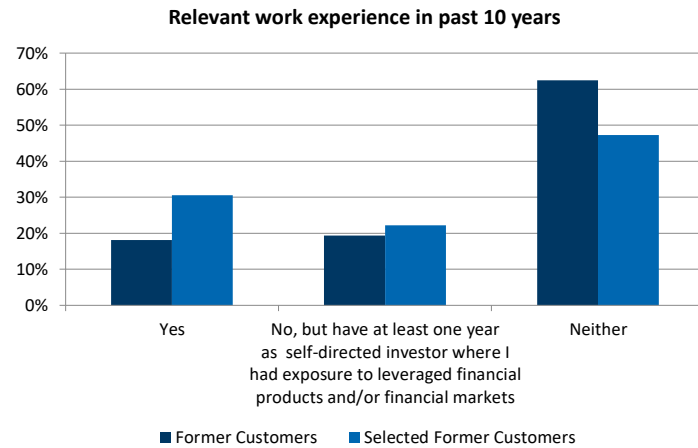


8. In the last 2 years, have you attended an educational seminar or course (online or offline) on margin FX and/or CFDs which explained the concepts of leverage, margin, volatility and covered the other Qualification Criteria?

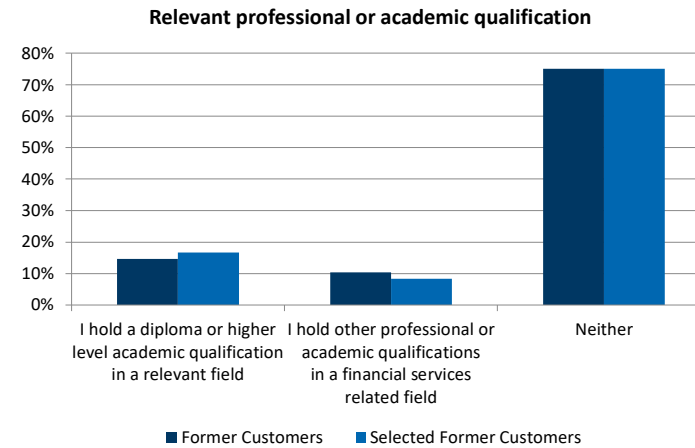


Annexure 2 – Key metrics of Selected Former Customers

9. Do you have any relevant work experience during the past 10 years that gives you a good understanding of leverage, margin, volatility and the other Qualification Criteria?



10. Do you have a professional or academic qualification which gives you a good understanding of leverage, margin, volatility and the other Qualification Criteria?



Annexure 3 – Telephone Review

Forex Capital Trading Pty Ltd (In Liquidation)

Selected Former Customer Communications Review

1. Our review

As set out in the Investigations Report, we undertook a review of 58 Selected Former Customers as a representative sample of conduct that was experienced by all Former Customers during the Relevant Period.

We found that all but one of the Selected Former Customers experienced a form of Misleading or Deceptive Conduct or were impacted by the unconscionable system outlined in the Investigations Report. For the Selected Former Customer that we did not identify misconduct, we had limited information compared to other Selected Former Customers. However, based on the systemic nature of the Company's conduct, and the policies and procedures in place, it would appear this Selected Former Customer would also have a claim against the Company for Misleading or Deceptive Conduct.

Further, a summary table of issues identified is provided at Annexure A – Summary of findings. Based on the investigations undertaken, we have sought to categorise the improper conduct towards Former Customers in four ways:

- Misleading or Deceptive Conduct;
- Upselling / maximising deposits;
- Delaying or cancelling withdrawals; and
- Continuous contact (including ignoring requests for no further contact).

Where our investigations have shown that a Selected Former Customer has received one (or more) of these types of conduct, that is indicated with an "X" in the relevant column.

An overview of the conduct found is outlined below. In summary, we found:

- Former Customers were routinely offered incentives to deposit funds, increase deposits, or cancel withdrawals;
- Former Customers were encouraged to increase their account equity (i.e. deposit more funds) and trading volume through "trading tips";
- Representatives actively sought to reduce or cancel withdrawals;
- Representatives insinuated that their interests were aligned with Former Customers and that they were there to help the Former Customer succeed with their trading; and
- Representatives applied relentless pressure to Former Customers to continue trading, calling frequently, even when Former Customers advised that they had no funds or were no longer interested in trading.

Finally, in this note, where direct quotes or extracts have been provided, they have not been corrected and typographical errors are as they appear in the original document. The only edits that have been made are to replace the names of Former Customers or Representatives as appropriate. Where these documents make references to refer to "clients" those references are references to Former Customers and references to "agents" are references to Representatives of the Company (as defined elsewhere in the Investigation Report).

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2. Upselling and maximising deposits

Our investigations identified several techniques Representatives used to encourage Former Customers to deposit or to upsell or maximise a potential deposit. The main techniques employed were:

- offering an incentive in return for a deposit;
- advising Former Customers that they needed to increase their equity;
- encouraging Former Customers to increase their trading volume, which would often either require additional equity to facilitate or accelerate losses.

Our investigations showed Representatives routinely called the Selected Former Customers to elicit deposits. Representatives were provided with an Alerter report, which provided relevant trading details about the Former Customers to assist them in targeting additional deposits. Representatives were also provided with details of when a Former Customer logged into the deposits page of their account, were on margin call, or had liquidated, which would be used as a prompt to call Former Customers and seek a deposit (FCT.2003.0003.8253).

An overview of these techniques is provided below.

2.1. Incentives

Our investigations identified that 57 of the 58 Selected Former Customers experienced behaviour designed to upsell or maximise their deposits. Most frequently, the Selected Former Customers were offered deposit credits if they deposited funds within a certain timeframe (usually that day or the following day). Other incentives used to increase deposits included:

- offering gift cards (e.g. Coles Myer gift card);
- adding Selected Former Customers to a rebate program;
- offering Selected Former Customers a certain number of protected positions; and
- offering Selected Former Customers participation in the VIP program.

We have limited information available for the one Selected Former Customer that we have not been able to find instances of incentives being offered. However, as stated above, due to the systemic nature of the Company's conduct, we have no reason to believe this Selected Former Customer would **not** also have received similar misconduct from the Company or its Representatives.

Our investigations suggest incentives were used to:

- secure or upsell a deposit;
- create a sense of urgency; and
- develop relationships with Former Customers and create a belief that the Representatives were working in the Former Customer's interests, with Representatives suggesting they were going the extra mile to secure an incentive, when incentives were, in fact, standard practice within the organisation.

Examples of this behaviour are set out below.

- Representative M requesting approval for an incentive for Selected Former Customer 3 (FCT.2008.0004.8287): *"Requesting a 15% rebate for 3k... contingency for 2k to get the deal."*
- Representative N emailing a Former Customer group, including Selected Former Customer 6 (FCT.2012.0003.5599): *"The big boss is here from overseas and has made an extraordinary one day only offer to all our clients. I've never seen an offer as good as this before. This is the absolute best opportunity you're likely to ever get to progress your account to VIP status or get access to trading credit if you're interested."*
- Follow up email from Representative N to Former Customer group, including Selected Former Customer 6 (FCT.2012.0003.5719): *"Also as detailed in an email yesterday some of our senior managers are in town from overseas. They are leaving today, so if you want to upgrade your trading package or are interested in getting some*

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free trading credit then contact me ASAP as they're leaving later today and this is your last chance to allow me to go into bat for my Former Customers to negotiate an offer directly with under the most generous terms."

- Representative G emailing a Former Customer group, including Selected Former Customer 4 (FCT.2006.0004.7197): *"Today is the very last day to get on our Rebate Program. The Company will Pay you up to 50% of ALL of the Spread you have paid for the entire month of JULY! Let me know today if you want that payout."*
- Representative O emailing a Former Customer group, including Selected Former Customers 16 and 32, wrote (FCT.2012.0002.7770) *"This is the most significant spread cashback reward I have seen since I started here!" "This is massive so be sure to take advantage before the offer expires on Friday 18th August."*
- In a call with a Representative about potentially opening an account with the Company (FOR.0001.0002.0957), Selected Former Customer 37 enquires about an incentive offered previously. The Representative advises that the promotion has finished, *"But, since you've just said to me that'll get me across the line, would, if, if they did that for you mate, would it get you across the line today?"*. After the Former Customer confirms it would likely "get them across the line", the Representative ends the call to obtain approval for incentives. On a subsequent call with Selected Former Customer 37 (FOR.001.002.0958), the Representative confirms he can offer an incentive and states, *"Look, I've had to stick my neck out a little bit. Um, to be honest, because we're really not meant to do this"*.
- Representative P emailing a Former Customer group, including Selected Former Customer 11 (FCT.2006.0007.7799): *"Today is the last day of the month and many of you have already contacted me to get your rebates activated! Well done! Those of you who haven't got your rebates activated for this month need to get in touch with me ASAP! A lot of you have hundreds and some with thousands of dollars that haven't been claimed this month. All rebates will be paid into your trading accounts on the 1st of Feb. (Tomorrow) if you have it activated today."*

Our investigations indicated that incentives were a routine offering to Former Customers, with monthly deposit credit reports consistently reporting deposit credits at around 97% of deposits for that month (i.e. if \$1,000,000 of deposits were received that month, \$970,000 in deposit credits had been given out).

We also noted that, despite the routine nature of incentives, there was little consistency in the level of deposit credit offered among Former Customers. For example, one Former Customer was advised that the Company could offer only a 50% credit on a \$10,000 deposit but could offer 100% on a deposit over \$10,000, while another Former Customer was offered an 100% credit on a \$10,000 deposit. It appears that deposit credits were varied in order to secure a deposit or to encourage Former Customers to deposit more than initially anticipated.

Incentives were used as both a carrot and a stick, with credits and rebates being cancelled if a customer withdrew funds prior to satisfying certain criteria (e.g. certain time period lapsing, certain trade volumes achieved). Further information about this is provided in section 3.

2.2. Equity

Representatives also sought to increase deposits by suggesting Former Customers needed additional equity to facilitate their trades or generate profits. They would do this both directly in conversations with Former Customers and indirectly, by suggesting equity requirements in trade updates.

Examples of this behaviour are set out below:

- Representative C emailing a Former Customer group, including Selected Former Customer 42 (FCT.2012.0012.1749): *"This is a trade that you truly need to understand how much movement there could be and the astronomical profits that could be had. Please make sure you have large enough accounts to do large enough trades. This sort of trade doesn't come around very often. Make sure you contact me if you want deposit packages I will be servicing specific packages for 50k, 100k, 250k+ deposits and Former Customers today. I look forward to working with you all on this one and the possibility making a large some of money together."*
- Representative H emailing a Former Customer group, including Selected Former Customer 26 (FCT.2006.0007.1436): *"Get your account ready – for those upping their position sizes to gain bigger profits, so you have more possibilities to trade. (If you want to talk about promotions please email me and I will call you back to see if you are eligible)."*

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- Representatives D and G each emailing a Former Customer group, including Selected Former Customers 26 and 42 (FCT.2006.0006.4666 and FCT.2006.0006.4646): *"This is an extremely good opportunity, I have loaded all my portfolio onto this trade, let me know ASAP how much you can put in your account so we don't miss this opportunity."*
- Phone notes from a conversation with Selected Former Customer 56: *"Client is worried about his current trades. Spoke to client and asked if he wants to maintain them he needs more equity. Client is looking to deposit further."*
- Phone notes from a conversation with Selected Former Customer 58: *"spoke to has little equity needs to contribute"*.
- SMS to Selected Former Customer 46 *"You are at 0.06% equity. I have rebate offers for U and bonus credits available to reduce your trading costs and help your trades."*
- SMS to Selected Former Customer 52 *"You need to get more equity in to maintain the GOLD trade. Once it re-traces you don't want to miss it."*
- Representative on a call with Selected Former Customer 32 (FOR.0001.0002.0826), *"How about you take my advice, try to find some money if you have it sitting somewhere, 3% 4% 10 grand stick it in. I will put in for.. we have 25 30k to work with and we trade 50k 200k in position sizes and we shift the equity little bit. You know, we start seeing, does that make sense to you a little bit?"*
- Representative on a call with Selected Former Customer 44 (FOR.0001.0001.0330), *"I'd rather wait until, you know, we've got proper equity in there."*
- Representative on a call with Selected Former Client 28 (FOR.0001.0001.0031), *"Now the reason why I said to you for you to have high equity in your account is because of this reason here, no matter how high, no matter how long it goes, as long as you have the balance here and you can ride out the fluctuation of the chart and wait for it to go back into your favour. Profit."*

2.3. Increasing trading volume

Our investigations found that Former Customers were encouraged to increase their trading volume both directly and indirectly. We observed Representatives telling Former Customers to increase their volume of trades directly in telephone calls and through advice given in daily trading emails.

The daily trading emails were sent to Former Customers, ostensibly, to provide market information and trade options. However, many of these emails pushed promotions, increased deposits and increased trading volumes. Examples of these emails are provided in Annexure B – Daily trading email samples. Extracts from those emails, phone calls and call notes, where the Representative was encouraging a higher trade volume are provided below:

- *"Diversify your portfolio – trade a number of different pairs 3-5 is a great number. Don't have all your eggs in the one basket."*
- *"There's nothing wrong with trading the BEST looking trades 10+ times a day."*
- *"Remember: The best way to trade the FX market is to have at least 3 trades per day."*
- *"This is a brand new client of mine. He's using the same trade recommendations trading the same markets and profiting very consistently. Things to take note of, 1. Look at the amount of trades he is completing a day – averaging roughly 7-10 trades a day 2. Only looking for small profits per trade but they add up."*
- Note from a call with Selected Former Client 38, *"market update, also expressed the need to place 3 trades a day."*

The impact of increased trading was often that a Former Customer was required to deposit further funds into their account as a higher level of equity was required to support their additional trades. Without further funds, the account was at risk of liquidating. Increased trade volumes also increased the risk of Former Customers incurring losses, which would, in turn, result in Representatives encouraging Former Customers to deposit further funds to rebuild their accounts.

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2.4. Deposits after liquidation or margin calls

Through our investigations, we observed Selected Former Customers being contacted after their account had liquidated or when they were close to or at margin call in order to elicit a deposit, consistent with the guidelines set out in our policy and procedures review. Examples of this behaviour are set out below.

- Message sent to Selected Former Customer 46: *"Hi [Former Customer], You are in a margin call, If you deposit today you can avoid this and I will see if i can get you a bonus credit."*
- Message sent to Selected Former Customer 46: *"Hi [Former Customer], You are in a margin call and your account may be liquidated, which would close your trades if the market goes against you by 0.26%. If you deposit you may avoid this".*
- Message sent to Selected Former Customer 56: *"[Former Customer], I tried to call you. Margin 0.68 is very low. Don't risk your position. Deposit something and I will match it to bring it up."*
- Message sent to Selected Former Customer 52: *"[Former Customer], Try get 2k and we will match it 100% with you. Once gold drops you will be at a high profiting margin."*
- Note from call with Selected Former Customer 20: *"called advised need to top up or close position as margin call! he will monitor and look at putting in \$\$"*
- Note from call with Selected Former Customer 51: *"Call after 6, large account liquidated, might get him back on board. No contact yet".*
- Note from call with Selected Former Customer 50: *"Liquidated. Absolutely shattered. Has only 8k left to his name and not sure what to do. Matched 1k for 1k."*

3. Withdrawals

3.1. Selected Former Customers

Our investigations identified that 30 of the 58 Selected Former Customers experienced behaviour designed to defer, delay or cancel withdrawal requests. For the remaining 28 Selected Former Customers, we do not have sufficient documentation to determine whether or not they experienced similar behaviour.

Our review suggests that delaying or cancelling withdrawals was a targeted action taken by Representatives, with Company staff referring to a withdrawal cancellation as a "save". Representatives were also provided with information about whether and when a Former Customer had created a withdrawal request or logged into the withdrawal page (among other things), which could prompt a phone call to "save" the withdrawal (FCT.2003.0003.8253).

Notes from the Company's Customer Relationship Management database ("CRM") suggest that incentives were often used to procure withdrawal cancellations, either as a carrot or a stick. Examples of the notes Representatives made in CRM about cancelling withdrawals are provided below:

- Selected Former Customer 58: *"doubled his rebate cancel withdraw till end of month".*
- Selected Former Customer 14: *"client WD cancelled, may WD again after he completed volume requirements".*
- Selected Former Customer 58: *"withdrawl 1k approved for rent" followed by "catch up with trades canclcd 1k withdrawal as account equity very low" the next day.*
- Selected Former Customer 20: *"Constantly Changing AM. Had trouble Withdrawing in the past. Took months to withdraw a few years ago. Introduce DAXCAC tomorrow."*
- Selected Former Customer 39: *"as stipulated in the terms & conditions, the credit was removed from your account after your withdrawal, which liquidated the new trades you opened before it was removed".*
- Selected Former Customer 14: *"update the market trend by phone, cancel WD 10K".*
- Selected Former Customer 39: *"Made WD request, but perhaps interested in returning to trade BTCUSD with better spread." "Received email said to cancel WD. Sent T&Cs for 3 month 50% spread cashback."*

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We also found instances where Representatives attempted to turn a withdrawal into a deposit. An example of this is provided in the chat between Selected Former Customer 36 and Representative A, an extract of which is provided in Annexure C – Withdrawal cancellation exchange.

In the chat, the Former Customer repeatedly asks the Representative about a withdrawal request they have submitted. The Representative initially ignores the question and advises that he is “*trying to work a solution*”. The Representative continues to pressure the Former Customer and push incentives to cancel the withdrawal. The Representative’s remarks include “*I need to know I'm not wasting my time with this - do you want me to find out what I can do before we proceed with the withdrawal?*” and “*I know this would help you out [the incentives] but its your decision*”.

Where Representatives suspected a Former Customer was “testing” the withdrawal system, withdrawals were pushed out quickly. This was seen through CRM notes, for example:

- “*Try to save the 100 bucks withdraw, but Former Customer is testing our WD speed, so let it go out asap. Gave him tips and advices so he can starts trading again.*”
- “*want to test WD apply a 1200 WD test ask [Staff] to processs this cleint is clever*”.

The delaying or cancellation of withdrawals resulted in Selected Former Customers ultimately losing those funds through unsuccessful trades.

3.2. General observations

Through our investigations, we reviewed several documents that referred to withdrawals. As many of the Company’s KPIs and bonus targets were based on net deposits (i.e. deposits less withdrawals), the Company’s Director appeared to manage withdrawals based on daily deposits. Whatsapp messages between the Company’s Retention Master (who was required to approve incentives outside of standard approvals and monitored daily trading) and the Company’s Director show withdrawals being “pushed out” when deposits were high but delayed or cancelled when deposits were low. Extracts of these messages are provided below and in Annexure D – Whatsapp message extracts.

- “*We are having an amazing day! ... Total Dep: \$215,999 ... Don’t worry I am already on the team leaders to push out WDs*” (from Retention Master to Director);
- “*[Representative] has told us to hold his WDs until next week, obviously just to win the incentive you gave out. Which is stupid because he’ll take the money then process all next week – just an FYI*” (from Retention Master to Director);
- “*We will be holding back \$178k AUD sorta of WDs for next week*” (from Retention Master to Director);
- “*Hey Shlomi, [Representative] has asked if we can process an extra \$160k WD “asap”. His client is paying off some cards and loans but will be redepositing. Is this approved? The client just raised the WD 5 minutes ago*” (from Retention Master to Director). “*Not approved*” (from Director to Retention Master);
- “*\$46,702 usd Net Deposit ... Withdraws for retention today: \$50 AUD*” (from Retention Master to Director). “*?? ... How could it be? ... Please delay*” (from Director to Retention Master);
- “*We have one big WD that has to go, it’s on [Account Team Leader] team \$27k, I’m going to hold some of the new newer ones and see how we do, we’ve got big ones lined up apparently but we’ll see. ... I’ll keep you updated but the \$27k ([Former Customer]) has to go out today apparently if that’s okay*” (from Retention Master to Director);
- “*We haven’t got a figure for withdraws yet but majority are cancelled!*” (from Retention Master to Director);
- “*Potential WDs today is \$112,043 BUTT most are cancelled by waiting for emails, and we processed some last night*” (from Retention Master to Director);
- “*4pm Update Total Dep: \$286,347 Total Loads: 32 WDs So Far: \$18,501 Net: \$267,846 Sales: 7 I’ve told the TLs to push our WDs, [Representative] has a few big ones that he held back (I think he is trying to save them) but maybe if you could send a message emphasising you want WDs out Because \$18k is nothing!*” (from Retention Master to Director); and
- “*Withdraws ended up being \$16,155 USD Due to some insufficient funds Aka liquidation’s*” (from Retention Master to Director).

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4. Pressure to trade

Our investigations showed that Selected Former Customers were relentlessly followed up to encourage trading and deposits. Selected Former Customers would receive calls every one to two days, even after advising they were not interested in trading or were taking a break (usually because of significant losses suffered). The Company's CRM notes show calls frequently going unanswered as Selected Former Customers did not want to speak to Representatives. Notes in CRM include:

- "Phone "switched off" might have blocked our number";
- "hung up";
- "client not interested . said hes lost too much money. please remove";
- "STVM" [straight to voicemail]; and
- "sounds like he is rejecting".

Despite these notes, Representatives continued to call the Selected Former Customers, with calls intensifying when Selected Former Customers had liquidated or advised they were not interested in trading. One of the Selected Former Customers received 182 unanswered calls and messages after his account liquidated. Other Selected Former Customers experienced call volumes of 26, 33, 34, 46 and 74 calls after liquidating or ceasing to trade with the Company.

A sample of comments made by Selected Former Customers about the Company's relentless pressure to deposit and trade and its impact are set out below.

- Selected Former Customer 44: "feels like he has a knife to his throat".
- Selected Former Customer 38 on being asked to deposit more funds: "Look I mean I'm not in a position, I'm I'm in really deep shit because of I literally lost with you with Forex CT about 25,000, which is because of that really in the big in the big problem now. So I'm I'm I'm I'm not sure if I'm ready. So I just need to really think about it if if this is past that I wanna go again."
- Selected Former Customer 43:
 - "I just feel fucken shit man, because, yeh im just really gone, gone real balls deep into this now, I didn't think like 50 grand to mate, mate this would've lasted me 3 months, even if I was going bad, now seems to be like a week later I need to be tipping more money in you know and trying to get myself out of the shitter."
 - "I just wanna ask you, you know like, theres been a few nights now and its really affected me, you know that ive got these open trades and then I'm watching it mate, and its affecting me at home and my personal life, now how do you manage that, how do you manage that mate?"
 - "You've already asked me for more money and that's not what I'm going be doing.. [cut off by Representative]"
 - "Nah, yeh nahhh. Look mate... Look mate... (repeats) I'm sorry now I'm getting really, every time I seem to speak to one of you guys it always is 'put money in', what do you think I am, a bank? You know, its just. No chance sorry."
- Selected Former Customer 56 "Nah mate, I've had to borrow that, I've scraped everything."

5. Misleading or deceptive conduct

5.1. Interests aligned, best interests and no personal benefits representations

Our investigations showed that Representatives repeatedly suggested that their interests were aligned with Former Customers, they received no personal benefit from Former Customer's actions or that they were acting in the best interests of Former Customers. This was frequently seen in the Representative's calls with Selected Former Customers and daily trading emails. Extracts from a sample of these emails are provided at Annexure B – Daily trading email samples and set out below, together with transcripts from some calls with Selected Former Customers:

- "This is why I send you these emails, its in your best interest to read the around 10:30am every morning and look to trade at least 3 trades off it."

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- *"This is an extremely good opportunity, I have loaded all my portfolio onto this trade, let me know ASAP how much you can put in your account so we don't miss this opportunity".*
- *"I have been researching Oil as the profits on this have been extremely good over the past couple of weeks and have devised an Oil program which a number of you are already taking part in. I have a couple of spaces left available on the program. Please read through the information and let me know if you would like to take a spot."*
- *"Well done every one who cleaned up on Oil last night, there was over 200k profits taken".*
- *"Stick to our strategies, discipline and enjoy – Would like to hear your thoughts on indicators used when we discuss your trades during our appointments".*
- *"USE YOUR DAILY TECHNICALS AND FOLLOW EMAIL CONTENT".*
- *"I look forward to working with you all on this one and the possibility making a large sum of money together."*
- Representative on call with Selected Former Customer 27: *"Our success are directly tied into one another, so it's in my best interest for you to do well, it just is, because if you don't you might stop trading".*
- Representative on call with Selected Former Customer 27: *"One thing I want to make out, is that my success and your success is directly tied into one another. You being unsuccessful here works out for nobody, not for you, not for the company and not for myself"*
- Representative on call with Selected Former Customer 31: *"At the end of the day, if you think of it this way [Former Customer], we look for long term clients as an organisation, because as you know, if you're trading every day, every week, every month, it means that our company is making money on the spread, right? And if you're building your account at the same time it means that it's a win win situation, you're building your account we make money on the spread, the fees, umm, so there's no interest in us, us as in the account manager for you to completely blow your account, because if you do there's a high chance that you might turn around and not trade again, does that make sense?"*

We did not observe risk or general advice warnings in the emails reviewed until around December 2018. At this time, many of the warnings were hidden after the email signature and written in a font size significantly smaller than the rest of the email. In 2019, the warnings progressively moved above the Representatives' signature and increased to a standard font size, though this was often still smaller than other text in the email.

5.2. Profit representation (general and specific) and risk representation

Our investigations showed that Representatives regularly represented that certain profit levels could be achieved, while downplaying or failing to mention risks involved. This was often done by:

- telling Selected Former Customers about another "client's" successful trading strategy, which led to a certain profit level;
- advising Selected Former Customers about an "opportunity" that could bring "astronomical", "massive" or "huge" profits;
- providing example trades to Selected Former Customers, showing profit that would be achieved if the market moved to a certain price level, suggesting Selected Former Customers could achieve that profit; and
- discussing a Selected Former Client's trade or account with them and advising them they could generate a certain profit or grow their account to a certain level.

Examples of this behaviour are provided below. Extracts from Representative's daily training emails, containing profit representations, are provided at Annexure B – Daily trading email samples.

- *"Congratulations to those of you who followed the morning email this morning and **made insane amounts of money**".*
- *"This is a brand new client of mine, He's using the same trade recommendations trading the same markets and profiting very consistently."*

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- *"If we can get a contract of 1000 on at \$61 per barrel, every time Oil pushes higher by \$1 you are making \$1000. As you can see Oil has been up at \$76 per barrel over the last couple of months. If Crude Oil returns to that price, and you have 1000 contracts on, you will make \$16k profit."*
- *"This is a massive opportunity to start the new year with some \$\$ in the bank!"* with two example trades, which suggest profits of \$139,060.44 and \$260,181.78, with no risk warning.
- *"Well done every one who cleaned up on Oil last night, there was over 200k profits taken!"*
- Representative speaking to Selected Former Customer 54: *"I'm going to help you build that up to 1 million and we will start talking."* Selected Former Customer 54 responds, *"What about 20 million?"* Representatives responds, *"No worries my friend, we can do that."*

6. Other findings

Through our investigations, we identified a number of other issues outside the specific categories discussed above and relating to Former Customers outside of the Selected Former Customer group. A summary of those findings is provided below.

6.1. Remuneration

While our investigation of Selected Former Customers Communications did not include a review of Representative remuneration, we identified behaviour where Representatives provided advice to the investors that may not be in the investor's best interests, but would secure a higher bonus for the Representative. The investigation into Representatives' remuneration and bonuses is contained in the "Policies and Procedures Review" that has also been included as an annexure to the Investigation Report.

This behaviour includes securing deposits, increasing trading volumes and cancelling deposits, discussed above. We also observed examples of Representatives advising Former Customers to defer deposits, which would secure the Representative a larger bonus. For example, on 4 August 2017, Selected Former Customer 58 discusses investing \$200 in his account with his Representative. The Representative advises Selected Former Customer 58 that it would be best to wait until he had \$1,000. The Representative receives an additional bonus for deposits of \$1,000 or more so it is in his best interests to delay the Former Customer's deposit until he has \$1,000.

The impact of the remuneration policy was also seen in comments made in the Company's CRM database, with Representatives showing a callous disregard for Former Customers and their personal situations. These ranged from Representatives relentlessly following up Former Customers that had advised they were going bankrupt, were losing their houses, or making insensitive and demeaning comments about Former Customers when the Former Customer was impacting the Representative's KPIs (e.g. not depositing or performing enough trades).

Some examples of the notes left in CRM relating to Selected Former Customers are provided below:

Selected Former Customer	Interaction method	Interaction note
35	Phone	The customer is too stupid. There is no one of the most stupid customers!!!!!!!!!!!!
35	Phone	Unable to communicate with customers... Today PUSH account opening deposit 10,000 principal 50% bonus
38	Phone	Doesnt have a loan, lost a lot of money cant invest until loans come through
37	Phone	Needs to lick his wounds. May return
44	Phone	Called and spoke to [Former Customer] about executing on the 250k deal before month end. Feels like he has a knife to his throat with the short time frame. Asked for another call tomorrow morning.
58	Phone	hasnt the cash for a week

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Selected Former Customer	Interaction method	Interaction note
58	Phone	angry because he went very big on trades and is blaming us. he does not take any advice regarding position sizes or anything. and swearing and all of that
58	Phone	still carrying on. said start small, refresh
58	Phone	call back Friday, selling his van and wants to try new strategy
28	Phone	liq a few times. Zero money left. Check in a couple of week. If no money EOM then remove
42	Phone	says hes got no money left - unlocking hedge trade today
44	Phone	said he cant do it now due to "personal reasons", keep pushing
44	Phone	Called and potentially secured 250k to go VIP.

Examples of comments related other Former Customers are provided below:

Date	Interaction note
2/02/18	homeless bankrupt - absolutely nothing can be done remove
23/5/17	Father overseas is dying, wants to withdraw total balance. Will put back in once back from overseas. Fml
20/12/17	Touched base with client and he wasn't happy about rollover that he wanted to pull the plug . Over 100k charged in Rollover since 2 weeks ago he signed up. Spoke to him and got client not to withdraw. Cancel withdrawal request .
6/9/18	REMOVE FROM SYSTEM, LOST TOO MUCH, BANKRUPT.
20/3/18	rambled on about how he has been bankrupt for the past 7 years, waiting for a letter so he can take out a 5k loan and trade
10/9/18	Might declare bankruptcy
21/11/18	clients gone bankrupt - can only deposit 1k. doing credit match if comes through tonight
18/10/18	idiot
29/05/18	Checked in. Rambled on about some health stuff. Not getting in until new financial year.
18/01/18	No payout. Talking \$50k deposit. Talks over, doesn't listen and rambles. Complains about lack contact AM and support. Waste of time?
28/03/18	mu, going on holiday to dubai for 2 weeks, talked about WD 10k, turned him around again, bit shaky.
3/5/18	Touched base with client regarding portfolio. Cancelled her 34k withdrawal but she would need to take something out due to her father passing away and needs to pay for it .
24/1/17	Called back and I hit him up for another 500 to get a DC. Not working atm and all his cards are maxed out
2/11/18	Very upset with [Representative] - lost his house over not being able to access his capital. Said once [Representative] knew he wanted to withdraw some money from account to keep his house, [Representative] just never returned or answered his calls anymore etc, & When he tried to Get in touch with Managers @ ForexCT nobody even bothered to call him! Now a single Father of 3 kids and no house, blames [Representative].
8/1/19	Wants to withdraw \$80000, talked her down to \$60000. Need to call her back to get her to send me an email regarding cancelling the withdrawal, as well as get her to put the request through the account regarding the bank card.
1/2/2019	Has been trying to withdraw funds, upset that he hasn't yet been able to. Advised that he is disappointed with the accounts team, but is otherwise satisfied with his AMs. Unable to save withdraw.
11/2/19	AFCA Complaint has been lodged by client - has been trying to withdraw his funds since Dec 2018. DOES NOT WANT TO TRADE
13/2/18	Target is 50k equity for 2018. Said need to make 1k+ this month and about 5% a month to get there. Keep pointing towards this target to avoid WD.
23/1/18	[Former Customer], Don't trade with small margins. If you have the capability to deposit 5 - 10k I will match 5 - 10k with you so you can have 20k to trade with a higher leverage.

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Date	Interaction note
24/1/18	[Former Customer], I said before higher leverage and maintain your position. Depositing bit by bit is not safe cause low margin. 10k for 10k today !
26/6/2018	[Former Customer], Do you want me to help you with this or not ? I don't know why I have to chase you to make your own money. Last chance today or offer is gone.
14/11/18	Upset - lost all his money even tho he put in withdrawal request waited 8 days then ended up losing all.
31/5/18	[Former Customer], Deposit 50k now. Ill apply the credit and I wont tell you not to withdraw.
8/3/17	caught up with client - told him i dont want to see weekly withdrawals only monthly
26/6/18	Burnt last time, could be open to it in a couple of months but had a bad a.m who talked her out of WD and lost alot, has young kids, nice woman. would maybe look at it on a small scale and build up trust
7/11/17	Whinging. Says the withdrawal is taking too long and it's unacceptable.
19/7/18	had a close friend die and is grieving she says. wanted to WD, saved it. but she wont be trading for a few weeks
26/7/18	Cient wants to withdraw 5k - Told him we would take that credit out client is reconsidering
2/07/18	no answer - i feel like shes being a time waster
29/01/19	starting to feel like a complete waste of time, keeps saying he'll deposit soon every call he just needs to 'get his head around things on the demo first' starting to put the pressure on him to activate his live account
6/03/19	Waste of time trader – no funds
24/10/18	Time waster - kept the conversation going but then kept pushing for free advice - then yelled at me and then hung up. This guy is a massive waste of time. Have kept all commitments of phone meetings - have resent all login details - hasn't logged in once since speaking with him. Will try one more time in a week [Noting the Company pushed its “free” training as a differentiating factor between it and other trading platforms]

6.2. Former Customer selection / tactics

Our investigations led us to review an email sent from the Company's Sales Support Administrator to Representative I, with notes on new Former Customers, being first time depositors (FCT.2011.0004.8101). The email included details of the Former Customers':

- deposit value;
- profession;
- current financial position, history with trading and reason for trading;
- income bracket (self reported on registration); and
- house value (estimated).

This email raised several concerns around the Company's sales tactics:

- The profession and income details indicate that many of the Former Customer's were earning less than \$50k per year (18 of the 23 Former Customers), with 12 being unemployed, retired or part time workers.
- House values were seemingly obtained from a search of the customer's address, which was provided during the registration process. Where this could not be found, an estimate based on the suburb profile was provided. This is highly concerning as it suggests the Company was actively seeking out information about its customer's wealth.
- The Former Customer summary details contained notes about how much money the Company may be able to extract from the customer and others which suggested the Former Customer should not be trading (due to their financial position). A sample of these comments is provided below:
 - “Never traded before. Scared to lose money because he is still looking for a job.”

Annexure 3 – Telephone Review

- *“Used to be a carer is retired now. has more money that she can invest.” “if satisfied with service can deposit more funds , wants to be sure of us first.” “((Has 100k sitting in her bank will invest further if satisfied and likes our service..))”*
- *“Client had been a gambler for a long time, but then discovered Forex trading was a lot more rewarding than gambling.”*
- *“Older bloke (72) bit slow but got there in the end.”*
- *“Likes getting bonus credit”.*
- *“Pensioner - but works 20 hours a fortnight as a personal carer. Doesn’t own a computer, will be trading from his Samsung galaxy s8 – Pensioner living fortnight to fortnight going through a divorce.”*

6.3. Complaints handling

Several complaint registers and documents were identified in our investigations. While not related to one of our Selected Former Customers, one of the complaints raised concerns around the Company’s compliance framework and complaint handling process.

A Former Customer lodged a serious complaint against a Representative, advising that they had transferred money to the Representative’s personal bank account, under the impression that it was a business account, as the Representative had advised that they could procure better credits for the Former Customer this way.

The complaint was lodged on 11 October 2018 and was not responded to substantially until 2 January 2019, almost three months later. The Company’s Head of Legal and Compliance asked the Former Customer for more information to substantiate the claim and, when a response was not received by 30 January 2019, closed the complaint.

Despite the seriousness of the complaint, it appears that no further investigation was undertaken until ASIC issued a notice on the Company requesting all interactions between Representatives and 90 named Former Customers. Following this, the complaint was sent to the Company’s solicitors stating that the Former Customer was “one of the 90” and an investigation into the Representative was conducted.

Following the investigation, the Head of Legal and Compliance refers to a sample of emails as “the worst of the worst” and states that “From my perspective he frequently engages in emotional manipulation of his Former Customers, routinely puts significant pressure on his Former Customer’s to not withdraw their funds, with some even appearing to ask his permission to withdraw in some cases.”

Despite the seriousness of the issues, the Head of Legal and Compliance still questions whether the Company can terminate the Representative as Forex CT “did not have the Quality Monitoring Framework working in the same way at that time” and asks the Company’s solicitors “As a result, do you think that this conduct as a whole amounts to Serious Misconduct under his contract that requires his termination?”

This issue raised significant concerns as:

- it appears that, without the ASIC notice being issued, the Representative may not have been investigated;
- despite the seriousness of the issues, the Company questioned whether it could terminate the Representative because of a lack of compliance framework; and
- the Compliance Officer found subsequent complaints lodged by other Former Customers about the same Representative to be unsubstantiated, despite complaining of being manipulated into cancelling withdrawals and under significant pressure to trade.

A timeline of the complaint is provided in Annexure E – Timeline of Former Customer complaint.

We are also concerned that the number of complaints made by Former Customers is underrepresented in the Company’s compliance logs as, following a complaint by Selected Former Customer 32, the Head of Legal and Compliance had to advise the Representative involved what constituted a complaint and stated that “Our team will

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provide training at some point in the near future on recognising a complaint (including a definition of what a complaint is- i.e. an expression of dissatisfaction which expects a response) and reporting these to the Complaints team. In the meantime, please treat any issue where a client states we have done something wrong as a complaint.”

6.4. Reputation management

In July 2018, the Company sought to engage external assistance in a reputation management program, to address the numerous negative reviews about the Company. The proposal received from the external party (FCT.2001.0001.0466) states that “We need to shift the narrative away from ForexCT being a scam to one where it’s a legitimate business where there are significant risks involved but that ForexCT will deliver on promises made pre-sale.”

This suggests that the Company was aware of the issues faced by Former Customers and, rather than address them, sought to manage negative reviews.

7. Egregious conduct

While undertaking our Targeted Investigations, we identified a myriad of examples of misconduct. There are several instances of egregious misconduct that should be highlighted.

7.1. Communications with Former Customers

Example	Conduct identified
1	<p>Call between Representative and Former Customer while Former Customer was in hospital:</p> <p>Representative: “No worries, matey. And, how did you go – I know you’ve been in hospital, but did you chase up any - - -”</p> <p>Former Customer: “No. I haven’t got any yet, but I’ll give you – how’s that Aussie/US going? ...”</p> <p>Representative: “... See if you can try and get a hold of the funds tomorrow, and then we’ll go from there. All right?”</p> <p>Representative: “You told me – you told me you’ve been in hospital quite often at the moment now. Just look after yourself. I’ve got something that I want to tell you about. So, at the moment now, two of your trades are in profit. (Discusses trades). So, I was speaking to you, literally, three minutes and it jumped up by a hundred and something on both trades. So, you know, I know you don’t have access to it now, but would you like me to close those two profits and take it?”</p> <p>Former Customer: “I’d prefer to speak to you about my health, if you don’t mind.”</p> <p>Representative: “No. I don’t mind at all. You tell me, [Former Customer]”</p> <p>Former Customer: “Look, mate, the stress of doing this is – I think is contributed to – to my health conditions. Not caused it but it’s contributed to it and - - -”</p> <p>Representative: “Yep. Yep.”</p> <p>Former Customer: “- - - mostly my – mostly my stroke doctor and my heart doctor are saying, “[Former Customer], you got to get stress out of your life if you want to survive.”</p> <p>Representative: “Yeah.”</p> <p>Representative: “- - suggestion is this, in regards to your portfolio, I can overlook it and manage it. Anything that pops up, anything that goes wrong, anything like that, I can give you a call and give you an update. Right. That’s basically it. Nothing – nothing to, obviously, exert your – your health. Just let me manage your portfolio, as in, like, let me give you updates. Instead of you logging in and then stress going through it and stressing about it, any trade that’s worth going into, I can call you and let you know about it, any trade that goes into profit, I’ll call and let you know about it. At the moment now, there’s two trades in profit. We can close them and take those profits.”</p>

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Example	Conduct identified
2	<p>Call between Representative and Former Customer</p> <p>Representative: <i>“I’ll give you an example of one of my other clients, she’s a stay at home mum, stay at home wife. She doesn’t work at the moment now but she does make more than her husband does going to work. Umm, she makes roughly about 2 – 3 thousand a week and that’s on trades that she, probably, she doesn’t trade regularly but probably about 4 times a week or so but the good thing that she does, she does her proper research in regards to some currencies that’s obviously affecting change in their country.”</i></p>
3	<p>Call between Representative and Former Customer</p> <p>Representative: <i>“Clients from Abu Dabi come here and sometimes I go there and we discuss plans for their portfolio. I had an executive client recently that quit his job. He was earning about 30 – 40 thousand a month, in his portfolio now he sits on about 1.3”</i></p>
4	<p>Call between Representative and Former Customer</p> <p>Representative: <i>“I really respect all my clients in regards to how much they want to do coz I don’t know how their personal situation is ... I do know that a good margin to start off with is between 5 and 10. I could say 50, I could say 100, like last week a client started off with me with 350000, he got half of it from his self managed super fund but that’s him, you know..... but for me, what I see is that a client that truly starts off and doesn’t know what’s happening, a safe margin with a safety net is between 5 and 10. The reason why I say that is because it gives you a lot more leverage to obviously move and let the market fluctuate and the momentum of it. Having a small margin is quite, a little bit risky because you won’t be able to sit in your trade long enough before it turns into a profit.”</i></p>
5	<p>Call between Representative and Former Customer</p> <p>Representative: <i>“Did you hear that in the background, the gong and the clap, someone hit 100000 profit already today. So when a client makes 10000, you’ll hear that gong sound at the background”</i></p> <p>[Gong was rung when a Representative had a Former Customer deposit \$10k or more into their account, not when a Former Customer profited]</p>
6	<p>Call between Representative and Former Customer</p> <p>Representative: <i>“If you feel unsafe in regards to putting on a large amount of, if you think that’s gonna be a big among and that’s not worth putting in that to get two. If I was to say to you I’ll give you, you know what, let’s start off with a good relationship and I’ll give you 1 for 1, so you know what authority I have here. You put 1000 now and I’ll give you 1000 back.”</i></p> <p>Former Customer: <i>“I have transferred 1000 with [Alternate Representative]....</i></p> <p>Representative: <i>“No, no, no, that’s with you and [Alternate Representative], with me and you now it’s different, what I can offer you.</i></p> <p>Former Customer: <i>“But aren’t you in the same company?”</i></p> <p>Representative: <i>“Most definitely, yes but, when you first opened your portfolio with acquisitions, that would be your portfolio with your first deposit when you first open your portfolio. When it comes to my part of your portfolio, is me progressing your portfolio onwards so that deposit, it doesn’t go towards the, umm, your, once you get transferred over to a senior account manager.”</i></p> <p>Former Customer: <i>“so why not, why doesn’t that sit in my account? Where does that money go?”</i></p>

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Example	Conduct identified
	<p>Representative: <i>“Like I said, I’m very direct when it comes to your portfolio because I want you to be making. I’m not here to convince you Sam, I’m not here to sell you anything Sam coz this is what you need for yourself to obviously make a certain income and a certain investment but you’re not listening to what I’m trying to tell you to protect you from actually making it more safer for yourself.”</i></p> <p>Former Customer: <i>“How is investing more money, and not seeing returns making it safer for.”</i></p>
7	<p>Representative messages and emails to Former Customer</p> <ul style="list-style-type: none"> ■ <i>I'll touch base with you later this afternoon. I'll be going into a meeting regarding your request and I'll do my absolute best to negotiate . Have faith in me and I won't let you down .</i> ■ <i>I'm simply calling regarding if you have received your funds and give you updates. I'm quite held back on how your not responding to me, we are a team.</i> ■ <i>I processed your withdrawal, I had plans for you and also worked out a a further discount regarding rollover. Touch base with me buddy</i> ■ <i>Your doing it again, ignoring my communication. I sent you an email and called you. Lets make this work well together</i>
8	<p>Representative messages and emails to Former Customer</p> <ul style="list-style-type: none"> ■ Please reply to my emails and give me an update. END OF YEAR trades have massive advantages as you may already know how much profit you made last year. Market fluctuates enormously and I cannot keep holding on these offers. I need yuo to communicate with me so I can help ■ Can you please liase with me through email. You don't need to test if you can take 1k out. But if you want it processed I can because yuo are eligible for it. Please do not ignore me because we spoke about this many times already . I just need correspondance and I can help you but you always don't reply. We are a team arent we ? Next time if you need help with you portfolio and I ignore you for weeks, how would you feel ? ■ After your portfolio is at \$0 are then going ot contact me ? I have big plans and alot of tools I want to help you with but you continue ot ignore me. Your portfolio could be a lot higher then it is now but your not giving the opportunity to help you with this . ■ You need to sit on higher margin but you dont want to take advantage of the offers. I can give you 120% on \$30,000 deposit. You have to email me TODAY if you want this.
9	<p>Representative messages and emails to Former Customer</p> <ul style="list-style-type: none"> ■ DEPOSIT 5K NOW AND I CAN DO 150% !!!! TAKE IT . ITS ONLY FOR NOW !! MUST DO IT NOW THOUGH ■ I'm waiting to apply the \$30,000 equity credit. Very busy down here buddy. Can we get this done now. Worked hard to get this for you. ■ I don't want to call and tell you, cause I don't want to bother but when you deposited 15k you had great margin. You trade well with higher equity. I will match it for you ■ I have great news ! deposit 10k now and I will apply 15k for you. ONCE OFF OFFER, won't be offered again . It's amazing. 150% ■ I CAN DO IT AGAIN [Former Customer]. Last time for 150% foreve. Another 10k I'll do another 15k. This won't be offered again
10	<p>Representative messages and emails to Former Customer</p> <ul style="list-style-type: none"> ■ We work as a team, I help you to my 100% but you need to respect and treat me as a team aswell

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Example	Conduct identified
	<ul style="list-style-type: none"> Reserved amount is getting lower as overload of deposits from other clients. Your offer now is 2k deposit and receive 2k equity credit. Please do not waste this offer as it will just get lower and lower . ACC FOREXCT [Sent by Representative]
11	<p>Representative messages and emails to Former Customer</p> <ul style="list-style-type: none"> I AHVE SAID IT MANY TIMES BEFORE - NOT EVERYDAY OF THE MONTH YOU ARE PRESENTED WITH TRADESETUPS WORTH MILLION DOLLAR BUT WHEN YOU DO , DON'T WASTE THE TRADE ON 1 DOLLAR PROFIT /PIP!! HAVE THE EQUITY TO TRADE \$20/PIP 50/PIP REMEMBER IF YOU TRADING WITH MORE THAN 20% OF YOUR ACCOUNT EQUITY YOU ARE PUTTING YOUR ACCOUNT AT RISK

7.2. Impact Forex CT experience on Former Customer

A Former Customer wrote to Forex CT detailing the impact their experience with the Company had on his life (FCT.2006.0007.2545). Extracts of the Former Customer’s email are provided below:

“As you all know , I nearly lost my life’s savings in a very short period of time. To say the least I was, and still am stunned. Your company professes to support , educate and sustain a working relationship with clients. I enjoyed my discussions with [Representative] and also felt at times initially that things were going quite well. Although it is difficult to pinpoint, there is something very wrong and unjust about what happened to me. There is NO doubt that safeguards should have been out in place, and that somethings should be done in the future.”

“What happened to me, and my losses as a direct result for of my association with and dealings with ForexCT , there is no doubt whatsoever, left me absolutely ashamed , desperate , depressed , almost suicidal and from being comfortably off for my retirement, I am now in a very poor situation for this. This all happened so suddenly, and I would say that despite obviously losing vast sums of money , I was encourage to invest more and more , and ‘borrow ‘ more and more.”

“In retrospect it is easy to say now , I should have had more self control etc but I was continually encouraged by members of your team to keep on throwing money into an abyss where I was completely out of my depth. I don’t know who it was who picked up on it , but at the time I did have a lot of cash in my current account.”

“With this available to me it was always tempting to increase and double my money with your bonus scheme which I realise now is nothing but a con designed to get me (the client) to spend more and more and more.”

“... and that how similar to gambling or being in a big casino , I was sucked into a spiral of losses, and worst of all encouraged by all 3 of you to keep going when it was so obvious that I was on a road to nowhere other than destroy my life’s savings.”

“The Forex CT team are trained to make clients spend spend spend. There is no evidence at any stage that they had anything but their interest at heart.”

“This with NO safeguards in place. There should have been warning signs, bells going off on your fancy “platform” , that allows a novice like me to go on-line , and without realising the implications before it is too late , to throw away a lifetime of savings.”

“Forex CT claim to have professional advisors for clients and you really should have checks in place to make sure that what happened to me does not happen to myself and other vulnerable individuals like me again.”

Annexure 3 – Telephone Review

“... there is NO doubt I was caught and I was conned ! I was certainly conned into spending a lot more money than I wanted to spend on trading . I got so carried away , that some of the money I even struggle to trace.”

“I knew there was a risk , but did not realise when being encouraged to put in more and more and more, what I was doing. I did not want to be “a big gun” .I just wanted to be a small fry to start . You listen to those recordings. I was pushed and pushed and I always capitulated and gave in and sent more money , UNTIL I had nothing left . This without any reasonable advice until it was too late. I feel like I was targeted as easy money , to make more money for the Forex CT.”

“Also , I need to see more warnings . Like on a cigarette box . It is an addiction to some , and can be very destructive. It has affected my marriage , my retirement, my work ability.”

Annexure 3 – Telephone Review

Annexure A – Summary of findings

Investor	Misleading or Deceptive conduct	Upselling / maximising deposits	Withdrawals cancelled / delayed	Continuous contact (Former Customer ignoring or requesting no contact)
1		X		
2		X		
3	X	X	X	
4	X	X		
5				
6	X	X		
7		X		
8		X		
9		X		
10	X	X		
11	X	X	X	X
12	X	X		
13	X	X		
14		X	X	X
15		X		
16		X		
17	X	X		X
18		X		
19		X		X
20	X	X	X	X
21	X	X	X	
22	X	X	X	X
23		X		
24		X		
25		X		
26	X	X	X	
27		X	X	
28	X	X	X	X
29	X	X		X
30	X	X	X	
31	X	X	X	
32	X	X	X	
33	X	X	X	
34	X	X		X
35	X	X	X	X
36	X	X	X	X
37	X	X	X	X

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Investor	Misleading or Deceptive conduct	Upselling / maximising deposits	Withdrawals cancelled / delayed	Continuous contact (Former Customer ignoring or requesting no contact)
38	X	X	X	X
39	X	X	X	
40	X	X		X
41	X	X		
42	X	X		
43	X	X	X	
44	X	X	X	X
45	X	X	X	X
46	X	X		X
47		X		X
48	X	X		X
49		X	X	
50	X	X	X	X
51	X	X	X	X
52	X	X	X	X
53	X	X	X	
54	X	X	X	
55	X	X		
56	X	X	X	X
57	X	X	X	X
58	X	X	X	X



Annexure 3 – Telephone Review

Annexure B – Daily trading email samples

Representative	Date	Investors impacted	Email content	Comment
B	26 Jun 18	32	<p>Congratulations to those of you who followed the morning email this morning and made insane amounts of money on the short term SELL opportunity then followed by the short term bounce BUY option.</p> <p>This is why I send you these emails, its in your best interest to read the around 10:30am every morning and look to trade at least 3 trades off it.</p> <p>[FCT.2006.0004.2303]</p>	<p>Represents that significant profits made from trades the Representative suggested – implying that if investors follow the trade suggestions, they will make “insane” amounts of money.</p> <p>Suggests interests are aligned.</p> <p>Suggests it is in the investors best interests to increase trade volume (trade at least three trades from the morning email).</p>
C	3 Oct 18	42	<p>Hi All,</p> <p>This is a brand new client of mine, He’s using the same trade recommendations trading the same markets and profiting very consistently.</p> <p>Things to take note of,</p> <ol style="list-style-type: none">1. Look at the amount of trades he is completing a day – averaging roughly 7-10 trades a day2. Only looking for small profits per trade but they add up. <p>[Picture of trades]</p> <p>[FCT.2012.0012.2999]</p>	<p>Encouraging Former Customers to increase trade volume by suggesting his Former Customer is making significant money through high volume trades.</p> <p>Suggests interests are aligned in providing Former Customers this advice / tip. However, Representatives were remunerated based on how active Former Customers were so an increase in trading volume would result in a higher bonus for the Representative.</p>
D G	8 Nov 18	42, 26	<p>Hi Traders,</p> <p>Please check the below as soon as possible and get back to me. I want us to look at the trade on Crude Oil, looking at the major channel it has been trading between you can see it is right at the very bottom on support.</p> <p>There could be a reversal coming up. The Daily RSI is now facing up as well, meaning the next movement should be north.</p> <p>If we can get a contract of 1000 on at \$61 per barrel, every time Oil pushes higher by \$1 you are making \$1000. As you can see Oil has been up at \$76 per barrel over the last couple of months. If Crude Oil returns to that price, and you have 1000 contracts on, you will make <u>\$16k profit</u>.</p>	<p>Representative is creating urgency, requesting Former Customers read his email “as soon as possible”.</p> <p>Representative makes a profit representation, suggesting Former Customers can make a profit of \$16k by placing 1,000 contracts. There is no risk warning provided.</p> <p>The Representative suggests interests are aligned by using “we” and advising that he has “loaded all my portfolio onto this trade”.</p> <p>The Representative encourages Former Customers to deposit more funds saying, “let me know ASAP how much you can put in your account so we don’t miss this opportunity.”</p>



Annexure 3 – Telephone Review

Representative	Date	Investors impacted	Email content	Comment
			This is an extremely good opportunity, I have loaded all my portfolio onto this trade, let me know ASAP how much you can put in your account so we don't miss this opportunity. [FCT.2006.0006.4666] and [FCT.2006.0006.4646]	It is in the Representative's best interests to increase trade volume and deposit amounts as it increases his bonus. The trade is not necessarily in the best interests of Former Customers.
E	11 Dec 18	41	<p>Subject: BOOMING BARRELS BENEFIT INVESTORS - OIL (I have limited spots left in the program Please let me know ASAP)</p> <p>Good evening all,</p> <p>I have been researching Oil as the profits on this have been extremely good over the past couple of weeks and have devised an Oil program which a number of you are already taking part in. I have a couple of spaces left available on the program. Please read through the information and let me know if you would like to take a spot.</p> <p>The Representative then provides his analysis of oil and two suggested trades:</p> <ul style="list-style-type: none"> ■ Brent - \$139,060.44 profit from a buy position on 10,000 contracts, requiring equity of \$8,315.87 ■ Crude - \$260,181.78 profit from a buy position of 50,000 contracts, requiring equity of \$17,768.68. <p>This is a massive opportunity to start the new year with some \$\$ in the bank!</p> <p>The Representative provides no risk or general advice warning. [FCT.2006.0007.1677]</p>	<p>The Representative creates urgency by advising he has a "a couple of spaces left" and advise "ASAP".</p> <p>The Representative suggests interests are aligned by advising Former Customers he has devised an oil program for them. It is in the Representative's interests to increase trading volume and deposit amounts as these KPIs directly impact his remuneration. The Representative provides a profit representation suggesting significant profits can be made in a short period with no risk warning or general advice warning. These trades may not be in the best interests of investors and significant losses may be sustained if the price moves in the opposite direction. The Representative does not promote the use of stop losses (as his examples do not show stop losses being set), which would provide Former Customers with protection against a negative movement.</p>
F	14 Dec 18	26	<p>Good morning guys,</p> <p>Well done every one who cleaned up on Oil last night, there was over 200k profits taken!</p> <p><u>Trade Opportunities</u></p> <p>USDCAD – TC Preference was SELL – Open at same area</p> <p>Crude Oil – CL – TC Preference was BUY – Up \$2!</p> <p>GOLD – TC Preference was BUY – open at same area</p> <p>ASX – TC Preference was BUY – Up \$40!</p> <p>[FCT.2012.0015.0080]</p>	<p>Representative makes profit representation, suggesting Former Customers made \$200k by following his trading suggestions for oil.</p> <p>Representative assess previous trade suggestions and highlights where these went in line with suggested. Suggesting if Former Customers follow the emails, they will make money.</p> <p>No risk or general advice warning given.</p>



Annexure 3 – Telephone Review

Representative	Date	Investors impacted	Email content	Comment
H on behalf of G	10 Dec 18	26	<p>FX OPPORTUNITIES – See charts below Trading Central Preferences.</p> <p>Please analyse the data in the signals, using Indicators (talk to me if we need a session on this)</p> <ul style="list-style-type: none">• Diversify your portfolio – trade a number of different pairs 3-5 is a great number. Don't have all your eggs in the one basket• Don't forget your 'Stop Losses', 'Take Profit' & Entry Orders which are a great way to either regain or work gain potential profit on the retrace also• Get your account ready – for those upping their position sizes to gain bigger profits, so you have more possibilities to trade. (If you want to talk about promotions please email me and I will call you back to see if you are eligible)• Stick to our strategies, discipline and enjoy – Would like to hear your thoughts on indicators used when we discuss your trades during our appointments <p>PROMOTIONS!!</p> <ul style="list-style-type: none">- Want to set your account up for Trading in December? Talk to me I can help, You may be eligible for a bonus!- Have a friend who wants to start trading? This could earn you \$100.00 CASH!- Have you locked in your Rebate yet? Ask how today! <p>Risk warning hidden under signature in small print, significantly smaller than the rest of the text in the email [FCT.2006.0007.1436]</p>	<p>Representative encourages increased trading volume: "Diversify your portfolio – trade a number of different pairs 3-5 is a great number. Don't have all your eggs in the one basket"</p> <p>Representative encourages deposits and suggests more equity is needed to secure profits, without discussing risk: "Get your account ready – for those upping their position sizes to gain bigger profits, so you have more possibilities to trade."</p> <p>Representative insinuates their interests are aligned with the Former Customers: "Stick to our strategies".</p> <p>Representative uses incentives to encourage deposits: "PROMOTIONS!!- Want to set your account up for Trading in December? Talk to me I can help, You may be eligible for a bonus!- Have a friend who wants to start trading? This could earn you \$100.00 CASH!- Have you locked in your Rebate yet? Ask how today!"</p>
E	25/10/18	10	<p>Well done to those capitalising on all the channel trading. It's been a solid few weeks on the below trades. Keep capitalising on it while it's there. There's nothing wrong with trading the BEST looking trades 10+ times a day. If you require assistance on how to trade channels. Please let me know.</p> <p>[FCT.2006.0006.2594]</p>	<p>Representative is encouraging increased trading volume</p>



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D	28/8/18	12	<p>Remember: The best way to trade the FX market is to have at least 3 trades per day. This allows you to counter a loss and increase chances of profit taking. USE YOUR DAILY TECHNICALS AND FOLLOW EMAIL CONTENT.</p> <p>*Aim for short distances which are much more achievable (10-15 pips) if the market turns the other way you can look to wait for a recovery and double down when the trade starts to come back in your favour. This is a strategy you can use on your intraday trading!</p>	Representative is encouraging increased trading volume and suggests interests are aligned with Former Customers as he tells Former Customers to “use your daily technical and follow email content”.
C	27/9/18	42	<p>Hi All,</p> <p><i>I sent this last Friday and this trade is even more apparent now. The Dow Jones has dropped already over \$500 in value and looking for considerable further downside.</i></p> <p><i>This is a trade that you truly need to understand how much movement there could be and the astronomical profits that could be had.</i></p> <p><i>Please make sure you have large enough accounts to do large enough trades.</i></p> <p><i>This sort of trade doesn't come around very often. Make sure you contact me if you want deposit packages</i></p> <p><i>I will be servicing specific packages for 50k, 100k, 250k+ deposits and clients today.</i></p> <p><i>I look forward to working with you all on this one and the possibility making a large sum of money together.</i></p> <p>FCT.2012.0012.1749</p>	<p>Representative makes a profit representation without any risk advice, pushing higher volumes and deposits: "astronomical profits that could be had" "please make sure you have large enough accounts to do large enough trades".</p> <p>Representative suggests significant equity is required to trade by stating "I will be servicing specific packages for 50k, 100k, 250k+ deposits and Former Customers today".</p> <p>Representative provide no risk or general advice warning.</p>
Luke Carroll	27/06/18	32	<p><i>Hello traders,</i></p> <p><i>We'll look at that! What a result. It's amazing what a simple strategy does to a trade. Congratulations to all of you who followed my email and texts! Keep following!</i></p> <p>FCT.2006.0004.2410</p>	Representative insinuates interests are aligned, encouraging Former Customers to follow his trading suggestions

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Annexure C – Withdrawal cancellation exchange

Date	Who	Message
6/12/2017 1:01:44 AM	Former Customer	Does the account department have my necessary documents to proceed with my withdraw that i requested ?
6/12/2017 1:02:06 AM	Representative	thanks for taking the time - I'm trying to work a solution for you. You have to understand that it is a mandatory requirement for rollover which is stipulated in the PDS. Can we look at enabling the rollover discount program for you?
6/12/2017 1:02:25 AM	Former Customer	can you please answer to my question?
6/12/2017 1:03:01 AM	Representative	yes - I received it. Did you take any time to consider the offer of rollover reduction?
6/12/2017 1:06:44 AM	Representative	So are you saying that if I could waive the loss of charges and potentially massively reduce the rollover for you that it wouldn't work for you?
6/12/2017 1:09:06 AM	Representative	Well I can today and will work hard for a solution. Please allow me till 4pm to come back to you. Does that work for you?
6/12/2017 1:09:37 AM	Former Customer	i still want to proceed with that withdraw ... i will keep mu USD account for now
6/12/2017 1:11:22 AM	Former Customer	Will i receive those finds within 2 working days ?
6/12/2017 1:14:16 AM	Former Customer	will i receive those funds within 2 working days ?
6/12/2017 1:14:47 AM	Representative	[Investor 36] - please just clarify first if you are ahppy with me refunding the charges and putting you on a rollover reduction before you withdraw>?
6/12/2017 1:17:20 AM	Former Customer	ii don't understand ... can i not withdraw my funds ?
6/12/2017 1:17:41 AM	Representative	[Investor 36] - I need to know I'm not wasting my time with this - do you want me to find out what I can do before we proceed with the withdrawal?
6/12/2017 1:19:21 AM	Former Customer	i can not accept a deal that i don't know yet ... meantime i want those funds back ... i might keep the other account there if i like the deal .. the other account has USD 18,700 i want the funds back from the AUD account
7/12/2017 12:51:01 AM	Former Customer	hi [Representative A]
7/12/2017 12:51:48 AM	Former Customer	would you please give me an update about my funds withdraw ... it has been 2 days and they did not hit my account yet ...
7/12/2017 12:52:43 AM	Former Customer	please let me know
7/12/2017 12:53:39 AM	Former Customer	i need to be in control of my funds at anytime ...
7/12/2017 12:53:48 AM	Former Customer	please give me an update
7/12/2017 12:53:55 AM	Former Customer	thank you
7/12/2017 12:54:53 AM	Representative	: Hi [Investor 36] - to my knowledge we had an appointment at 4pm yesterday but you weren't online. You asked me to have a solution for you before you withdraw - I have one. We are prepared to refund all rollover charges. We are also prepared to put you on a rollover reduction of 50% for 2 months. All you need to do is make a 10K deposit to your account. Are you in a position to so this?

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Date	Who	Message
7/12/2017 12:55:20 AM	Former Customer	i need to withdraw those funds anyway i told you
7/12/2017 12:55:39 AM	Former Customer	i request to withdraw those funds to make sure i am in control
7/12/2017 12:56:09 AM	Representative	Ok - that's fine. I take that as not wanting to continue. I will process for you.
7/12/2017 12:56:11 AM	Former Customer	I am sorry i am not interested to deposit any more funds if i am not in control of the,m
7/12/2017 12:56:31 AM	Former Customer	please let me have those funds back please
7/12/2017 12:56:57 AM	Representative	[Investor 36] - there's no need to be sorry - I know this would help you out but its your decision
7/12/2017 12:57:29 AM	Former Customer	when i see that i am in control of my funds i will resume trading on my USD account

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Annexure D – Whatsapp message extracts

#	Extract
1	<p>[7/1/19,16:31:23] Retention Master: Hey Shlomi, [Representative] has asked if we can process an extra \$160k WD “asap”</p> <p>His client is paying off some cards and loans but will be redepositing</p> <p>Is this approved?</p> <p>[7/1/19, 16:31:38] [Retention Master]: The client just raised the WD 5 minutes ago</p> <p>[7/1/19, 16:49:22] Shlomi Yoshai: Not approved</p>
2	<p>[7/1/19, 14:35:08] [Retention Master]: Top 2 Performers this week, will be able to join us on Cairns trip To qualify, you must have at least 4UD, and minimum \$40k to be in the competition then based on Net Deposit top 2 will join it</p> <p>[7/1/19, 14:35:09] [Retention Master]: Us*</p> <p>[7/1/19, 14:35:10] [Retention Master]: Approve?</p> <p>[7/1/19, 14:35:37] Shlomi Yoshai: [Image omitted]</p>
3	<p>[9/1/19, 12:38:20] [Retention Master]: [Representative] has told us to hold his WDs until next week, obviously just to win the incentive you gave out. Which is stupid because he'll take the money then process all next week – just an FYI</p> <p>We will be holding back \$178k AUD sorta of WDs for next week</p> <p>[9/1/19, 12:38:47] [Retention Master]: The WDs were raised 3rd of December and 7th December Thoughts?</p>
4	<p>[20/7/18, 14:13:19] [Retention Master]: \$46,702 usd Net Deposit</p> <p>18 Loads</p> <p>[20/7/18, 14:13:38] [Retention Master]: Withdraws for retention today: \$50 AUD</p> <p>[20/7/18, 15:02:58] Shlomi Yoshai: ??</p> <p>[20/7/18, 15:03:11] Shlomi Yoshai: How could it be?</p> <p>[20/7/18, 15:03:35] Shlomi Yoshai: Please delay</p> <p>[20/7/18, 15:10:28] [Retention Master]: \$57,882 usd</p> <p>22 loads</p> <p>[20/7/18, 15:10:49] Shlomi Yoshai: Thanks</p>
5	<p>[20/7/18, 17:10:34] [Retention Master]: We didn't make the incentive</p> <p>[20/7/18, 17:13:48] Shlomi Yoshai: Thanks for letting me know</p> <p>[20/7/18, 17:14:00] Shlomi Yoshai: I will send an updated target</p> <p>[20/7/18, 17:14:09] [Retention Master]: YAY</p> <p>[20/7/18, 17:19:18] [Retention Master]: \$5 Deposit</p> <p>\$7.5k Credit</p> <p>[20/7/18, 17:19:27] [Retention Master]: For [Representative] – [Former Customer 1]</p> <p>[20/7/18, 17:19:38] [Retention Master]: [Former Customer 1]</p> <p>[20/7/18, 17:23:03] [Retention Master]: And [Former Customer 2]</p> <p>\$10k Deposit</p> <p>\$15k Credit</p> <p>[20/7/18, 17:25:16] Shlomi Yoshai: brilliant</p> <p>[20/7/18, 17:25:50] Shlomi Yoshai: Approved fur [Former Customer 1]</p> <p>[20/7/18, 17:26:11] Shlomi Yoshai: [Former Customer 2] 120% approved</p>
6	<p>[21/8/18, 14:44:48] [Retention Master]: WDs today are \$35,876US</p> <p>We're currently on \$65,000US</p> <p>We have one big WD that has to go, it's on [team leader] team \$27k, I'm going to hold some of the new newer ones and see how we do, we've got big ones lined up apparently but we'll see.</p>

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#	Extract
	<p>[21/8/18, 14:45:18] [Retention Master]: I'll keep you updated but the \$27k ([Former Customer]) has to go out today apparently if that's okay</p> <p>[21/8/18, 16:27:18] Shlomi Yoshai: Updates please</p> <p>[21/8/18, 16:32:17] [Retention Master]: Current Deposit: \$68,341</p> <p>Loads: 23</p> <p>We have processed \$27,321 worth of WDs, I've told [staff] to hold off on the last \$9k usd for now and I'll let her know if we will process or delay</p> <p>So current net = \$41,020 usd</p> <p>Thanks :)</p>
7	<p>[30/8/18, 14:59:58] [Retention Master]: Another offer for [representative]:</p> <p>Former Customer [Former Customer]</p> <p>100% Credit</p> <p>\$50k Deposit</p> <p>SCB 50% Unlimited until the end of the year 2018</p> <p>[30/8/18, 15:00:12] Shlomi Yoshai: Ok</p> <p>[30/8/18, 15:00:31] Shlomi Yoshai: Sorry</p> <p>[30/8/18, 15:00:37] Shlomi Yoshai: Not approved</p> <p>[30/8/18, 15:01:13] [Retention Master]: [Representative] said to tell you: [Former Customer] wants to WD \$50k and we're trying to save it</p> <p>[30/8/18, 15:01:59] Shlomi Yoshai: I can do 2 month</p> <p>[30/8/18, 15:02:41] [Retention Master]: He is asking for 3 months?</p> <p>[30/8/18, 15:03:49] [Retention Master]: WDs: \$1,609 Usd</p> <p>Floor total: \$77,962 usd</p> <p>I'm going to get the TLs onto some more WDs</p> <p>[30/8/18, 15:20:37] Shlomi Yoshai: We can do 1st month 25% 2nd month 35%</p> <p>3rd month 50%</p>
8	<p>[3/9/18, 18:17:40] [Retention Master]: So current Floor:</p> <p>Deposits: \$59,874 Us</p> <p>WDs: \$1,027 Us</p> <p>Net: \$58,847 Us</p> <p>[3/9/18, 18:18:04] [Retention Master]: We're not having the greatest day, the floors focus is on Volume at the moment</p> <p>[3/9/18, 18:31:36] [Retention Master]: Shlomi, Withdrawals tomorrow are \$129,481 Us</p> <p>[3/9/18, 18:32:16] Shlomi Yoshai: Thanks for letting me know</p>
9	<p>[12/9/18, 17:06:04] [Retention Master]: 5:00 PM Update</p> <p>Total Dep: \$199,814</p> <p>Total WD: \$31,347 (Because we're asking more)</p> <p>Net: \$168,467</p>
10	<p>[14/9/18, 13:08:32] Shlomi Yoshai: Good morning</p> <p>[14/9/18, 13:08:49] Shlomi Yoshai: Could I please get a floor update</p> <p>[14/9/18, 13:10:54] [Retention Master]: Good morning!</p> <p>Total Dep: \$100,215</p> <p>We haven't got a figure for withdraws yet but majority are cancelled!</p> <p>Sales: 2</p>
11	<p>[17/9/18, 17:13:48] [Retention Master]: Hi Shlomi.</p> <p>We've got a potential FTD that is with Pepperstone</p> <p>What can we offer the Former Customer to swing with us for a \$1k Deposit?</p>

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#	Extract
	<p>Thanks :)</p> <p>[17/9/18, 17:15:16] [Retention Master]: 5:00 PM Update</p> <p>Total Dep: \$218,708</p> <p>Total WD: \$12,052</p> <p>Net: \$206,656</p> <p>Sales: 8</p> <p>[17/9/18, 17:24:06] Shlomi Yoshai: 100%</p> <p>[17/9/18, 17:33:55] [Retention Master]: Any other promotions? Spread cash back or anything?</p> <p>[17/9/18, 17:35:35] Shlomi Yoshai: 50% scb for one month</p>
12	<p>[19/9/18, 11:54:25] [Retention Master]: Potential WDs today is \$112,043</p> <p>BUTT most are cancelled by waiting for emails, and we processed some last night</p> <p>[19/9/18, 11:54:37] [Retention Master]: I'll give you a final WD amount around lunch</p> <p>[19/9/18, 12:13:33] [Retention Master]: Hi,</p> <p>So we've got [Representative] and [Representative] asking if we can apply \$20k Credit go a client that will deposit \$20k by Friday. His name is [Former Customer], he's unrealised is currently -243,647 AUD, and [Representative] planning to get a big rebate off him but have to wait until he sells his house/car but doesn't want him to liquidate yet or he won't deposit that large rebate in the future.</p> <p>Can we apply the credit today and send him Ts and CS?</p> <p>Thanks</p> <p>[19/9/18, 12:15:09] Shlomi Yoshai: Based on bank transfer receipt?</p> <p>[19/9/18, 12:15:24] Shlomi Yoshai: De he transfer the money already?</p> <p>[19/9/18, 12:17:46] [Retention Master]: No he has not he hasn't got the cash yet he's going to collect some cash and will have it in by Friday</p> <p>[19/9/18, 12:19:35] Shlomi Yoshai: This is not something we do</p> <p>[19/9/18, 12:20:07] [Retention Master]: I thought so... but they wanted to ask for approval anyway but I'll let them know it's not approved?</p> <p>[19/9/18, 12:20:14] Shlomi Yoshai: What's his net deposits? Realized pl?</p> <p>[19/9/18, 12:23:08] [Retention Master]: Unrealised: -\$233,709.58</p> <p>Realised: -\$9,452.67</p>
13	<p>Total Deposits: \$169,890</p> <p>Account Equity: \$26,135</p> <p>Withdrawalable: -\$109,925.94</p> <p>[19/9/18, 12:23:35] [Retention Master]: FTD Date: August 2014</p> <p>[19/9/18, 12:24:00] [Retention Master]: image omitted</p> <p>[19/9/18, 12:24:37] Shlomi Yoshai: Not much we can do here</p> <p>[19/9/18, 12:25:00] Shlomi Yoshai: I can offer him 5k till Friday</p> <p>[19/9/18, 12:25:46] [Retention Master]: Alright cool, I'll let them know</p> <p>[19/9/18, 12:25:51] Shlomi Yoshai: But we need to make sure we are removing that on Friday</p> <p>[19/9/18, 12:25:51] [Retention Master]: Thanks heaps</p> <p>[19/9/18, 12:26:00] Shlomi Yoshai: Make a note</p> <p>[19/9/18, 12:27:09] [Retention Master]: [Representative] said, all good, we won't worry about it for now</p> <p>But if he takes up the \$5k offer I'll make the note and let you know. But right now he said it's all good</p> <p>[19/9/18, 14:57:30] Shlomi Yoshai: Updates please</p> <p>[19/9/18, 14:57:40] [Retention Master]: Hi! Sorry the the lateness,</p> <p>Current Deposits: \$66,914</p> <p>Total WDs today: \$6,158</p> <p>Net: \$60,756</p>

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#	Extract
14	<p>[19/9/18, 15:46:14] [Retention Master]: It's good thing we have the new system because a lot of the senior guys have been sending through really ridiculous offers and cracking the sh*ts when it is not approved. Just shows what they would have sent through to accounts to be applied even if their deposit didn't meet the minimum deposit requirements.</p> <p>[19/9/18, 15:56:50] [Retention Master]: It's so, so annoying hearing them crack the sh*ts to each other about their approvals not being approved. Or like sooking about their FTDs.. as if it's my fault, that they so bad, to swap if or take it off their book etc. So immature and annoying, it's a shame their senior guys who actually get treated SO well as well... So it'll be very good to have you back!</p> <p>[19/9/18, 15:57:03] [Retention Master]: I know you're jet lag sorry about the sook! But I'm good now haha</p> <p>[19/9/18, 15:58:05] [Retention Master]: Also [Representative] is asking for 40% Credit for \$20,000 Deposit for [Former Customer]</p> <p>I assume it's not approved because it's so ridiculous but I'll just let you know</p> <p>[19/9/18, 16:02:38] [Retention Master]: We have an incentive on today, I'll send you a photo.</p> <p>I assume that's why he's asking for a stupid offer just to get the cash incentive!!!</p> <p>[19/9/18, 17:12:34] [Retention Master]: Update</p> <p>Total Dep: \$88,289</p> <p>Total WD: \$6,158</p> <p>Net: \$\$82,131</p>
15	<p>[6/12/18, 13:01:05] [Retention Master]: We are having an amazing day!</p> <p>1pm Update</p> <p>Total Dep: \$215,999</p> <p>Loads: 21</p> <p>Sales: 4</p> <p>Don't worry I am already on the team leaders to push out WDs</p>
16	<p>[6/12/18, 14:09:17] Shlomi Yoshai: What's wrong with sales today?</p> <p>[6/12/18, 14:39:43] [Retention Master]: No idea! :(</p> <p>They've had completed FTDs come through, quite a few actually</p> <p>[6/12/18, 15:03:49] [Retention Master]: 3pm Update</p> <p>Total Dep: \$226,330</p> <p>Total Loads: 26</p> <p>Sales: 5</p> <p>[6/12/18, 16:04:06] [Retention Master]: 4pm Update</p> <p>Total Dep: \$286,347</p> <p>Total Loads: 32</p> <p>WDs So Far: \$18,501</p> <p>Net: \$267,846</p> <p>Sales: 7</p> <p>I've told the TLs to push our WDs, [Representative] has a few big ones that he held back (I think he is trying to save them) but maybe if you could send a message emphasising you want WDs out</p> <p>Because \$18k is nothing!</p>
17	<p>[6/12/18, 17:40:53] [Retention Master]: Thanks you're the best they are sending them through now</p> <p>Yesterday you asked me to make sure we do not process [Former Customer] 200k as he is under investigation, [Representative] has said it is now okay to process, it has been adjusted down to \$40k, can we process it?</p> <p>[Former Customer] is [Representative]'s Former Customer</p>
18	<p>[2/1/19, 15:26:35] [Retention Master]: The floor is currently \$18,513</p> <p>Did you want to process any WDs today?</p> <p>Total WDs is \$4,057</p>

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#	Extract
	[Representative] on [Representative Team Leader] team is really wanting to push out a \$4k Aussie as he will be getting larger deposits from this Former Customer if we can satisfy this?
19	<p>[16/1/19, 16:04:16] [Retention Master]: Withdraws ended up being \$16,155 USD</p> <p>Due to some insufficient funds</p> <p>[16/1/19, 16:04:20] [Retention Master]: Aka liquidation's</p>
20	[22/1/19, 12:17:32] [Retention Master]: [Former Customer] [Representative]'s Former Customer requesting to WD another \$50k, I bet you he will be pulling out the entire \$160k now like how he was originally going to... but in small \$50k increments
21	<p>[30/1/19, 17:24:09] [Retention Master]: Hi Shlomi,</p> <p>[Staff]just called me to say she is processing a \$8k AUD WD, to prevent a case with AFCA costing \$10k</p>
22	<p>[19/2/19, 15:29:19] [Retention Master]: Okeh</p> <p>[19/2/19, 18:05:30] [Retention Master]: Current Withdrawals: \$41,420</p> <p>Net Deposit: \$ 177,320</p> <p>I'm going to find more WDs to put us at \$50k WD at least dont worry</p> <p>Got this</p> <p>On a WD mission</p>
23	<p>[12/4/19, 14:47:24] [Retention Master]: Hey,</p> <p>Former Customer wants to WD \$250k but [Representative] wants to give him Rollover worth \$110k for \$10k so it is a \$10k discount to save the WD</p> <p>Can we approve this?</p> <p>Idk if he has spoken to Former Customer about WD or not</p>
24	<p>[10/5/19, 14:11:40] [Retention Master]: Are you available at all today?</p> <p>[Representative] wants to give 50% Rollover for 30 Days for Free to [Former Customer] to stop a 350k WD</p> <p>It's the same Former Customer from last time</p>
25	<p>[12/12/18, 16:40:10] [Retention Master]: Should we do spins soon? The dealer is just sitting on her phone and the fairy floss lady is just chilling staring at nothing haha What should we do to get vibe up and going</p> <p>[12/12/18, 16:41:03] Shlomi Yoshai: Sure</p>
26	[11/1/19, 17:43:50] [Retention Master]: Ps. Everyone is drinking at their desk and most likely doing other substances right now... I'm still sober sally though!! #Dryjan

FXC.010.003.0174

Annexure 3 – Telephone Review

Annexure E – Timeline of Former Customer complaint

Date	Activity
11 Oct 2018	Former Customer lodged complaint
23 Oct 2018	Former Customer followed up on complaint
24 October 2018 11:19 AM	Compliance officer responds to complaint and requests further details
24 October 2018 12:26 PM	Former Customer responds with details including bank statements and screenshots of messages [FCT.2004.0001.0438]
24 Oct 2018 2:06 PM	Compliance officer responds with standard response noting matter being investigated [FCT.2000.0001.3470]
24 Oct 2018 8:35 PM	Former Customer provides further details of their claim and clarifying information from their earlier email
2 Jan 2019 10:36 AM	Head of Legal and Compliance responds to Former Customer's complaint and requests further information Advises Former Customer that if they do not receive a response by 30 January 2019, the complaint will be closed [FCT.2001.0002.3271]
30 Jan 2019	Company closes the complaint
22 Mar 2019	ASIC issues a notice requesting certain books and records, including all records of communications between any representative of Forex CT and each of the Former Customers identified in Annexure B. Annexure B contained a list of 90 Former Customers, including the Former Customer that submitted this complaint [S01973606].
17 April 2019 1:13 PM	Head of Legal and Compliance forwards Former Customer complaint to Forex CT's solicitors, External Law Firm, referencing "as discussed" [FCT.2015.0002.3572]
18 April 2019 3:07 PM	Head of Legal and Compliance forward Former Customer complaint to another two people at Forex CT's solicitor's office, noting "I provided this to Alistair, I am not sure it has been provided through other means but it related to one of the 90." The "90" are the specific investors ASIC requested information about. [FCT.2015.0002.0744]
24 Apr 2019 3:41PM	Head of Legal and Compliance emails Shlomi with a sample of the Representative J's emails. Advises, "From my perspective he frequently engages in emotional manipulation of his Former Customers, routinely puts significant pressure on his Former Customer's to not withdraw their funds, with some even appearing to ask his permission to withdraw in some cases. With these selection of emails and [Former Customer] Complaint, as previously discussed with you and also [Solicitor], I think we have enough here to consider whether you want him to be part of this business moving forward." [FCT.2000.0002.0165]
30 April 2019 4:33 PM	Head of Legal and Compliance emails Forex CT's solicitor with the "worst of the worst" of the Representative's behaviour. States that, while much of this conduct was from a while ago, Forex CT "did not have the Quality Monitoring Framework working in the same way at that time. As a result, do you think that this conduct as a whole amounts to Serious Misconduct under his contract that requires his termination?" [FCT.2015.0002.2458]
30 April 2019 5:07 PM	Head of Compliance emails Forex CT's solicitors and advises that they had not had a response from the Former Customer. "I asked a number of questions, in an attempt to substantiate the complaint but I did not get a response and the matter was closed." [FCT.2000.0002.0163] It is concerning that such a serious matter was closed without any further investigation of the Representative.



Annexure 4 – Document Review

Forex Capital Trading Pty Ltd (In Liquidation)

Selected Former Customers Review (Documents)

This memorandum sets out the Liquidators' findings on their investigations into the Company's internal policies and procedures, training protocols, remuneration structures, and performance management of Representatives (collectively termed "Policies and Procedures").

Furthermore, whether those Policies and Procedures attributed to the Company engaging in:

- i. Section 1041H Claims and Section 12DA Claims: Misleading or Deceptive Conduct; and
- ii. Section 991A Claims and Section 12CB Claims: Unconscionable Conduct.

Additionally, the Liquidators have examined the findings made by Justice Middleton in *ASIC vs Forex Capital Trading Pty Ltd* [2021] FCA 570 ("Contravention Proceedings") and considered if those findings are consistent with the Liquidators' investigations. Those findings include, whether the Company appears to have "Systemic Compliance Deficiencies" and a "Culture of Non-Compliance" within the meaning of the applicable laws and regulations of an Australian Financial Services License holder.

A list of documents identified relating to our investigations is enclosed (Index of Documents). We have referenced a number of documents listed in the index under the relevant headings, in support of our findings. This bundle of documents provides an example of each of the different types of documents that were referred to or considered when compiling the report. For ease of handling we have not annexed all documents referred to in this memorandum, however, if you wish to request a copy of these documents, please contact the Liquidators. We also note, the documents have been redacted to remove personal information of individuals involved in the conduct of the business of the Company (such as names or contact information). This information has not been redacted where the conduct of the individual has already been made publicly available, including in related court proceedings.



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1 Remuneration

Below Senior Management level, Forex positions could be categorized into four roles (collectively referred to as “Representatives”):

Role	Bonus Structure
Account Managers (Retention Desk Employees) <i>Dealt with customers on a day-to-day basis. Teaching them how to trade, investment strategies, sourcing further deposits.</i>	Retention Desk Bonus Structure
Account Manager Team Leaders (Retention Team Leaders) <i>Managed a team of Account Managers</i>	Retention Desk Team Leader Bonus Structure
Acquisition Agents (FX & CFD Sales) <i>Responsible for sourcing new customers and obtaining an initial first deposit from the customer.</i>	Acquisition Desk Bonus Structure
Acquisition Team Leaders (Sales Team Leaders) <i>Managed a team of Acquisition Agents</i>	Acquisition Desk Team Leader Bonus Structure

1.1 Bonus Structure

1.1.1 Account Managers

There were three versions of the Retention Desk Bonus Structure relevant to Account Managers (see annexure 1.1.1).

Pre 1 December 2017 (CB FCT.2009.0001.5831), bonuses were paid on the following criteria:

- Unique Net Depositor (“UND”): Number of >\$1k deposit in month;
- Active Traders (“AT”): Place at least 1 trade in month, irrespective of value.

A target was set for UND and AT for each Account Manager. How the Account Manager performed against the target set the % of their maximum bonus they could receive.

Post 1 December 2017 (CB FCT.1025.0002.7092), additional criteria of Net Depositors Amount (“NDA”), calculated on a customer’s total deposits less total withdrawals in a month, excluding first time depositors.

There were eight pre-requisites, that if not met, would reduce the bonus amount. These were more ‘qualitative’ measures including adhering to policies and procedures, legislative requirements and daily customer phone call targets.

Liquidators’ Comments

The largest contributor to an Account Manager’s bonus (as a % of total bonus paid) was the NDA criteria.

As a result of the NDA requirement, any withdrawals by customers reduced the amount of Net Deposits on which bonuses are calculated for the respective employee. This bonus structure creates an incentive for Representatives to deter or delay withdrawals by customers, which may be counter to the customer’s instructions or best interests.

Furthermore, the bonus structure appears to have incentivised Account Managers to engage in frequent, demanding follow-up calls after an initial deposit to encourage the customer to trade, with the hope that further deposits could be elicited, in order to maximise compliance with the NDA criteria, and in turn maximising the possible bonus an Account Manager could earn.

Although the eight pre-requisites for bonus eligibility included complying “with all relevant Commonwealth, State and Territory legislation and regulatory environment”, it is not clear this was ever measured or impacted on bonuses. The



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Company and Account Managers' compliance with "all relevant Commonwealth, State and Territory legislation and regulatory environment", or lack of, is discussed further throughout this paper. However, in short, the Company, Account Managers and Account Manager Team Leaders appear to have been fundamentally driven by financial incentives and had little regard to compliance.

1.1.2 Account Manager Team Leaders

There were three versions of a bonus structure relevant to the Account Manager Team Leaders (see annexure 1.1.2).

Bonuses were calculated by reference to:

- the percentage of aggregated net deposits for the team under management; and
- additional performance measures of customer Trading Volume for the team under management.

Eligibility criteria also applied, that if not met, would reduce the maximum bonus available. These criteria were similar to those that applied to Account Managers.

Liquidators' Comments

The Account Manager Team Leader incentives incentivised Account Manager Team Leaders to maximise the amount of deposits made by their Account Managers. This can be seen in the KPI and Performance Management section of this memorandum (part 3).

1.1.3 Acquisition Agent Bonus & Acquisition Team Leaders

Three documents related to Acquisition Agent Bonus Structure and Acquisition Team Leaders (see annexure 1.1.3).

Bonuses consisted of a cash payment based on 'first-time deposit' ("FTD"), at a minimum value of \$500. Bonus amounts were tiered depending on the Acquisition Agent's seniority and number of FTD's in a relevant period. Withdrawal of funds by a new customer adversely impacted the bonus of an Acquisition Agent, which could be adjusted if initial funds were withdrawn within 25 days on the following month of deposit.

A key performance measure was introduced at the conclusion of Acquisition Agents' traineeship period, requiring Acquisition Agents to generate 10 FTD's per month. If this was not met in two consecutive months, an official warning may be issued.

Liquidators' Comments

The bonus structure was based on volume of new customers being introduced and subsequently depositing money with the Company. Once the deposit was made, the new customer was transferred to an Account Manager to commence trading.

A withdrawal of the initial deposit by a customer resulted in a reversal of the FTD KPI, on which bonuses were calculated. Accordingly, similar to Account Managers, Acquisition Agents and Acquisition Team Leaders were incentivised to dissuade or deter any withdrawal request of the initial deposit.

While bonus eligibility included adhering to policies and procedures as well as relevant Commonwealth, State, and Territory legislation, it is not clear this was ever measured or impacted on bonuses. The Company and Acquisition Agents' compliance with "all relevant Commonwealth, State and Territory legislation and regulatory environment", or lack of, is discussed further throughout this paper. However, in short, the Company, Acquisition Agents and Acquisition Team Leaders appear to have been fundamentally driven by financial incentives and had little regard to compliance.

One-Off Bonus Incentives

Various Representatives, including Account Managers and Acquisition Agents, were provided one-off ad hoc performance incentives. See annexure 1.2 for examples of the one-off bonus incentives.



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A sample of the evidence provided in 1.2 includes:

- Ad hoc emails providing a cash payment for X number of FTD's received by the end of the day (CB FCT.2011.0001.3027 and CB FCT.2011.0007.5992);
- Various prizes for the employee who received the highest Net Deposits for the month, including trips to Las Vegas, luxury watches, and weekend getaways (R FCT.2003.0010.4393); and
- Roulette Wheels, Wheel of Fortune and dice games where Representatives accumulated 'points' throughout the day or month. The employee who accumulated the most 'points' was entitled to cash or prizes (R FCT.2003.0009.5367, FCT.2011.0001.1990, FCT.2011.0002.0684).

Liquidators' Comments

Cash payment incentives were linked to reaching performance targets for individuals, teams or both.

The Liquidators consider these ad hoc incentives and the "gamification" of customer deposits was commonplace at Forex. Furthermore, these incentives contributed to an embedded system of remuneration which inherently conflicted with a customer's best interests.

1.2 Findings on Remuneration

The Liquidators' investigations have drawn the same conclusions reached in the Contravention Proceedings, where Justice Middleton found that the Company:

- [implemented] an employee remuneration scheme and key performance indicators that "was likely to provide an incentive to Account Managers to encourage customers to deposit funds and to discourage them from withdrawing funds and to recommend trades or trading strategies that were not necessarily in the customers' best interests" (at [8]); and
- [implemented] a bonus structure that "incentivised acquisition agents to maximise the number of first-time deposits that they obtained from new customers and therefore created a significant risk that acquisition agents would coach prospective new customers to assist them to pass the qualification quiz" (at [77(e)]).

The Liquidators' review of the materials has independently substantiated that the Company operated a remuneration structure that incentivised Representatives to aggressively pursue Former customers to make deposits so as to maximise their own bonus eligibility and attract new customers and deposits to the business, regardless of the customer's eligibility or suitability to be trading in the financial products offered by the Company.



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2 Training

We have reviewed the training documents provided to Account Managers and Acquisition Agents in undertaking their day-to-day roles. These include onboarding training guides, formal presentations, daily scripts when dealing with customers and informative emails.

2.1 Employee Key Concepts Document

A 'Key Concepts' document was issued to all new onboarding Representatives which provided background on the Company's operations and how to interact with new and existing customers. This was an all-encompassing guide that was relevant to Acquisition Agents and Account Managers.

Two versions of the Key Concepts documents are annexed in 2.1, and include a 2017 document (CB FCT.2003.0006.7330) and a 2019 document (CB FCT.2003.0006.7465).

Liquidators' Comments

From the Key Concepts document we note employees were advised or directed to take a number of troubling actions. These themes are further expanded on throughout Section 2 of this Memorandum, and include:

- On page 1 of the 2019 copy:
 - o Customers who have become liquidated (had losing trades closed at a negative equity position) must be called "immediately" to elicit a deposit of further funds.
 - o Customers who are margin called (required to deposit more equity, or close unprofitable trades) must be called "immediately" to elicit a deposit of further funds.
 - o Customers who have requested a withdrawal must be called "within the hour" in order to "retain" their equity.
- On page 8 of the 2019 copy:
 - o when instructing Representatives on methods to increase trade size, the document suggests asking customers: "In fact you are actually more likely to lose money in the market with \$500 or \$1,000 than \$10K or \$20K aren't you?"
- On page 11 of the 2019 copy:
 - o coaching Representatives to encourage liquidated customers to deposit more funds, by: "[Offering] to work closely with the customer on developing a better trading strategy and close with a special deposit credit as a show of goodwill from ForexCT to help get them back in the market." The document continues on page 18 by giving instruction on how to elicit a deposit from a customer who has stated that they do not have enough money to begin trading.
- On page 12 of the 2017 copy:
 - o An Objection Handling Guide for Representatives aimed to counter common reasons why customers did not want to proceed as suggested by Representatives (for example, why a customer did not want to deposit further funds).

In addition to the Key Concepts Documents, Forex CT issued a 'Trading Services Manual' (R FXC.010.001.0065). Of note, it provides talking scripts for Account Managers around withdrawal request protocols, liquidated accounts and objection handling which is discussed in further detail throughout Section 2 of this Memorandum. As an example, on page 37 is a script for Account Managers aimed at stopping the withdrawal and attempting to obtain a re-deposit.

2.2 Upselling and Maximising Deposits

Forex used tactics to elicit higher deposit amounts from customers, including by:

- offering gifts and giveaways to customers for deposits; and
- providing training and coaching methods to Forex Representatives .

Please see the evidence in annexures 2.2 for examples.

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On 2 May 2017, an email from a Sales Team Leader (CB FCT.2011.0001.1077) highlighted the importance of upselling through the following comments to Representatives:

- “What you are looking at achieving through your discovery is profiling the [customer] and speaking to what is valuable to them.”
- “If you haven’t given away the kitchen sink already, you have the ability to attempt an upsell”
- “Discover where value can be provided and attempt a second sell at the end [of the call]”
- “Dangle the carrot to secure a call back”

Additionally, Representatives were instructed to offer bonus credit based on deposit amounts from customers, with a table of maximum bonus credit based on deposit size (FCT.2011.0001.3586).

In an email titled “Script Methodology” (R FXC.003.011.2060) an employee explains how to build motivation in a customer for trading and “conditioning the customer for a sale”. This shows the Company’s focus was on maximising sales above other considerations in respect of trading high risk financial products.

In an email from a Sales Team Leader to Shlomi Yoshai on 4 July 2018 (R FXC.002.056.0247), the Sales Team Leader notes “it is a growing concern for me that some of the Account Managers out there make it clear and use scare technique telling new customers that they can’t trade with only a \$500 deposit.” This is likely a result of Account Managers being told to request higher value deposits from new customers.

The email then goes on to highlight the conflicted bonus structures between Account Managers and Acquisition Agents. The conflicted structure arises because:

- A \$500 deposit is the minimum for a FTD bonus KPI to be triggered for an Acquisition Agent. An Account Manager is measured on Net Deposits not including the initial FTD.
- If the Account Manager cannot get a further deposit after the \$500 FTD, they tell them to not bother trading. This results in a withdrawal request of the \$500 FTD, and the Acquisition Agent’s FTD KPI is reversed out.
- Alternatively, if a new customer deposits \$25,000, the acquisition agent still only receives the one FTD KPI statistic. However, the email explains that Account Managers do not want a customer who has exhausted all their funds (eg. all \$25,000 in one go), as the initial FTD is not included in the Account Managers Net Deposit KPI. If the customer only has \$25,000 in funds, eliciting a second deposit is therefore unlikely.

2.3 Using Liquidation or Margin Calls as Opportunities to obtain deposits

Representatives were trained on how to utilise liquidated accounts or margin calls to elicit further deposits from customers. Additionally, the importance of investors actively and frequently trading, in high volumes, was expressed. The more active the customer, the more likely their account would go into a margin call or into liquidation. That is, the more they traded, the more likely they were to lose all of their money.

In the training presentation titled Margin Call (CB FXC.010.001.0013), it states “as we all know, a [customer] in margin call is a great opportunity for us to gain a deposit.” It further goes on to how to “Pitch” to a customer in order to obtain a further deposit.

See section ‘3. KPI’s and Performance Management’ for Forex leaders reinforcing the importance of eliciting further deposits from customers in a margin call situation or liquidated account.

2.4 Deterring Withdrawals

Representatives were trained and provided guidance on ways to deter customers from withdrawing funds. If a customer withdrew funds, it would reduce an Account Manager’s bonus eligibility under the NDA criteria. Accordingly, Account Managers were directly incentivised to dissuade a customer from completing their withdrawal request.

Examples of this training and guidance include:

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- Forex CT issued a withdrawal process document (R FCT.2005.0001.0001). On the second page is a template script for a call with customers who had requested a withdrawal. It attempts to persuade the customer to reverse their decision to withdraw funds, and in turn, elicit another deposit.
- In the “Trading Services - Daily Work Flow” document (CB FXC.010.001.0063) there is a stepped process for what Representatives should do if a withdrawal is requested, including a script aimed at changing a customer’s decision to withdraw, who to notify if not successful, and follow up calls to try and dissuade the withdrawal. If unable to change a customer’s mind, the last step is to process the withdrawal.
- In a document titled “Morning Huddle Topics” (CB FXC.003.002.4261) there are protocols on withdrawal request. One such direction is “Practice retention techniques to stop the [customer] from withdrawing and get them trading again.”
- In an internal email exchange on 24 July 2017 (R FCT.2008.0003.0397), Representatives discuss a new customer who has requested a withdrawal, in which Representatives conclude this is a result of an Account Manager not contacting the new customer. The exchange shows the length Representatives go to in delaying withdrawals in an attempt to stop the customer from proceeding with the withdrawal.

Please see annexure 2.4 for evidence of deterring withdrawals.

2.5 Increasing Trading Volume

Representatives were directed to encourage customers to increase trading volume, on the basis that a higher trading volume increased the likelihood of a customer’s account entering margin call or being liquidated, and thus, providing an opportunity for the Representative to elicit a further deposit.

Examples of these directions include:

- A coaching document ‘Volume Benchmark’ (CB FCT.2007.0016.4807), which aimed to coach Account Managers on how to encourage investors to increase their trading, either volume of trades or the size of the trades.
- A number of emails titled “Position Sizing Guides” (eg. CB FXC.003.005.5971), which were circulated to Account Managers. The Position Sizing Guides instructs Representatives on:
 - The daily investment strategy (eg. which currency to sell, which one to buy); and
 - The size of the position you should aim to have the investor take on – relevant to how much equity they have in their account. This was in line with Account Managers reaching their ‘high volume trading’ benchmarks.

See annexure 2.5 for further evidence on tactics to increase trading volume.

2.6 Objection Handling

The presentation ‘Objection Handling’ (CB FXC.003.002.7945) provides three examples of common objections and how to counter them in order for the investor to:

- continue trading; and/or
- deposit further funds.

Additionally, it provides scripts for Account Managers to follow when calling customers who have an objection. On page 20, the presentation leads on from solving the objection to then seek a further deposit from the customer. Tellingly, this document also includes the phrase *“Remember, an objection isn’t a **No**. If the [customer] neither **Wants** nor **Needs** the product you are offering then they will usually just tell you that outright”*. This summarises the Company’s attitude to customers who have expressed a clear desire they do not wish to continue to trade are to still be sold to.

Please refer to other previously highlighted training manuals that include a section on Objection Handling, including Key Concepts Document (CB FCT.2003.0006.7330) and Trading Services Manual (R FXC.010.001.0065).

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2.7 Findings on Training

The Liquidators' investigations have drawn the same conclusions reached in the Contravention Proceedings, where Justice Middleton found that Forex CT:

- Established and implemented “incentives for clients to deposit funds and disincentives for clients to withdraw funds from their trading accounts” (at [77(g)]);
- Provided “inadequate or inappropriate training and guidance to representatives, including encouraging representatives to advise clients to trade more frequently and in higher volumes and training representatives to use a client in a negative situation in relation to their trading of the Products as an opportunity to persuade the client to deposit more funds into their trading account, without consideration of whether that was in the client's best interests” (at [77(h)]); and
- “Training and encouraging representatives to deploy strategies to persuade clients to cancel requests to withdraw funds from their trading account” (at [77(i)]).

3 KPIs and Performance Management

3.1 KPI Tracking

KPIs were continually tracked for Representatives, with emails of monthly targets circulated monthly by Shlomi Yoshai (CB FCT.2003.007.1277 and CB FCT.2003.007.1278). As you will note, the KPI's are reflective of the previous themes discussed in '2. Training' and performance against the KPI's is directly linked to Representatives bonus structures.

KPI's measured are:

KPI	Role
Net deposits	Account Managers
Trading volumes	Account Managers
Number of active traders	Account Managers
Number of unique depositors	Account Managers
Number of first time deposits	Acquisition Agents
Value of first time deposits	Acquisition Agents

Additionally, team managers actively provided feedback on KPI metrics to Representatives. Included below are a sample of the comments recorded in annexure 3.1.2:

- “Number of positions and volume need to increase greatly to open up rebate, rollover margin, deposit opportunities”
- “Average deposit size needs to go up...continue pushing for larger deals”
- “Daily traders numbers have stagnated”
- “Teach these people to trade and get them active ASAP”
- “55% of clients on your book have not traded in over a week. If not made active they have a high risk of becoming WD's [withdrawals]”
- “Get your FTD's [First Time Deposits] trading at a higher level. Train them to trade. Third week this has been poor”
- “3 liquidations with no redeposit. Get these clients re-engaged or I will shuffle. I need to see more high volume clients immediately”
- “You got lots of people to deposit last week but failed to build the trust and value required for more significant deposits”
- “...Immediately need to improve both traders and volume benchmark this month in order to fix the deposits hole. You need to find creative ways to make this happen asap”



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- “focus on being collaborative with clients as we have discussed and not asking for money more than once every 6 calls unless there is an immediate situation”
- “Large % of clients with money not trading”
- “I have seen a massive lack of phone contact with many clients. Without building trust and value you are making it very hard to pitch more of your book for money”
- “Average deposit size is \$1,778. Never pitch for less than 3k. Let them talk you down if required to get the deal but always start high”
- “7 FTD's with 3 traders.... Get them going or the leads will dry up”
- “Never pitch for less than 3k....Do not be shy. Start asking for 10k's and 20k”
- “2 liquidations with 0 re-deposit is an ongoing problem. It seems like you have not developed this capability”

As illustrated above, Representatives were continually encouraged by their team leaders to maximise opportunities for deposits and given negative feedback in situations where trading volumes or deposit sizes did not reach benchmarks. Further, Representatives were encouraged to implement tactics, including:

- “building trust and value” in order to pitch for higher deposits; or
- “improve both traders and volume benchmark.....find creative ways to make this happen”

3.2 Performance Appraisals

Provided in annexure 3.2 are samples of performance appraisal reports provided to Representatives, including:

Acquisition Agents: Areas for development

- For all 4 reviews provided, they included ‘Upselling’ (being an area of improvement). Notes advising that upselling is to be raised on every call and to determine more opportunities.
- Comments about working towards hitting the \$2,000 average deposit.
- Use of 3rd party success stories to be more relatable to investors on the calls.

Account Managers: Areas for development

- Second Deposits - improve second call
- Very Important Person promotion, talk bigger
- 100k AUD deposits minimum [monthly target]
- Time management – stop training customers pre-deposit (ie. Before their FTD).

3.3 Warning Letters

Provided in annexure 3.3 are samples of warning letters sent to Representatives who consistently failed to meet their “minimum requirements”, which were broadly the KPI's discussed in 3.1 (being a number of FTDs for Acquisition Agents, and a certain value of NDAs for Retention Desk staff).

The recipients of these letters are told that their employment will be terminated if they do not increase their performance, as measured against the discussed targets.

3.4 Findings on KPI's and Performance Management

In all instances, performance measurement, appraisals and warning letters were a result of missing financial metrics set by the Company.

Please refer to ‘Section 4. Compliance’ for the Liquidators’ findings on how the Company enforced compliance with relevant laws and regulations applicable to the financial services advice.

In summary, there appears to be a highly disproportionate weighting on financial KPI metrics being achieved when measuring Representatives’ performance, with a reluctance to monitor and enforce compliance with laws and



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regulations (or factor these into performance discussions). The tactics/methods implemented by Representatives to elicit deposits (critical to achieving staff's financial KPI's (refer to section 2)), would often conflict with adhering to relevant laws and regulations (such as "best interests" obligations).

The Liquidators' investigations have drawn the same conclusions reached in the Contravention Proceedings, where Justice Middleton found the Company were:

- "establishing and enforcing key performance indicators for retention team leaders, Account Managers and acquisition agents that resulted in a conflict between the interests of representatives and the interests of Forex CT clients" (at [77(c)]);
- "implementing and encouraging a trading floor culture that was directed towards maximising trading volume and client deposits and not adequately promoting a culture of compliance with applicable legal requirements" (at [77(f)]; and
- "failing to ensure compliance with financial services laws" (at [77(j)]).

4 Compliance

4.1 Compliance Documents

Annexure 4.1 contains documents relevant to Forex CT's compliance process, including:

- "Code of Conduct Manual" (R FCT.2014.0003.1806)
- Email correspondence between the director and a voice recording and analysis firm, Depaho Ltd, with respect to call monitoring for compliance purposes (CB FCT.2000.0001.1139); and
- A draft template of the compliance report to assess Representatives' calls (CB FCT.2000.0001.1141).

These documents set the foundations for Forex CT implementing and monitoring compliance with the legal requirements of an Australian Financial Services Licence holder.

4.2 Compliance Enforcement

Annexed at 4.2 are examples of compliance enforcement documentation of Representatives. Several of these documents comprise transcripts of Representatives' phone calls, analysed for potential breaches of compliance by a third-party monitoring company. The management team at Forex CT received these on a weekly basis, with 6 Representatives monitored per report.

Also annexed is a warning email issued to an employee of Forex CT for incorrectly explaining the deposit and withdrawal process, and assisting the customer in completing the entry quiz which is to be completed strictly without assistance (R FXC.002.011.6833). No penalty was issued for the breaches.

In another email, an employee had received "7 unsatisfactory monitoring reports" for the year to 6 June 2018. The letter of warning also states that the employee had received "email notification and verbal counselling for these breaches". The letter concludes by threatening a deduction of the employee's bonus in the event of future breaches. It is the Liquidators view that having 7 unsatisfactory monitoring reports, without any real implications on the employee (financial or otherwise), does not encourage compliance with policies. Furthermore, depending on the type of breaches, there being no disciplinary action appears highly disproportionate to the seriousness of the various compliance breaches.

Another document, titled "Breach Summary, Grouped by Team Leader" (R FXC.020.002.0156) provides a summary of Representatives who have breached the Company's policies and procedures. The handwritten notations show financial fines being imposed for the breaches. Notes on breaches include:

- "Promising profits, unbalanced information"
- "Personal advice, inadequate information"



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- “Insufficient onboarding, questionnaire. Inadequate information on fees”.

The level of enforcement in rectifying these breaches is largely unknown. Compliance enforcement must be considered in conjunction with findings on Representatives’ interaction with customers, to understand the effectiveness of rectifying non-compliance identified.

4.3 Examples of Compliance Shortfalls

Annexure 4.3 contains a “Hand over memorandum and exit report” (R FCT.2014.0006.0928) dated 13 December 2018, giving instruction from the outgoing Head of Legal and Compliance at Forex CT, prepared for the incoming replacement compliance officer.

The Head of Legal and Compliance mentions “systemic issues the Cyprus team has picked up via their investigations” and a “lack of enforcement of policies and procedures and consequence management”. On page 13 the document includes the following handover comments:

- “Lack of enough and continuous training of agents regarding compliance with policies and procedures, products and services”;
- “Lack of overall risk assessments and analysis required to build frameworks”;
- “Lack of understanding of breaches and lack of compliance with reporting obligations”;
- “Lack of policies and procedures and periodic reviews of policies and procedures – many of Forex CT’s policies and procedures either don’t exist and/or must require a detailed review”;
- “Lack of enforcement of policies and procedures and consequence management of ALL agents in accordance with the bonus structure”; and
- “Lack of clearly identified compliance obligations via a register, training of key stakeholders and lack of accountability”.

The action recommendations indicate there to be significant risks associated with non-compliance with relevant legislation and regulations. The Liquidators consider the degree of compliance shortfalls to be significant. We consider it highly likely the former Head of Legal and Compliance may have faced resistance in having the non-compliance issues adequately addressed within the Company.

4.4 Findings on Compliance

It is the Liquidators’ view that the combination of:

- the absence of coaching or compliance education initiatives being implemented;
- the former Head of Compliance officer’s handover letter, detailing repeated compliance breaches, and the lack of understanding of compliance by Forex Representatives; and
- The limited number of warnings issued that were of a non-financial nature (i.e., compliance breaches), given there appeared to be significant compliance issues as highlighted by the outgoing Head of Compliance,

indicates that Forex CT had insufficient compliance enforcement processes to prevent Representatives acting in their own financial interests, which often conflicted with, and was to the detriment of, the best interests of customers.

The Liquidators’ investigations have drawn the same conclusions reached in the Contravention Proceedings, where Justice Middleton found that Forex CT had “systemic compliance deficiencies” and a “culture of non-compliance.”



Annexure 4 – Document Review

5 Customer base

5.1 Customer referral base

In annexure 5.1 there is an email from a third party (R FCT.2002.0001.3876) advising of a new campaign about to launch to generate new customers for the Company. Of specific note is the comment “one of our big French publishers built the website under his name, meaning that we can write what we want and are not working under regulation”. The Liquidators consider this a problematic attitude to working within the laws and regulations.

Further, the new leads are expected to be generated through Google searches with targeted key words including “make money fast, money on internet, forex trading, currency convertor, stocks trading...”

The email appears to suggest any avenues to entice new customers will be explored by the Company, and the specific Google key words used would likely attract less sophisticated customers through ‘fast money’ concepts.

In the minutes of a board of directors meeting on 17 November 2016 (R FCT.2014.0002.0372), lead generation strategy and effectiveness was discussed. These included, Google, Facebook, mailers and a third party Teremarkets. The type of media used to attract new customers does not appear overly sophisticated, and therefore the Liquidators consider this would likely attract less sophisticated investors, which may have been the intended target audience for Forex CT.

5.2 Lead generation and handling

Documents relating to lead generation and handling is provided in annexure 5.2.

In an email titled “Lead Handling and recycling” from Shlomi Yoshai on 16 July 2014 (R FCT.2003.0003.5049), Representatives are provided with protocols for calling new leads. They are categorised as:

- New Lead (no contact)
- New Lead (initial contact made)
- Deposit Chance %
- Close Lead and Reason.

The email notes a new lead should receive a “minimum [of] 14 call attempts” in the first 30 days. If there is no answer, the lead is “recycled” after 60 days. The Liquidators have assumed this to mean that the lead is reallocated to a new agent, and the process is repeated.

Similarly, once a new lead is initially contacted, Representatives should hold “7-10 effective interactions” within 30 days, after which, if the new lead has not deposited, is to be reassigned to a new agent and the process repeated. This reflects the repetitive, persistent and high-pressure tactics employed by Representatives to elicit a deposit and to commence a new lead trading.

In another email exchange between Shlomi Yoshai and a senior staff member (R FCT.2002.0001.8461) the merits of a new referral contact are discussed. Mr Yoshai concludes the discussion with “my perspective is very simple. Money. The rest is bullshit”. This illustrates the mentality when attracting new leads whereby generating a deposit is the sole outcome desired. This demonstrates the Company’s disregard for the appropriateness of the customers who traded with the Company – as long as they could make deposits, the Company would accept them as a customer.

5.3 Findings on customer base

The Liquidators’ investigations support the view that the Company’s customer base and new leads were generally unsophisticated with respect to knowledge of the complex and high-risk financial products offered by the Company.

It is the Liquidators’ view that unsophisticated investors were preferred, as Representatives had a greater chance of manipulating and falsely underplaying the risk of Forex CT’s products to customers. This demographic was also more



Annexure 4 – Document Review

likely to be susceptible to the high-pressure sales tactics employed by the Representatives. This, in turn, led to situations where customers incurred significant losses without a complete understanding of the products they were trading.

6 Conclusion on Investigations

Based on the Liquidators' investigations, we have concluded that:

- Acquisition Agents and Acquisition Team Leaders, in essence, operated as telemarketers, incentivised to maximise the number of new clients opening trading accounts with Forex CT.
- Account Managers and Account Team Leaders were incentivised to:
 - o Keep clients depositing
 - o Keep clients trading
 - o Limit withdrawals until all funds were exhausted.
- Staff were trained to use various techniques in order to achieve these outcomes.
- Staff were measured on their performance against the above objectives and were reprimanded in instances where they failed to achieve results.
- Due to Forex CT's unconscionable system, compliance with relevant laws and regulations under their AFSL could not have been achieved.
- Forex targeted unsophisticated investors, looking to make money quickly. Marketing campaigns, targeting Australian clients, were deliberately undertaken from countries with little, or no regulatory oversight that allowed Forex to say what it wanted without recourse.

Annexure 5 – Summary of Misrepresentations in phone calls

Black Crosses indicate the Misrepresentation was made in a call

Red Crosses indicate the Misrepresentation was made in writing only

Grey cells represent where there were no phone calls available to be reviewed or only limited information

Selected Former Customer	Interests Aligned Representation	No Personal Benefit Representation	Risk Representation	Profit Representation (General)	Profit Representation (Specific)	Best Interests Representation	Comments
1							No calls or CRM records
2							Limited information
3	X						No calls
4	X			X			No calls
5							No calls
6	X						No calls
7							No calls
8							No calls
9							No calls
10	X			X			No calls
11				X			No calls
12	X			X			No calls or CRM records
13						X	
14							Limited information
15							Limited information
16							Limited information
17	X		X	X			
18							No calls
19							No calls
20			X	X		X	
21					X		
22	X		X	X	X	X	

23							No calls
24							No calls
25							No calls
26	X			X			
27	X	X	X	X		X	
28	X		X	X	X	X	
29			X	X	X	X	
30				X			No calls or CRM records
31	X						
32			X	X	X	X	
33	X			X	X		
34			X				
35	X		X	X	X	X	
36			X	X			
37		X	X	X	X	X	
38	X		X	X	X	X	
39	X		X	X		X	
40				X			Limited information, lost entire \$40k deposit on first trade
41	X			X			No calls
42	X		X	X		X	
43	X	X	X	X	X	X	
44	X	X	X	X	X	X	
45			X	X		X	
46			X	X			
47							No calls
48			X	X			
49							No calls
50	X	X	X	X	X	X	
51			X	X		X	
52	X		X	X	X	X	

53	X		X	X		X	
54							No calls
55	X		X	X		X	
56	X		X	X	X	X	
57							No calls
58			X	X	X		
TOTALS	16	5	26	26	15	21	



Annexure 6 – Sample Account Statement

A redacted version of the Sample Account Statement of a Selected Former Customer commences on the next page.



Account Statement

Period: 01/07/2017 - 09/10/2018

Account Holder: [REDACTED]

Username: [REDACTED]

<u>Open Date</u>	<u>ID</u>	<u>Direction</u>	<u>Amount</u>	<u>Symbol</u>	<u>Open Rate</u>	<u>Close Rate</u>	<u>Close Date</u>	<u>Customer's currency P&L</u>
28/09/2018 12:46:40 PM	63196954	Buy	10.00	GOLD	1184.98	1184.06	28/09/2018 12:49:07 PM	-12.75
19/06/2018 2:10:41 AM	59870407	Buy	128,000.00	USDJPY	109.87	109.51	25/06/2018 4:24:23 AM	-566.86
18/06/2018 4:21:30 AM	59831685	Buy	128,000.00	USDJPY	110.51	109.51	25/06/2018 4:24:23 AM	-1574.61
19/06/2018 2:10:27 AM	59870398	Buy	100.00	GOLD	1283.44	1266.87	25/06/2018 4:24:23 AM	-2232.1
23/04/2018 1:50:58 PM	57925142	Buy	40.00	GOLD	1324.24	1266.87	25/06/2018 4:24:23 AM	-3091.26
13/06/2018 4:50:50 AM	59658768	Buy	100,000.00	AUDUSD	0.7569	0.7421	25/06/2018 4:24:23 AM	-1993.67
18/06/2018 4:20:56 AM	59831673	Buy	100.00	GOLD	1280.53	1266.87	25/06/2018 4:24:23 AM	-1840.1
20/04/2018 1:43:01 PM	57872343	Buy	20.00	GOLD	1337.46	1266.87	25/06/2018 4:24:23 AM	-1901.8
13/06/2018 4:51:14 AM	59658775	Sell	100,000.00	NZDUSD	0.701	0.6936	19/06/2018 2:10:08 AM	999.26
14/06/2018 4:29:30 AM	59710325	Sell	100.00	GOLD	1298.81	1280.28	17/06/2018 11:16:06 PM	2490.09
14/06/2018 4:29:50 AM	59710328	Sell	130,000.00	USDJPY	110.19	110.63	17/06/2018 11:15:56 PM	-694.93
13/06/2018 4:55:11 AM	59658829	Sell	40.00	GOLD	1294.74	1299.3	14/06/2018 4:28:46 AM	-241.13
13/06/2018 4:55:27 AM	59658831	Sell	50,000.00	USDJPY	110.61	110.21	14/06/2018 4:28:41 AM	239.95
12/06/2018 8:53:24 AM	59623002	Buy	50,000.00	USDJPY	110.17	110.65	13/06/2018 4:49:56 AM	286.6
12/06/2018 8:53:51 AM	59623025	Buy	40.00	GOLD	1298.62	1294.64	13/06/2018 4:49:52 AM	-210.37
15/05/2018 3:49:36 PM	58700298	Buy	10.00	GOLD	1294.46	1297.44	12/06/2018 8:50:56 AM	39.13
30/04/2018 6:24:00 AM	58135820	Buy	5.00	SP 15/06/2018	2679.12	2721.87	15/05/2018 6:04:40 AM	284.72
18/04/2018 2:59:41 AM	57729306	Buy	1.00	DOW 15/06/2018	24769.5	24833.5	15/05/2018 5:23:35 AM	85.13
8/05/2018 1:38:20 AM	58406033	Sell	10,000.00	AUDUSD	0.7495	0.7463	8/05/2018 10:08:44 AM	42.89
18/04/2018 11:52:37 AM	57753832	Sell	20.00	GOLD	1349.59	1342.57	20/04/2018 4:34:21 AM	181.95
17/04/2018 8:53:25 PM	57724335	Sell	20.00	GOLD	1347.2	1342.55	20/04/2018 4:34:17 AM	120.51
17/04/2018 1:17:33 PM	57700319	Buy	20.00	GOLD	1339.79	1340.38	17/04/2018 1:36:34 PM	15.2
16/04/2018 5:43:23 AM	57629825	Sell	20.00	GOLD	1345.53	1339.59	17/04/2018 1:16:08 PM	153.06
13/04/2018 1:18:52 AM	57576862	Buy	20,000.00	AUDNZD	1.0529	1.0559	16/04/2018 5:41:36 AM	56.8
11/04/2018 12:46:55 PM	57484238	Sell	40.00	GOLD	1353.38	1338.67	12/04/2018 11:30:23 PM	758.49
10/04/2018 4:22:15 AM	57400778	Sell	20.00	GOLD	1333.57	1338.67	12/04/2018 11:30:23 PM	-131.49
14/03/2018 7:04:53 AM	56433469	Sell	10,000.00	EURCAD	1.6047	1.5685	5/04/2018 1:44:27 AM	368
13/02/2018 8:33:22 PM	55339769	Sell	10,000.00	EURCAD	1.5562	1.5685	5/04/2018 1:44:27 AM	-125.04
15/02/2018 1:12:18 PM	55445049	Sell	10,000.00	EURCAD	1.56	1.5685	5/04/2018 1:44:27 AM	-86.41
1/03/2018 4:43:38 PM	55985733	Sell	10,000.00	EURCAD	1.5675	1.5685	5/04/2018 1:44:27 AM	-10.17
14/03/2018 7:04:40 AM	56433464	Sell	10,000.00	EURCAD	1.6046	1.5685	5/04/2018 1:44:27 AM	366.98
13/02/2018 10:57:24 AM	55315146	Sell	10,000.00	EURCAD	1.5517	1.5685	5/04/2018 1:44:27 AM	-170.78
9/03/2018 3:12:53 AM	56270403	Sell	10,000.00	NZDUSD	0.7261	0.7278	9/03/2018 6:04:52 AM	-21.8
21/02/2018 11:28:40 PM	55676359	Sell	10,000.00	AUDUSD	0.7799	0.7768	28/02/2018 9:13:33 PM	39.92
20/02/2018 7:45:32 AM	55570983	Sell	10.00	GOLD	1338.01	1330.91	20/02/2018 9:01:39 PM	90.11
13/02/2018 10:56:35 AM	55315098	Buy	10,000.00	AUDCHF	0.7349	0.7377	20/02/2018 7:43:23 AM	37.95
19/02/2018 6:10:32 AM	55532054	Buy	10,000.00	USDJPY	106.52	106.97	20/02/2018 7:43:23 AM	53.14
18/01/2018 4:59:56 AM	54284247	Sell	10,000.00	NZDUSD	0.7277	0.726	7/02/2018 6:14:03 PM	21.74
22/01/2018 12:17:03 PM	54392859	Sell	10,000.00	NZDUSD	0.7302	0.726	7/02/2018 6:14:03 PM	53.72
1/02/2018 8:34:34 PM	54877036	Sell	10,000.00	NZDUSD	0.7391	0.726	7/02/2018 6:14:02 PM	167.55

1/02/2018 11:01:21 AM	54844794	Buy	10,000.00	USDCHF	0.9328	0.94	7/02/2018 10:51:28 AM	97.44
4/02/2018 11:10:12 PM	54944589	Sell	10,000.00	AUDUSD	0.7899	0.7898	5/02/2018 8:11:10 PM	1.27
31/01/2018 12:40:31 AM	54781143	Sell	10,000.00	AUDUSD	0.8073	0.8	1/02/2018 10:58:01 AM	91.28
17/01/2018 3:09:58 AM	54227335	Sell	10,000.00	NZDUSD	0.7253	0.728	17/01/2018 10:32:49 AM	-33.82
10/01/2018 4:26:47 AM	53948017	Buy	10,000.00	GBPUSD	1.3535	1.3524	10/01/2018 5:52:43 AM	-14.07
9/01/2018 11:26:45 PM	53943477	Buy	10,000.00	USDJPY	112.71	112.48	10/01/2018 12:53:28 AM	-26.18
8/01/2018 5:08:08 AM	53855598	Buy	10,000.00	USDJPY	113.22	113	8/01/2018 12:36:15 PM	-24.83
5/01/2018 3:58:17 AM	53808106	Sell	10,000.00	EURUSD	1.2074	1.205	5/01/2018 9:18:02 AM	30.61
4/01/2018 5:38:49 AM	53758216	Buy	10,000.00	USDJPY	112.64	112.82	5/01/2018 3:50:03 AM	20.3
10/08/2017 1:45:41 PM	48940993	Buy	50,000.00	USDJPY	109.62	109.15	10/08/2017 7:37:24 PM	-272.88
10/08/2017 2:07:52 PM	48943794	Buy	50,000.00	USDJPY	109.45	109.15	10/08/2017 7:37:24 PM	-174.18

Closed Trade P&L	-8,257.44
Rollover Interest	-2,410.55
Manual Adjustment	5,155.24
Total P&L	-5,512.75

Account Summary

	\$
Balance as of 01/07/2017	0.00
Total Deposits	5,500.00
Total Withdrawals	-248.48
Total Closed Trade P&L	-8,257.44
Total Rollover	-2,410.55
Total Bonus	261.23
Total Manual Adjustment	5,155.24
Total Credit	0.00
Total Transfer	0.00
Balance as of 09/10/2018	0.00

Please Note:

1. All dates and times are based in GMT.
2. All dollar amounts are in AUD.

Forex Capital Trading Pty Ltd

Level 18, 636 St Kilda Road, Melbourne, Victoria 3004, Australia

Tel 1800367392 Fax 1800068022, web: www.forexct.com.au, AFS Licence 306400,

ACN: 119 086 270

Mackenzie, Patrick (AU)

From: Daniel Woodhouse – FTI Consulting <fxct@fticonsulting.com>
Sent: Thursday, 5 May 2022 5:00 PM
To: KWM Forex
Subject: Forex Capital Trading – Recovering your Money

EXTERNAL



[View in Browser](#)

Forex Capital Trading Pty Limited ACN 119 086 270 (In Liquidation) (“Company” or “Forex CT”)

Dear Sir/Madam

Forex Capital Trading Pty Limited ACN 119 086 270 (In Liquidation) (Company or Forex CT)

I refer to the appointment of Nathan Stubing, Ross Blakeley and myself as liquidators of the Company on 7 December 2021 (“Liquidators”) and our previous communications.

Investigations Report

The Liquidators have now completed a detailed investigation into the affairs of the Company, including whether its former customers (i.e. you) may have a claim against Forex CT for loss or damage arising from conduct of the Company and its representatives.

Based on our investigations, the Liquidators consider:

- Forex CT engaged in conduct between, at least, 1 January 2017 and 1 April 2019 that was:
 - misleading or deceptive, or likely to mislead or deceive former customers;
 - in all the circumstances, unconscionable and against the law; and
- you were likely misled or deceived and were subject to the Company’s unconscionable system; and
- **if you suffered loss or damage while trading with Forex CT, you may have a valid claim against the Company.**

The Liquidators have prepared a detailed report in respect of their investigations. The report, entitled ‘Investigations Report – May 2022’, and the annexures referred to in the body of the report, can be accessed from our website at: www.fticonsulting.com/creditors/forexcapital-trading-pty-ltd.

How do I claim?

You can lodge a claim at <https://www.forexctclaims.com.au/>.

If enough Former Customers (such as you) lodge claims, then the Liquidators intend making a demand on the Company's ultimate holding company, Invesus Group Limited (a company incorporated in Gibraltar) ("Invesus"). Invesus has undertaken to pay former clients' claims under a Letter of Comfort. The Letter of Comfort expires on 30 June 2022. The Liquidators have obtained funding from a third party to pursue this claim against Invesus, but the claim will only be brought if the size of the claim against Invesus makes it commercially viable for the funder to pursue this claim.

The claim against Invesus may be the only way we are able to recover funds to pay creditors, including you.

It is important you lodge your claim as soon as possible, so the Liquidators can include your claim in the demand against Invesus.

Next steps

There are over 8,600 potential claims from former clients. If we adjudicate claims in the normal manner, the Liquidators consider it is not practically possible to complete the adjudication process before the Letter of Comfort will expire, and we will not be able to make a claim against Invesus.

The Liquidators intend shortly to make an application in the Federal Court of Australia ("Court") to allow us to adjudicate your claim quickly ("Claim Application"). If the Court grants our application, we will be able to make the demand against Invesus before the Letter of Comfort expires.

We will write to you after the Claim Application has been heard by the Court to let you know what you need to do next.

In the meantime, we strongly urge you to lodge your claim with the Liquidators at <https://www.forexctclaims.com.au/>.

Questions

If you have any questions, please email the Liquidators at fxct@fticonsulting.com.

Yours sincerely

Daniel Woodhouse
Joint and Several Liquidator
Forex Capital Trading Pty Limited (In Liquidation)



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Mackenzie, Patrick (AU)

From: Woodhouse, Daniel <Daniel.Woodhouse@fticonsulting.com>
Sent: Thursday, 5 May 2022 8:05 PM
To: Theodora Theophanous Invesus; Leonidas Invesus
Cc: Stirling, Renae
Subject: Forex Capital Trading Pty Ltd (In Liquidation) ("Company")
Attachments: Letter to Invesus 050522.pdf; 20220505 - Forex Capital Trading Pty Ltd (in liq) - Investigation Report (including Annexures and document bundles).pdf

Dear Theodora and Leo

Please find attached a self-explanatory letter.

If you have any questions, please feel free to contact me.

Kind regards

Daniel Woodhouse
Senior Managing Director, Corporate Finance & Restructuring

FTI Consulting
+61 8 9321 8533 T | +61 8 9321 8544 F
daniel.woodhouse@fticonsulting.com

Level 47, Central Park
152-158 St Georges Terrace
Perth WA 6000, Australia
www.fticonsulting.com

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FTI Consulting acknowledges the Aboriginal and Torres Strait Islander peoples as the Traditional Custodians of the lands and water on which we live and work each day. We recognise Aboriginal and Torres Strait Islander connection to land, waters and culture and pay respect to the Elders past and present across our great nation.

5 May 2022

Theodora Theophanus and Leonidas Demetriou

Invesus Group Limited

Montarik House

3 Bedlam Court

GX11 1AA

GIBRALTAR

By email: tth@invesus.com, leonidas@invesus.com

Dear Theodora and Leo

Re: Forex Capital Trading Pty Ltd (in liq) ACN 119 086 270 ("Company")

I refer to our previous correspondence that was sent between 20 September 2021 and 29 October 2021. I note we did not receive any response to our final email of 29 October 2021.

I also refer to the letter of comfort dated 17 March 2019 that was issued by Invesus in favour of ForexCT ("Letter of Comfort"). Unless otherwise defined, capitalised terms in this letter have the meaning given to them in our earlier correspondence.

Transition to court ordered winding up in insolvency

As foreshadowed in our previous correspondence, as a result of our investigations into the affairs of the Company, my fellow Liquidators and I formed a view that the Company was unable to pay its debts in full in the timeframe set out in the declaration of solvency provided by the Company's former director (pursuant to s 494 of the Act). In line with our statutory obligations under s 496 of the Act, we then undertook the necessary steps to apply to the Federal Court of Australia for orders that the Company be wound up in insolvency.

Orders pursuant to s 459A of the Act were made by Registrar Trott on 7 December 2021, and Nathan Stubing, Ross Blakeley and myself were appointed as joint and several liquidators of the Company.

FTI Consulting (Australia) Pty Limited

ABN 49 160 397 811 | ACN 160 397 811 | AFSL Authorised Representative # 001269325

Level 47, Central Park | 152-158 St George's Terrace | Perth WA 6000 | Australia

Postal Address | PO Box Z5486 | Perth WA 6831 | Australia

+61 8 9321 8533 telephone | +61 8 9321 8544 fax | fticonsulting.com

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Investigations into the affairs of the Company

As you are aware, as Liquidators, we are obliged to investigate the affairs of the Company and ascertain potential claims against the Company. As foreshadowed in our letter to you of 20 September 2021, we have now conducted a detailed examination into the affairs of the Company, including the viability of the claims of former customers against the Company. The findings of our investigations are contained in our Investigation Report dated 5 May 2022, a copy of which is **enclosed** with this letter.

As a consequence of our investigations and the findings we have made, we now intend to bring a further application in the Federal Court of Australia seeking orders to allow for the claims of former customers of the Company to be adjudicated as expeditiously as possible, in order to allow us to make a request of Invesus for financial support to meet the debts of the Company in respect of its customers.

We intend to bring this application, and have it determined, as soon as possible. We will provide you with copies of the relevant documents when they are filed.

Kind regards



Daniel Woodhouse

Joint and Several Liquidator

				Value				Trading period				Frequency of trade			
Selected Former Customer Number	Loss	No of active months	No of trades	Up to 5,000	5,000 to 20,000	20,000 to 100,000	Over 100,000	Beginning	Middle	End	Overall	Bottom 25%	Mid- lower 25%	Mid- upper 25%	Upper 25%
1	550	1	3	●				●				●			
2	500	1	13	●				●					●		
3	2,000	1	48	●				●						●	
4	1,000	1	391	●				●							●
5	300	2	6	●					●			●			
6	469	2	22	●					●				●		
7	500	1	46	●					●					●	
8	3,300	2	218	●					●						●
9	500	1	1	●						●		●			
10	1,000	1	19	●						●			●		
11	5,000	3	105	●						●				●	
12	2,610	1	118	●						●					●
13	375	2	3	●							●	●			
14	2,637	10	111	●							●		●		
15	2,500	3	97	●							●			●	
16	2,000	2	189	●							●				●
17	20,000	1	186		●			●				●			
18	5,430	5	24		●			●					●		
19	17,500	3	127		●			●						●	
20	11,250	2	490		●			●							●
21	10,000	2	6		●				●			●			
22	10,500	1	8		●				●				●		
23	6,100	2	81		●				●					●	
24	8,050	7	533		●				●						●
25	5,500	1	3		●					●		●			
26	10,500	3	30		●					●			●		
27	15,331	4	258		●					●				●	

28	17,200	4	962			●					●						●
29	5,385	3	6			●						●		●			
30	5,252	5	51			●						●			●		
31	7,750	7	212			●						●				●	
32	9,900	8	4,865			●						●					●
								●						●			
33	49,328	3	60					●						●		●	
34	30,000	4	228					●								●	
35	28,800	4	2,867					●									●
36	24,543	2	1					●			●			●			
37	42,000	3	63					●			●				●		
38	21,000	3	146					●			●					●	
39	33,900	3	383					●			●						●
40	40,000	1	1					●			●			●			
41	90,688	2	32					●			●				●		
42	33,000	4	199					●			●					●	
43	80,749	2	223					●			●						●
44	59,350	8	5					●				●		●			
45	23,800	9	193					●				●			●		
46	36,318	18	456					●				●				●	
47	66,073	11	1,570					●				●					●
								●						●			
								●							●		
48	400,000	1	38					●			●					●	
49	107,100	4	667					●			●						●
								●			●				●		
50	171,500	4	78					●			●				●		
51	152,000	4	203					●			●					●	
52	154,000	5	565					●			●						●
								●			●				●		
53	101,000	1	21					●			●				●		
54	555,500	1	32					●			●					●	
55	908,130	7	1,509					●			●						●
								●				●		●			

[illegible]



Account Statement

Period: 01/07/2017 - 09/10/2018

Account Holder [REDACTED]

Username: [REDACTED]

<u>Open Date</u>	<u>ID</u>	<u>Direction</u>	<u>Amount</u>	<u>Symbol</u>	<u>Open Rate</u>	<u>Close Rate</u>	<u>Close Date</u>	<u>Customer's currency P&L</u>
28/09/2018 12:46:40 PM	63196954	Buy	10.00	GOLD	1184.98	1184.06	28/09/2018 12:49:07 PM	-12.75
19/06/2018 2:10:41 AM	59870407	Buy	128,000.00	USDJPY	109.87	109.51	25/06/2018 4:24:23 AM	-566.86
18/06/2018 4:21:30 AM	59831685	Buy	128,000.00	USDJPY	110.51	109.51	25/06/2018 4:24:23 AM	-1574.61
19/06/2018 2:10:27 AM	59870398	Buy	100.00	GOLD	1283.44	1266.87	25/06/2018 4:24:23 AM	-2232.1
23/04/2018 1:50:58 PM	57925142	Buy	40.00	GOLD	1324.24	1266.87	25/06/2018 4:24:23 AM	-3091.26
13/06/2018 4:50:50 AM	59658768	Buy	100,000.00	AUDUSD	0.7569	0.7421	25/06/2018 4:24:23 AM	-1993.67
18/06/2018 4:20:56 AM	59831673	Buy	100.00	GOLD	1280.53	1266.87	25/06/2018 4:24:23 AM	-1840.1
20/04/2018 1:43:01 PM	57872343	Buy	20.00	GOLD	1337.46	1266.87	25/06/2018 4:24:23 AM	-1901.8
13/06/2018 4:51:14 AM	59658775	Sell	100,000.00	NZDUSD	0.701	0.6936	19/06/2018 2:10:08 AM	999.26
14/06/2018 4:29:30 AM	59710325	Sell	100.00	GOLD	1298.81	1280.28	17/06/2018 11:16:06 PM	2490.09
14/06/2018 4:29:50 AM	59710328	Sell	130,000.00	USDJPY	110.19	110.63	17/06/2018 11:15:56 PM	-694.93
13/06/2018 4:55:11 AM	59658829	Sell	40.00	GOLD	1294.74	1299.3	14/06/2018 4:28:46 AM	-241.13
13/06/2018 4:55:27 AM	59658831	Sell	50,000.00	USDJPY	110.61	110.21	14/06/2018 4:28:41 AM	239.95
12/06/2018 8:53:24 AM	59623002	Buy	50,000.00	USDJPY	110.17	110.65	13/06/2018 4:49:56 AM	286.6
12/06/2018 8:53:51 AM	59623025	Buy	40.00	GOLD	1298.62	1294.64	13/06/2018 4:49:52 AM	-210.37
15/05/2018 3:49:36 PM	58700298	Buy	10.00	GOLD	1294.46	1297.44	12/06/2018 8:50:56 AM	39.13
30/04/2018 6:24:00 AM	58135820	Buy	5.00	SP 15/06/2018	2679.12	2721.87	15/05/2018 6:04:40 AM	284.72
18/04/2018 2:59:41 AM	57729306	Buy	1.00	DOW 15/06/2018	24769.5	24833.5	15/05/2018 5:23:35 AM	85.13
8/05/2018 1:38:20 AM	58406033	Sell	10,000.00	AUDUSD	0.7495	0.7463	8/05/2018 10:08:44 AM	42.89
18/04/2018 11:52:37 AM	57753832	Sell	20.00	GOLD	1349.59	1342.57	20/04/2018 4:34:21 AM	181.95
17/04/2018 8:53:25 PM	57724335	Sell	20.00	GOLD	1347.2	1342.55	20/04/2018 4:34:17 AM	120.51
17/04/2018 1:17:33 PM	57700319	Buy	20.00	GOLD	1339.79	1340.38	17/04/2018 1:36:34 PM	15.2
16/04/2018 5:43:23 AM	57629825	Sell	20.00	GOLD	1345.53	1339.59	17/04/2018 1:16:08 PM	153.06
13/04/2018 1:18:52 AM	57576862	Buy	20,000.00	AUDNZD	1.0529	1.0559	16/04/2018 5:41:36 AM	56.8
11/04/2018 12:46:55 PM	57484238	Sell	40.00	GOLD	1353.38	1338.67	12/04/2018 11:30:23 PM	758.49
10/04/2018 4:22:15 AM	57400778	Sell	20.00	GOLD	1333.57	1338.67	12/04/2018 11:30:23 PM	-131.49
14/03/2018 7:04:53 AM	56433469	Sell	10,000.00	EURCAD	1.6047	1.5685	5/04/2018 1:44:27 AM	368
13/02/2018 8:33:22 PM	55339769	Sell	10,000.00	EURCAD	1.5562	1.5685	5/04/2018 1:44:27 AM	-125.04
15/02/2018 1:12:18 PM	55445049	Sell	10,000.00	EURCAD	1.56	1.5685	5/04/2018 1:44:27 AM	-86.41
1/03/2018 4:43:38 PM	55985733	Sell	10,000.00	EURCAD	1.5675	1.5685	5/04/2018 1:44:27 AM	-10.17
14/03/2018 7:04:40 AM	56433464	Sell	10,000.00	EURCAD	1.6046	1.5685	5/04/2018 1:44:27 AM	366.98
13/02/2018 10:57:24 AM	55315146	Sell	10,000.00	EURCAD	1.5517	1.5685	5/04/2018 1:44:27 AM	-170.78
9/03/2018 3:12:53 AM	56270403	Sell	10,000.00	NZDUSD	0.7261	0.7278	9/03/2018 6:04:52 AM	-21.8
21/02/2018 11:28:40 PM	55676359	Sell	10,000.00	AUDUSD	0.7799	0.7768	28/02/2018 9:13:33 PM	39.92
20/02/2018 7:45:32 AM	55570983	Sell	10.00	GOLD	1338.01	1330.91	20/02/2018 9:01:39 PM	90.11
13/02/2018 10:56:35 AM	55315098	Buy	10,000.00	AUDCHF	0.7349	0.7377	20/02/2018 7:43:23 AM	37.95
19/02/2018 6:10:32 AM	55532054	Buy	10,000.00	USDJPY	106.52	106.97	20/02/2018 7:43:23 AM	53.14
18/01/2018 4:59:56 AM	54284247	Sell	10,000.00	NZDUSD	0.7277	0.726	7/02/2018 6:14:03 PM	21.74
22/01/2018 12:17:03 PM	54392859	Sell	10,000.00	NZDUSD	0.7302	0.726	7/02/2018 6:14:03 PM	53.72
1/02/2018 8:34:34 PM	54877036	Sell	10,000.00	NZDUSD	0.7391	0.726	7/02/2018 6:14:02 PM	167.55

1/02/2018 11:01:21 AM	54844794	Buy	10,000.00	USDCHF	0.9328	0.94	7/02/2018 10:51:28 AM	97.44
4/02/2018 11:10:12 PM	54944589	Sell	10,000.00	AUDUSD	0.7899	0.7898	5/02/2018 8:11:10 PM	1.27
31/01/2018 12:40:31 AM	54781143	Sell	10,000.00	AUDUSD	0.8073	0.8	1/02/2018 10:58:01 AM	91.28
17/01/2018 3:09:58 AM	54227335	Sell	10,000.00	NZDUSD	0.7253	0.728	17/01/2018 10:32:49 AM	-33.82
10/01/2018 4:26:47 AM	53948017	Buy	10,000.00	GBPUSD	1.3535	1.3524	10/01/2018 5:52:43 AM	-14.07
9/01/2018 11:26:45 PM	53943477	Buy	10,000.00	USDJPY	112.71	112.48	10/01/2018 12:53:28 AM	-26.18
8/01/2018 5:08:08 AM	53855598	Buy	10,000.00	USDJPY	113.22	113	8/01/2018 12:36:15 PM	-24.83
5/01/2018 3:58:17 AM	53808106	Sell	10,000.00	EURUSD	1.2074	1.205	5/01/2018 9:18:02 AM	30.61
4/01/2018 5:38:49 AM	53758216	Buy	10,000.00	USDJPY	112.64	112.82	5/01/2018 3:50:03 AM	20.3
10/08/2017 1:45:41 PM	48940993	Buy	50,000.00	USDJPY	109.62	109.15	10/08/2017 7:37:24 PM	-272.88
10/08/2017 2:07:52 PM	48943794	Buy	50,000.00	USDJPY	109.45	109.15	10/08/2017 7:37:24 PM	-174.18

Closed Trade P&L	-8,257.44
Rollover Interest	-2,410.55
Manual Adjustment	5,155.24
Total P&L	-5,512.75

Account Summary

	\$
Balance as of 01/07/2017	0.00
Total Deposits	5,500.00
Total Withdrawals	-248.48
Total Closed Trade P&L	-8,257.44
Total Rollover	-2,410.55
Total Bonus	261.23
Total Manual Adjustment	5,155.24
Total Credit	0.00
Total Transfer	0.00
Balance as of 09/10/2018	0.00

Please Note:

1. All dates and times are based in GMT.
2. All dollar amounts are in AUD.

Forex Capital Trading Pty Ltd

Level 18, 636 St Kilda Road, Melbourne, Victoria 3004, Australia

Tel 1800367392 Fax 1800068022, web: www.forexct.com.au, AFS Licence 306400,

ACN: 119 086 270