Before the Arbiter for Financial Services

Case ASF 042/2021

VL

('the Complainant')

vs

AKFX Financial Services Limited now renamed Trive Financial Services Malta Limited (C60473)

('the Service Provider' or 'the Company')

Sitting of 12 May 2023

The Arbiter,

PRELIMINARY

Change in name

The Office of the Arbiter for Financial Services ('OAFS') was informed by the Compliance Officer and MLRO of the Service Provider that *AKFX Financial Services Limited* changed its name to *Trive Financial Services Malta Limited* with effect from the 6 July 2022, as per the records held with the Malta Business Registry.[1]

For all intents and purposes, the records of this case have been accordingly updated to reflect the change in name of the Service Provider.

The Complaint in summary

[1] Page (P.) 139 - 140

Having seen **the Complaint** which relates to the suspension in trading and eventual closure of three open trade positions that the Complainant had in his trading account held with the Service Provider.

The open trade positions in question involved Contract for Difference ('CFDs') in XRXUS (US Xerox). At the closure of the said open trades there resulted a material financial loss, which loss the Complainant claimed was due to the alleged failures of, and actions taken, by the Service Provider. In essence, the Complainant alleged that the Service Provider:

(i) failed to inform him that the XRXUS CFD will no longer be offered as part of its financial product portfolio, thus not providing him with sufficient time to take appropriate action with respect to his CFD trades;

(ii) forced the closure of his open positions and misled him when he was told that he had to close his positions and that no trades would be any more possible in the XRXUS CFD, when it later transpired that the Company resumed offering the XRXUS CFD as part of its financial products.

Background and submissions made by the Complainant

The Complainant explained that on 2 August 2019, he contacted by email the customer service of the German branch of his investment broker's, GKFX Europe,[2] regarding his open XRXUS CFD trade positions.

He reported to the Service Provider that since 2 August 2019, he could not open new XRXUS trades nor close his existing XRXUS trades. His open trades at the time however continued to be charged with swap fees.

The Complainant noted that three days later, on 5 August 2019, he was called by the customer service representative who informed him that the XRXUS CFD was no longer provided by GKFX Europe. He noted that he was furthermore told that the XRXUS CFD will be removed from the financial product portfolio of GKFX Europe.

The Complainant questioned why GKFX Europe did not inform him, within an appropriate term, about the forthcoming change in the financial product portfolio with respect to XRXUS CFDs in order to provide him with a chance to

[2] GKFX Europe was the trading brand name of AKFX Financial Services Limited.

take appropriate action to reduce possible losses or take any gained profit on his positions.

He noted that the customer service representative furthermore informed him that in view of the prevailing situation, all his open XRXUS trades must be closed and that there was no possibility for him to continue to trade in XRXUS CFDs.

The Complainant submitted that there were no halts in trades in XRXUS CFDs by other brokers.

He noted that all of his open trade positions in XRXUS were closed on 6 August 2019 by GKFX Europe resulting in a total financial loss of EUR 22,417.

The Complainant explained that on 9 September 2019, he however found out that, contrary to the statement of GKFX Europe's customer service representative, the XRXUS CFD had not been removed from the financial portfolio of GKFX Europe and that the trading in respect of such instrument had continued.

In the circumstances, the Complainant concluded that the closure of his XRXUS CFD positions by GKFX Europe's customer service employee was misleading and caused massive financial losses.

The Complainant noted that, on 3 November 2019, he raised this matter with the customer service of GKFX Europe and its compliance department. He also asked to be given an explanation on the matter relating to the XRXUS CFDs and why his open trades were forcefully closed by GKFX Europe.

The Complainant submitted that, unfortunately, he did not receive any reasonable reply to his claim, and he was not able to contact GKFX Europe via email anymore.

He noted that his email address was possibly blacklisted by the financial service provider and claimed that the Service Provider was not willing to answer his questions.

Remedy requested

The Complainant sought a full refund of the losses he suffered amounting in total to EUR 22,417, which losses he claimed arose from the unsubstantiated forced closure of his open XRXUS trades on 6 August 2019 by GKFX Europe.[3]

In its reply, the Service Provider submitted the following: [4]

1. That the Complainant raises his complaint in respect of the loss of EUR 22,417 he claims to have suffered as a follow-up to the closing of three open trades he had executed in the CFD trades in XRXUS, with order numbers 77014573, 78871792 and 80478588 opened on the Complainant's instructions respectively on 5 and 6 February 2019, and 10 July 2019.

   It noted that the Complainant argues that the closing of these orders, (which the Service Provider submitted were already showing the cumulative loss of negative EUR 21,811.56), prior to their closing occurred without any information *'within appropriate term'*.[5]

   A further charge of additional roll-over swap rate fees applied (as per the advertised terms) in the amount of EUR 605.45 leading to the total claimed loss of EUR 22,417.01.

   The Service Provider submitted that in truth, however, the Complainant does admit that the company was in close touch and contact with him since he concedes that the company's representative was explaining to him over the phone that the Company could not keep his open positions in that particular product.

   In fact, the Company also advised that it was not in a position to maintain the relevant open trades in the particular product as it could not offer that product anymore.

[3] Page (P.) 3
[4] P. 16 - 19
[5] P. 16

The Company submitted that such service interruption, indeed occurred due to a corresponding third-party liquidity provider's temporary interruption of pricing.

It was further submitted that the Company's Terms and Conditions of Business disclose that all open trades are subject to the applicable laws and licence conditions, as well as prevailing usages and customs with respect to such trading or when effecting such transactions, with a view to essentially ensure that the Company is operating within its category of investment services licence.

In the case at hand, it submitted that it was itself required to protect itself and the Complainant as its client, by invariably taking steps towards ensuring that in a situation wherein there was the temporary pricing suspension of the XRXUS product, it would not be unduly exposed to intolerable risk without a corresponding liquidity provider which was not in a position to take the Company's routine and regular hedging of risk in the same product.

It submitted that the Company is indeed required to carry out the necessary monitoring of risk exposure by way of not spilling into any unauthorised service of business by taking the risk itself and dealing on its own account with the clients, including the Complainant, in respect of the XRXUS product (for which it had temporarily no continuing liquidity provider services for passing on the relevant associated risk).

As a disclosed condition of business, the Company's clients acknowledge that trading orders and contracts will be affected subject to, and in accordance with, Market Rules that include rules, regulations, customs and practices involved in the execution or settlement of a contract and any exercise by any such organisation or market of any power or authority conferred on it.

It noted that, in particular, under the Company's Terms of Business, a client acknowledges that Market Rules usually contain wide intervention powers in an emergency or otherwise undesirable situation, such as the one that

the Company was experiencing with the liquidity provider's temporary pricing suspension in the XRXUS product.

Furthermore, a Company's client is required under the published Terms of Business to agree that if any market or other organisation takes any action (e.g., the pricing suspension in XRXUS product among others) affecting an open trade order, then the Company, may take any action which in its reasonable discretion, it considers desirable or necessary in the interests of the Client and/or the Company.

It submitted that the published Business Terms deliberately do not stipulate any particular advance notice time period to pre-notify customers about any planned or impending course of action, in view of the absolute and urgent need to reasonably intervene for the benefit of the said clients and/or the Company's interests as aforesaid.

2. The Service Provider noted that the Complainant also complains that in some way, in his view, the Company may have had the intention to mislead him about the situation occurring in the last week of July 2019 and the first week of August 2019, since he claims that there was [no] such discontinuance of trading in the XRXUS product with CFD brokers.

   The Service Provider denied any such intention to mislead. It submitted that it is in a position to demonstrate, by way of evidence, its liquidity provider's pricing suspension in XRXUS, as well as with other underlying US equities and/or assets.

   It further submitted that it is not prudent, and it is indeed prohibited, under its licence terms and conditions, for the Company to retain trading risk exposures in products for which it may temporarily not be in a position to secure sufficient liquidity in order to manage its trading risk.

   The Company explained that this condition applies to each and every licensed investment service provider depending on the availability of sufficient liquidity for CFD products offered.

   It further submitted that, with respect, it was pointless and futile for the Complainant to make comparisons with other CFDs brokers which could

have had alternative liquidity provider services through other avenues or offerings.

The Service Provider held that what mattered in this particular case is that the Company reasonably and responsibly managed its business risks in an appropriate way, within the terms of its licence category, until the situation could revert to a scenario where liquidity pricing services were resumed thereby ensuring timely, adequate and prudent risk management.

It noted that, as previously stated, it was indeed another published Term and Condition of Business of the Company for it being able to close out all or any part of any Contract without prior notice to the client, or receiving any further authority from the same client, where the Company reasonably considers it necessary for its own protection and that of the customer himself.

The Service Provider also submitted that there was definitely no misleading intention on the part of the Company when it was itself compelled to intervene with a view to ensuring compliance with its licence conditions.

3. It noted that the Complainant also complains that *'I suppose … my email address was blacklisted'*.[6]

The Service Provider submitted that such an unfounded ground for the complaint is immediately manifest when considering such a claim against the Company's records of phone calls that actually took place and emails exchanged between the parties involved.

It submitted that the contrary would result from the records of such phone conversations wherein the Complainant himself verbally agreed to have his open positions closed precisely on account of the fact that the particular XRXUS product could not be serviced any more by the Company at that time.

It claimed that moreover, the written email exchanges further corroborate this background of facts and that the Complainant himself concedes that such communications took place.

[6] P. 18

The Service Provider considered that the Complainant was therefore in a way contradicting himself when arguing that he was being *'blacklisted'* whilst at the same time conceding that he had been notified about the discontinuance of the product at that particular stage and that in case he was dissatisfied with the email communication and outcome of his complaint he could resort to the Arbiter.

The Service Provider submitted that, in conclusion, and on the basis of the said grounds, as well as other documentary and oral evidence that may be produced, it considered the Complaint to be wholly unfounded, in fact and at law, and should therefore be rejected.

The Merits of the Case

The Arbiter will decide the complaint by reference to what, in his opinion, is fair, equitable and reasonable in the particular circumstances and substantive merits of the case.[7]

Pertinent matters

The disputed trades

The trades in question involve three Contract for Difference ('CFDs') positions in XRXUS (Xerox).[8]

According to the statement produced during the proceedings of the case, the Complainant had the following open positions before they were all closed on 6 August 2019:[9]

i. a Sell (short position) in XRXUS with a position size of 1500, opened on 5 February 2019, (ticket no. 77014573), at Price 28.68 and a T/P [10] of 20.13;

[7] Cap. 555, Art. 19(3)(b)
[8] P. 112
[9] P. 26
[10] A take-profit order at which to close the position.

ii. a Sell (short position) in XRXUS with a position size of 2000, opened on 6 February 2019, (ticket no. 78871792), at Price 29.31 and a T/P of 20.25;

iii. a Buy (long position), in XRXUS with a position size of 3500, opened on 10 July 2019, (ticket no. 80478588), at Price 35.93 and a T/P of 36.40.

According to a statement dated 5 August 2019, a day before the closure of the said trades, the Complainant had a negative *'Floating P/L'* position of -EUR 22,417.01 on the indicated trades.[11]

The positions were all closed on 6 August 2019 at a price of 35.11 for the short positions and 35.06 for the long position.[12]

The statement issued for *'Closed Transactions'* dated 6 August 2019, indicates a negative *'Trade P/L'* on the respective positions of -8,607.99 (for ticket no. 77014573), -10,352.89 (for ticket no. 78871792) and -2,717.61 (for ticket no. 80478588).[13] The said positions also had a *'R/O Swap'*[14] of -120.92, -60.53 and -442.26 respectively according to the said statement. The loss on the disputed positions accordingly amounted to -EUR 22,302.20 overall according to the said statement.[15]

The Service Provider

The Service Provider is the holder of an Investment Services Licence granted by the Malta Financial Services Authority under the Investment Services Act, 1994.

The investment service offered by the Service Provider was limited to execution-only service and did not involve investment advisory services. This also emerges from the hearing of 26 October 2021, during which the Company's official testified that *'… we do execution on behalf of other persons, let's say, for retail clients, professional and eligible counterparts'*.[16]

Furthermore, as outlined under the section titled *'Non-Advisory'* of the *'AKFX Terms of Business form 2019'* presented by the Complainant during the

[11] P. 6
[12] P. 26
[13] *Ibid.*
[14] Rollover Swap fees
[15] (-8,607.99) + (-10,352.89) + (-2,717.61) + (-120.92 + (-60.53) + (-442.26) = -22,302.20
[16] P. 31

proceedings of the case, the said Terms of Business indeed specifies that *'All Trade will be entered into on a match-principal, non-advised and execution only basis'*.[17]

Observations

General Background on CFDs

One typical definition of a Contract for Difference (CFD) stipulates that this is a financial derivative instrument, *'where the differences in the settlement between the open and closing trade prices are cash-settled'* with *'no delivery of physical goods or securities'*.[18]

As posted on the Malta Financial Services Authority's ('MFSA') website, a CFD allows *'investors to take advantage of prices moving up (by taking 'long positions') or prices moving down (by taking 'short positions') on underlying assets'*.[19]

A financial operator described CFD trading on its website as a *'method of speculating on the underlying price of an asset - like shares, indices, commodities, cryptos, forex and more ...'*.[20] Another website describes CFD trading as *'an advanced trading strategy that is used by experienced traders ...'*.[21]

The MFSA classifies CFDs as *'complex products'* that *'are not suitable for all investors'*.[22] Such aspect was also highlighted by the European Securities Markets Authority ('ESMA') in one of its investor protection warnings where it *inter alia* stated that *'CFDs are complex products, generally used for speculative purposes'*.[23]

It is further to be noted that in a notice issued by ESMA in 2018, it was *inter alia* indicated that:

[17] P. 38 - Emphasis added by the Arbiter
[18] https://www.investopedia.com/terms/c/contractfordifferences.asp
[19] https://www.mfsa.mt/service-detail/contracts-for-difference-cfd/
[20] https://www.ig.com/en/cfd-trading/what-is-cfd-trading-how-does-it-work
[21] https://www.investopedia.com/terms/c/contractfordifferences.asp
[22] https://www.mfsa.mt/service-detail/contracts-for-difference-cfd/
[23] https://www.esma.europa.eu/sites/default/files/library/2015/11/2013-267.pdf

> *'NCAs' [National Competence Authorities] analyses on CFD trading across different EU jurisdictions shows that 74-89% of retail accounts typically lose money on their investments, with average losses per client ranging from €1,600 to €29,000'*.[24]

ESMA had indeed highlighted that *'CFDs … are inherently risky and complex products'*.[25]

Reason for the lack of possible trades and ability to offer the trading service in the XRXUS CFD

As emerging during the proceedings of the case, the Complainant was, at the time, not able to trade anymore in the XRXUS CFDs (to either open new positions or close existing ones), given that there was a suspension in the price of XRXUS CFD by the Company's liquidity provider.

It is noted that in its reply of 10 December 2020, to the Complainant's formal complaint, the Service Provider explained to the Complainant that *'You could have opened the position again when our liquidity provider resumed the pricing in XRXUS'*.[26]

In the reply to the Complaint filed with the OAFS, the Service Provider stated *inter alia* that, *'Indeed, such service interruption occurred due to a corresponding third-party liquidity provider's temporary interruption of pricing'*.[27]

During the hearing of 26 October 2021, the official of the Service Provider further testified that:

> *'Regarding the interruption of the price...I could see that from the end of July till the beginning of September [2019] that product was not being available any more from our site ... '.*[28]

[24] https://www.esma.europa.eu/press-news/esma-news/esma-agrees-prohibit-binary-options-and-restrict-cfds-protect-retail-investors
[25] https://www.esma.europa.eu/sites/default/files/library/esma71-98-125_faq_esmas_product_intervention_measures.pdf
[26] P. 7
[27] P. 17
[28] P. 32

The Complainant did not contest the matters giving rise to the said suspension and himself acknowledged the occurrence of such suspension, noting in his final submissions that:

> *'As a matter of fact only the pricing of the XRXUS CFD was temporary suspended and later on resumed. This was mentioned by AKFX complaints team in the email from December 10 2020 ...'*.[29]

It is further noted that, in its final submissions, the Service Provider re-iterated the circumstances leading to the lack of possible trades in XRXUS at the time, wherein it highlighted *'... the fact of the Pricing Suspension in the Instrument XRXUS which is indisputably proven in the objective MetaTrader trading software system, for the period between 24 July and 3 September 2019 ...'*.[30]

Whilst it is noted that no details have emerged, during the proceedings of the case, as to the specific reasons for the price suspension by the Company's liquidity provider and neither have any price suspension in the underlying stock become apparent at that time,[31] **it is noted however that by virtue of its licence, the Company was, at the time, clearly not allowed to take risks on its own books (as it was not dealing on its own account when executing the client's orders)**.

As outlined above and further stipulated in its Terms of Business (*'form 2019'*),[32] the *'Services'* of the Company were defined, at the time, as meaning:

> *'... the services offered by the Company to the client, and which it is authorised to provide in virtue of the relevant License, currently consisting in the reception and transmission of orders as well as the execution of orders'*.[33]

In such circumstances, **the Arbiter accepts that the Company was dependent on the service provided by its liquidity provider. Hence, a prolonged**

[29] P. 129
[30] P. 132
[31] https://finance.yahoo.com/quote/XRX/history?period1=1561939200&period2=1567987200&interval=1d&filter=history&frequency=1d&includeAdjustedClose=true
[32] P. 34
[33] P. 37 - Emphasis added by the Arbiter

suspension in the service offered by its liquidity provider would have raised material implications to the Company and its ability to continue offering the investment instrument in question within the terms of its licence.

Alleged failures

Claim that the Service Provider failed to inform him about the developments involving the XRXUS CFD

As outlined above, the Complainant claimed that the Service Provider failed to inform him that the XRXUS CFD will no longer be offered as part of its financial product portfolio. He alleged that the Company accordingly did not provide him with sufficient time to take appropriate action with respect to his CFD trades.

It is firstly noted that, **the Complainant did not quantify the loss that he would have avoided or minimised, had he been informed beforehand of a forthcoming suspension in the trades**.

During the telephone calls that the Complainant had with the Service Provider,[34] it is noted that the Complainant stated that:

> *'… if I would have known in advance that it will not be possible to trade it from August 1st, I would have not opened long position. But now the situation is a bit disadvantageous for me'.*[35]

It is noted however that the long position had resulted into a loss of - EUR 2,717.61 (and Rollover Swap Fees of -EUR 442.26), this being a much lower percentage (of only 14.17%)[36] of the total loss experienced by the Complainant on his open positions.

Moreover, there are no assurances that the Complainant would have avoided or minimised the other material losses he experienced on his short open

[34] As reproduced in the transcript that the Complainant corrected when translating from German to English.
[35] P. 114
[36] (2,717.61 + 442.26) = 3,159.87. Expressed as a %, 3,159.87 of 22,302.20 = 14.17%

positions considering also the price of the underlying security, Xerox, during the month of July 2019.[37]

Accordingly, **no satisfactory evidence has emerged that the actions that the Complainant would have taken would have allowed him to materially reduce his loss let alone to *'take [his] gained profit'* as alleged in his Complaint**.[38]

It is noted that the Complainant indeed had a negative *'Floating P/L'* of -EUR 22,417.01 as at 5 August 2019, just before the closure of his positions.

The Arbiter considers that no sufficient and adequate comfort has been provided that the Complainant would have obtained a materially different result on his trades should his trades remained open given the various possible trading permutations and the speculative nature of the trades in question.

Furthermore, **no evidence has either been produced during this case to suggest that on (or before) the 10 July 2019, this being the date when the Complainant opened a long position, the Service Provider was itself aware about the development (of the price suspension by the liquidity provider) that was going to occur in end July 2019**.

It has not been proven or emerged that the lack of possible trading in the XRXUS CFDs was an event triggered and/or within the control of the Service Provider itself given that the lack of trading in such an instrument resulted as a consequence of the pricing suspension by the third-party liquidity provider.

It is also noted that as outlined by the Service Provider and not contested by the Complainant, **the suspension in pricing of the XRXUS did not involve a few days but was rather over a long period of time of over a month**, between 24 July and 3 September 2019. Hence, it seems that the suspension in trades was rather an exceptional situation that was experienced by the Service Provider at the time and unfortunately affected the trades in question.

In the particular circumstances and for the reasons mentioned, the Arbiter accordingly does not have sufficient grounds on which he can accept the

[37] https://finance.yahoo.com/quote/XRX/history?period1=1561939200&period2=1567987200&interval=1d&filter=history&frequency=1d&includeAdjustedClose=true

[38] P. 2

Complainant's claim that the Service Provider failed to inform him about the developments involving the XRXUS CFD for him to be given *'a chance to take appropriate action to reduce possible losses or to take [his] gained profit'*.[39]

Claim that the Service Provider forced the closure of his positions and misled him

The Complainant also claimed that the Service Provider forced the closure of his open positions and misled him when he was told that he had to close his positions and that no trades would be any more possible in the XRXUS CFD.

It is noted that during the hearing of 22 June 2021, the Complainant testified *inter alia* that:[40]

> *'... the GKFX Customer Service employee offered me only one solution, that GKFX closes my open orders. So that was the initial reason for the closure and which I was forced to accept.*
>
> *The point is that GKFX did not offer me any other possibility or a way out of this issue and the orders were closed by GKFX. But several weeks later, the trades with XRXUS CFDs were resumed, and I was very surprised at this point because the service employee at Customer Service told me that this trade will not be available any longer and would not be provided by GKFX'.*

It is noted that during the hearing of 14 September 2021, the Complainant further testified that:

> *'... the employee was not talking about suspension, the conversation was that they were not going to provide CFDs anymore. He told me that I would not be able to trade in this anymore'*.[41]

Having considered the transcripts of the telephone conversations held between the Complainant and the official of the Service Provider and the respective translation thereof as reproduced by the respective parties,[42] the Arbiter however considers that there is no sufficient basis and satisfactory

[39] P. 2
[40] P. 20
[41] P. 29
[42] P. 86-125

grounds on which he can accept the Complainant's claim as having been misled.

In the translated version of the telephone conversation (as corrected by the Complainant), it is noted that the representative of the Service Provider had informed the Complainant *inter alia* that:

> '*...The stock cannot be traded hence we are not able to provide the prices. Of course the company (XRXUS) continues to exist and the trading stop of (CFDs) occurred not because the company is liquidated etc ... This stock is simply no longer offered, hence it is not possible to do any trade actions. As it was already mentioned we could close this open orders for you. Because the price will not be provided anymore, you will not be able to trade. The stock is simply suspended from trading ...'.*[43]

Taking into consideration the nature of the investment instruments in question, the type of clients these are aimed for, as well as the nature of the service offered by the Service Provider, the Complainant should have been in a position to understand the context of the conversations.

The Complainant ultimately himself acknowledged that *'... of course in such case that is not a solution, to leave orders open ...'*. He further acknowledged the situation stating *inter alia* that:

> *'... ok, as I see no other options left me, but only most likely to close open orders, still I'm not sure. Please provide information respectively the last noted stock market price at which my open orders would be closed ...'.*[44]

The transcript of the telephone conversations further indicate that the Complainant was then provided with details of the market price at which his positions would be closed and ultimately himself accepted to proceed with the closures as also outlined above.

[43] P. 113
[44] P. 116

Accordingly, for all the reasons outlined throughout this decision, the Arbiter does not consider that in the circumstances there are sufficient justifiable reasons on which the said claims made by the Complainant can be upheld.

Other

During the proceedings of the case, the Complainant referred to Clause 55 of the Terms of Business. During the hearing of 30 November 2021, it is noted that the Complainant said that:

> *'he did not receive the requested (requested at the previous hearing) evidence about his confirmation for closed orders according to paragraph 55 in respect of Terms of Business ...'*.[45]

In his final submissions, the Complainant further submitted the following in this regard:

> *'During the last verbal cross-examination from October 26, 2021 [the official of the Service Provider] neither provided a clear answer nor evidence that [the Complainant] was contacted from an authorized AKFX Ltd service employee. The next and perhaps most severe fact is that AKFX Ltd did not provide evidence for customer confirmation in accordance to §55 of the terms of business which would legitimate the closure of the open orders'.*[46]

The Arbiter however does not consider that the Complainant's claims in this regard are valid either.

It cannot be disputed that the Complainant was in communication with a representative of the Service Provider as evidenced from the transcripts of the telephone conversations and the ultimate closure of the trades in dispute.[47]

With reference to clause 55 of the *'AKFX Terms of Business form 2019'*, it is noted that the said clause stipulates the following:

[45] P. 126
[46] P. 129
[47] P. 122

'55. The Client undertakes to confirm as soon as practicable and in writing by email any verbal orders, instructions and/or directives which he may have given to the Company.'

The said clause, which forms part of the section titled *'Communications and Instructions by the Client'* of the Terms of Business rather places the onus on the client to confirm the trades in question in writing his verbal orders. The lack of such confirmation provided by the Complainant is not however considered to invalidate the trades in question. This is so when taking into consideration also the terms outlined in the said section, and when the Complainant had himself clearly agreed with the closure of the trades.

Indeed, as emerging from the transcripts of the telephone conversations exchanged between the Complainant and the representative of the Company in August 2019, it clearly emerges that the Complainant not only had agreed to the closure of the trades,[48] but he had even also called again to ensure that they were closed.[49]

Conclusion

Whilst one can understand the Complainant's disappointment about the events in question, the Arbiter however finds no sufficient basis on which the alleged losses can be attributed to the alleged failures and actions of the Service Provider in the particular circumstances of this case.

Decision

The Arbiter sees sufficient evidence that the loss incurred by the client was a market loss incurred by speculative short/long derivative instruments that was crystallised by the closure of the instruments that the Service Provider had to do to continue operating within its licence. Nor has satisfactory evidence been provided by the Complainant that the market loss would have been

[48] P. 122
[49] P. 124

recovered if the trades could have continued or been re-established once the Service Provider was in a position to offer such trades within its licence.

For the stated reasons, the Arbiter cannot uphold the Complaint.

Due to the nature of this case, each party is to bear its own costs of these proceedings.

Alfred Mifsud
Arbiter for Financial Services