

## **Before the Arbiter for Financial Services**

**Case No. 064/2020**

**ZL ('the Complainant')**

**vs**

**AKFX Financial Services Limited**

**(C 60473)**

**('the Service Provider' or 'AKFX')**

### **Sitting of 30 November 2021**

#### **The Arbiter,**

Having seen **the Complaint** whereby the Complainant submits that his complaint relates to the limits on deposits allegedly imposed by the Service Provider in respect of his trading account and claims that such limits and/or the delay by the Service Provider to facilitate higher amounts of deposit that he wanted to make through his chosen method of payment, restricted his ability to continue trading during the period 27 February and 10 March of the year 2020.

It was claimed that this consequently led to losses on the open positions that the Complainant had in his trading account held with the Service Provider, which positions were closed due to margin calls and insufficient equity. It was further claimed that this also led to the Complainant being unable to profit from other trading opportunities arising at the time.

#### **Background and submissions made by the Complainant**

The Complainant explained that he traded forex with AKFX. He claimed that during February 2020 (up to the first week of March 2020),<sup>1</sup> when he noted that

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<sup>1</sup> A fol. 4 & 7

the financial markets were volatile and there were numerous opportunities, to take advantage of big market moves and make substantial profits, the Service Provider, (through the GKFX website), limited the funds that he was able to deposit into his trading account thus preventing him from taking advantage of the said opportunities.

The Complainant further explained that the main issue was that, at the time, he had a lot of trades open and his equity was falling lower and lower and so was his margin. He stated that in order to improve his equity and margin he had to deposit funds into the account not only to improve his margin and equity, but also to allow him to continue to trade and take advantage of the volatile market.

The Complainant submitted that in the past he was able to deposit £2,000 to £3,000 at a time but, occasionally, in February 2020, he kept getting an error message informing him that he had insufficient funds.

He noted that he came to realise that his daily deposits were capped at £300 per day and explained that he tried to deposit £2,000 into his trading account. The Complainant also stated that he had sufficient funds into his bank account at the time.

The Complainant explained that he had contacted AKFX to inform them about the issue and for them to get it rectified as soon as possible.

The Complainant further explained that he spoke to someone at AKFX but claimed that the Service Provider however did not resolve the issue. Moreover, at the time, his margin had improved, and he was able to continue trading but in late February 2020 he experienced the same issue again.

The Complainant submitted that AKFX did not take fast and decisive action to address the matter and that he was given false and contradictory information. He claimed that the manager assigned to him took nearly 2 weeks to resolve the issue and that by this time he had lost a substantial amount of money and was not able to trade and make money.

The Complainant submitted that he had experienced similar issues in the past but was able to deposit thousands of pounds per day during those times and not only improve his margin but go on to make substantial profits.

He explained that GKFX transferred to AKFX since then, and had sent an email detailing the differences between the two where no mention was made about any deposit limit. It was submitted that even the manager of AKFX had told him that there were no changes regarding deposit amounts since the switch. The Complainant noted that the platform to deposit funds into his trading account was actually still the same GKFX website that he had been using in preceding years.

The Complainant submitted that AKFX's manager blamed the matter on his bank and told him that he will be able to resolve the issue within minutes and even told him that some of the other clients experienced the same issue and that this was resolved after contacting their banks.

The Complainant claimed that when he contacted his bank he was however informed that this was completely false and that AKFX was responsible for the deposit limits. It was further submitted that when the Complainant informed the AKFX's manager of this, the said manager wasted time for nearly two weeks and, in this time, he ended up losing the bulk of the funds in his trading account.

The Complainant raised the following supplementary explanations and submissions in an attachment to his Complaint Form:<sup>2</sup>

- (a) As to reason for his financial services provider letting him down, the Complainant explained/submitted that:
- He tried to deposit £3,000 to his trading account on 27 February 2020 to stabilise his margin, hedge his trades and take advantage of a volatile market but received an error message on the deposit page stating that he had reached his daily deposit limit. The Complainant states that he contacted his account manager the following morning (that is 28 February 2020), to inform him about this and to rectify the situation as soon as possible but the account manager told him that the fault was with his bank and that a few clients had experienced the same issue and that this was resolved within minutes of them contacting their banks/card providers. The Complainant submitted that he followed the account manager's advice and contacted his bank

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<sup>2</sup> A fol. 7-10

to lift the limit but, as the Complainant had suspected, the issue was not with the bank but with GKFX instead.

The Complainant noted that he contacted his account manager again and told him what his bank had said and that the situation was urgent with the account manager informing him that he would look into it and get back to him in a few minutes.

The Complainant further submitted that a few hours later he still had not heard from the account manager and the situation with his account remained urgent. So, he contacted him again with the account manager repeating that he was looking into the matter and would get back to him within minutes. When the Complainant asked the account manager about alternative payment methods, the account manager simply stated that he had to use the options on the website and offered him no alternatives.

- GKFX did not treat the matter with any level of urgency and constantly gave him false and contradicting information and did not offer him any alternatives except to mock him for being in such a situation and indicating that it was his fault. The Complainant further stated that when he told his account manager that he should have been able to deposit thousands into the account within a minute or two, the account manager agreed but told the Complainant that software issues were not GKFX's responsibility.

He reminded the account manager that the issues were not software related but an imposed limit in GKFX's control. The Complainant alleged that GKFX again did not treat the matter with any level of urgency and continued to stop his trades.

- The Complainant believed that, as with any financial service, GKFX had the ability to resolve the issue within the same day and they were also able to provide payment alternatives because they advertise numerous options but they did not do this either.

- The Complainant further believed that GKFX had the capacity and resources to resolve the issue quickly and professionally but chose not to, this resulting in substantial losses.

(b) As to his complaint, the Complainant explained/submitted that:

- The market was volatile from the last week of February (2020) to the first week of March (2020) and he had the opportunity to trade the trends and make a substantial profit but that was reliant on having a reasonable margin. Moreover, his margin was low at the time and the only way for him to increase his margin in order to take advantage of the market volatility and open new trades would have been to deposit funds into his trading account. Volatile moves, such as those that occurred between the 28 of February (2020) and 9 of March (2020) do not happen very often and present great opportunities for traders to capitalise and make sizeable profits.

The Complainant explained that he had tried a few times previously in February (2020) to deposit funds into his account but he kept receiving an error message stating that he was limited to £300 per deposit per day from each payment method (that is, he could use different cards to deposit up to a maximum of £300 from each card). The Complainant submitted that the fact that his deposit was limited prohibited him from doing just that and that not only did GKFX prohibit him from increasing his margin and prevent stop-outs of trades but it also prevented him from capitalising on the said moves and missing out on substantial profits.

- According to an email received from GKFX on the 10 May 2019, he had been at the time offered 7 different payment methods but when he accessed his account in February (2020) he could only see 3 methods, two of which were immediate transfers via debit or credit card, but such immediate transfers were restricted to a mere £300 per day, with his account manager saying that this should have not been the case.
- The bank told him the same thing he had told his GKFX account manager on the phone earlier - that his bank does not put a limit of

online transactions and that he should return to the vendor to resolve the issue.

- Forex comparison websites have shown that GKFX's deposit limits by debit or credit card were up to \$5,000 per day. This was in line with his experience in dealing with GKFX over the years where in April and May 2019 he deposited a total of £7,000 GBP via debit card payment on the GKFX website over a period of 3 days. The Complainant reiterated that he tried to deposit a similar amount on the same website but this time experienced the said issues.

Moreover, when GKFX transferred his account to AKFX no mention was made about any change in deposit limits and the terms of business did not mention any such matter either other than mentioning that the broker was responsible for hardware or software failure. The Complainant claimed that the issues in question were not a software failure. He claimed that he experienced misinformation on numerous occasions by an account manager and a deliberate restriction put in place on deposit amounts without prior notice.

- On the 28 February (2020) when his account manager told him to contact his bank to raise the deposit limit, the account manager told him that the process would take a few minutes to resolve and that he should then be able to deposit thousands into his account per day as he had done in the past. Yet when he contacted him shortly after speaking to his bank he did not treat the matter with the same urgency that he said his bank would. The Complainant claimed that from the day, the 28 February (2020), he raised the issue with AKFX, the account manager of AKFX did not resolve the issue until the 10 March (2020), 10 days later.
- The Complainant refrained from making any payment via bank wire transfer as he argued that international bank wire transfers can take up to 5 business days and in some cases longer.
- Attempting to transfer the funds via wire transfer would have served no purpose except to add more funds to his GKFX account long after GKFX had already stopped out numerous trades. The Complainant

further submitted that the only realistic option for him would have been to wait for his account manager to resolve the debit card deposit limit issue so that he could act quickly and deposit the funds into his account, increase his margin, hedge his trades and profit from the big market moves in that period. He was however not able to do that.

- The Complainant believed that GKFX had the resources to provide him with a multitude of options but their inaction, misinformation and contradictions resulted in his loss and their gain. The Complainant submitted that there was a clear conflict of interest here as stated on their own website - extracts of which were attached.<sup>3</sup>

The Complainant submitted noted that he found it strange that while the market was volatile the deposit limit remained in place but on the day that the market stabilised (after GKFX had stopped out the majority of his trades) when trades began to move in his favour (based on the trades that GKFX stopped out), and 10 days after his initial complaint to GKFX, only then was this service offered to him.

The Complainant did not believe that there was any reasonable excuse that GKFX can give for taking the length of time to resolve the issue after telling him that they had contacted their card processor and confirmed that the issue was not with them, and also for not offering any other deposit options to him despite showing 7 different methods in their email.<sup>4</sup>

- In April and May (2019) he was in a similar situation where his margin was low, his equity was low, and he deposited a total of £7,000 into his account via debit card payment in the space of three days and was able to carry on trading and end with a profit close to £1,000. The Complainant submitted that now that he found himself in a similar position, he would have employed the same method of depositing funds to hedge his positions, take advantage of volatile periods and return his margin and equity to a healthy position again.

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<sup>3</sup> A fol. 17

<sup>4</sup> A fol. 14

It was further submitted that the difference this time round was that previously he was provided with the resources to do that but in 2020 that option was restricted, without prior notice, and with a clear lack of urgency, inaction and misinformation on the part of the broker.

In the same attachment to his Complaint Form, the Complainant pointed out that it was very difficult for him to quantify how much he lost as a result of the situation. It was claimed that he had months where he closed over £4,000 in profits when the market was not nearly as volatile and it was hard for him to even think about the opportunities that he missed out on as a result of the deposit limit. The Complainant claimed that with that level of volatility, in comparison to previous months, he could have made thousands.<sup>5</sup>

#### *Complainant's request*

The Complainant stated that as at end of 27 February 2020, just before he tried to deposit funds into his account, increase his margin and raise the issue with the Service Provider's account manager, his equity stood at £17,324.46.

As at 10 March 2020, this being when the deposit limit issue was finally resolved, his equity stood at £3,554.91, thus, resulting in a loss of £13,769.55. Moreover, he lost the opportunity to trade trends when the market was volatile and a few currencies were clearly weaker. Potentially, he lost out on £1,000 this being a conservative figure.

The Complainant accordingly sought a minimum total of £14,769.55 from the Service Provider as compensation for the losses he claimed to have incurred as a result of the issues and delay caused, which resulted in the majority of his trades being stopped.<sup>6</sup>

#### **In its reply, the Service Provider submitted the following:**<sup>7</sup>

1. That, with reference to the concerns raised by the Complainant regarding the margin, it noted that in view of the local regulations and the MFSA Conduct of Business Rulebook, AKFX is required to limit the level of margin

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<sup>5</sup> A fol. 10

<sup>6</sup> A fol. 4 & 10

<sup>7</sup> A fol. 24-26



for retail clients. The Service Provider stated that the Complainant qualifies as a retail client. The terms of business (section 24) which was agreed by the Client provided as follows:

*'24 ... We will categorise you as a retail client for the purposes of applicable regulations and law, unless we have categorised you differently and informed you in writing.'*<sup>8</sup>

The Service Provider further stated that Sections 10 and 12 of the Terms of Business establish the conditions in relation to margin as follows:

*'Section 10*

*Margin may be offered to the Client depending on the MiFID II Classification.*

*Section 12*

*The Company reserves the right to modify margin requirements in any market condition, especially those characterized by particular lack of liquidity or volatility on all currency pairs being traded with due notice given to the Client.'*<sup>9</sup>

2. The Service Provider stated that the Complainant made deposits into his trading account at AKFX via Safecharge Limited and that Safecharge Limited has established a limit of STG500 daily deposit limit which the client could view in line with the evidence he himself provided (as per Appendix B to its reply).<sup>10</sup>

AKFX submitted that the imposition of this cap was in view of client's money protection. It further noted that irrespective of this limit, AKFX advised the Complainant both verbally and in writing about the possibility of depositing via bank transfer. It also stated that on 4 February 2020, an email was sent by AKFX's Payments Team to the Complainant (as per Appendix C) with the bank details for bank wire transfer, which was an alternative payment solution.<sup>11</sup> The Service Provider pointed out that this

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<sup>8</sup> A fol. 24

<sup>9</sup> Ibid.

<sup>10</sup> A fol. 4 & 28

<sup>11</sup> A fol. 25 & 29

was before the 27 February 2020, when the Complainant complained of the issues he was encountering in this regard.

3. AKFX attached (in Appendix D)<sup>12</sup> a history report of the Complainant's account for the period 01/01/2020 to 27/02/2020 which, it noted, was the date mentioned by the Complainant in his statement on page 4 of his Complaint Form to the OAFS.

The Service Provider further stated that it is true that the client had an equity of STG17,324.46, but the figure quoted by the Complainant needs to be assessed holistically and the mentioned amount was the result of the deduction of a floating loss of STG36,366.85 from the balance of STG53,691.31. This goes on showing that the Complainant was already incurring a trading loss on 27 February 2020. Furthermore, the used margin was STG30,688.61, and this was already increased from STG22,218.34 from the beginning of the year.

4. The Service Provider submitted that the Complainant is claiming a compensation of STG14,769.35 due to the delay caused by AKFX to solve the issue of margin and deposit. It however submitted that such claim is unjustifiable on the basis that:
  - i) The Complainant was making a trading loss as at end February 2020 as explained above;
  - ii) If hypothetically there was a trading profit registered by the Complainant, that would have been an unrealised profit. It also noted that there is no guarantee, particularly, in view of the nature of the instrument that the Complainant would have made the money that it is being claimed.
5. The Service Provider further stated that during the review it went through the telephone conversations with the Complainant. In line with Section 62 of its terms of business, the Complainant had agreed for such telephone recordings to take place. AKFX quoted Section 62 as follows:

*'Section 62*

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<sup>12</sup> A fol. 30

*The Client acknowledges and expressly accepts that the Company may record all telephone conversations between the parties. Such recordings shall remain the property of the Company and the Client agrees, to the use thereof or transcript there from, as evidence by the Company in any dispute or anticipated dispute between the parties under these Terms of Business. Any such recordings or transcripts made by the Company may be destroyed by it in accordance with its usual practice.'*<sup>13</sup>

The Service Provider referred to the conversation on 04/03/2020 between Mr Andrew Woods (account manager appointed by the Company on behalf of the UK market) and the Complainant where Mr Woods had directed the client to alternative payments method and specifically asked the Complainant why he did not deposit via bank transfer. The client kept insisting that it was his choice to go through a payment service provider.

The Service Provider further stated that during the conversation the Complainant asked, as to the limit on bank transfer and Mr Wood had replied that there is no limit when deposit is made through banks transfer. At that stage, the line fell, and Mr Wood called again the Complainant and reconfirmed the above. The Service Provider refers to the verbal calls attached to its reply.<sup>14</sup>

Further to the said calls, it should also be noted that the Complainant never tried to send the funds via bank transfer. AKFX submitted that as per SEPA payments, such funds would have reached it within 1 working day maximum.

The Service Provider finally submitted that, based on the above, it does not feel that the Complainant is due any compensation.

**Having heard the parties and seen all the documents and submissions made,**

**Further Considers:**

**Preliminary**

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<sup>13</sup> A fol. 25

<sup>14</sup> A fol. 26

### ***Allegations directed towards GKFX***

In his Complaint Form and attachment made thereto, the Complainant repeatedly referred to GKFX and often directed his various allegations specifically towards GKFX. The Service Provider has not contested such a matter during the proceedings of this case and actually replied to all the allegations as directed by the Complainant towards GKFX.

The Arbiter notes that, in his complaint and during the hearing of the 6 October 2020, the Complainant indicated that a transfer had occurred of his GKFX account to AKFX.<sup>15</sup>

It is furthermore noted that, as part of the documentation presented in his Complaint, the Complainant submitted a 'Comparison Table' which table listed a regulated entity with the name of 'GKFX Financial Services Ltd' using the trading name 'GKFX' regulated by the FCA (UK) and another regulated entity with the name of 'AKFX Financial Services Limited' having the trading name 'AKFX and GKFX Europe' regulated by the MFSA (the Malta Financial Services Authority).<sup>16</sup>

The said table further included a note outlining that the client had 'two options to either: (1) transfer your GKFX UK account to AKFX or (2) close your GKFX UK account'.<sup>17</sup> Hence, the statements made by the Complainant that 'GKFX transferred to AKFX'<sup>18</sup> and 'I was transferred from GKFX to AKFX'<sup>19</sup> are to be seen in this context.

It is further noted that the website of AKFX (as indicated on the MFSA's website) is <https://www.gkfx.eu>.<sup>20</sup>

The said website in turn includes the following note:

*'GKFX is the registered trademark of AKFX Financial Services Limited, which is ultimately subject to the same ownership and control of other businesses*

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<sup>15</sup> A fol. 4 & 40

<sup>16</sup> A fol. 14

<sup>17</sup> Ibid.

<sup>18</sup> A fol. 4

<sup>19</sup> A fol. 40

<sup>20</sup> <https://www.mfsa.mt/financial-services-register/result/?id=5048>

*forming part of the Global Kapital Group. AKFX Financial Services Limited is authorized and regulated by the Malta Financial Services Authority ...*<sup>21</sup>

For the sake of clarity and avoidance of doubt, **the Arbiter is, in the circumstances of this case, hereby determining that the various allegations directed by the Complainant in his Complaint towards 'GKFX' are clearly intended and attributed to 'GKFX Europe', that is, against the Service Provider and are thus being construed accordingly for the purposes of this Complaint.**

This is also given that from the proceedings of this case, it has clearly emerged that the dispute subject of this Complaint relates to the trading account held by the Complainant with AKFX and the way AKFX acted in respect of such account.

### **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.**<sup>22</sup>

### **Facts of the Case and Other relevant Aspects**

The following are the pertinent facts and other relevant aspects as emerging from the proceedings of this case:

- i. *Deposits* - According to the '*Deposit and Withdrawal Report*' covering the period from 01 January 2019 to 6 March 2020 that was presented by the Service Provider, the Complainant made various deposits in the year 2019 of 1000, 2000, 3000 or 4000 (£) each.<sup>23</sup>

According to the same statement, the Complainant made no deposits in January 2020, but made a withdrawal of 4,000 (£) on 15 January 2020.

The statement further indicates a number of deposits made by the Complainant in February 2020 of £300 each - twice on 3 February 2020,

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<sup>21</sup> <https://www.gkfx.eu>

<sup>22</sup> Cap. 555, Art. 19(3)(b)

<sup>23</sup> A fol. 27

twice on 27 February 2020 and another deposit of £300 on 28 February 2020. A further deposit of £300 was done on 6 March 2020.

- ii. *Payment process referred to by AKFX* - During the proceedings AKFX stated that the Complainant *'made deposits into his trading account at the Company via Safecharge Limited ... Safecharge Limited has established a limit of STG 500 daily deposit limit ...'*<sup>24</sup>

The Service Provider provided an extract from the website of *Sofort.com*<sup>25</sup> which included reference to *'Safecharge Limited', '£500'* and that *'The amount exceeds the limit of Sofort in the specified period'*.<sup>26</sup>

- iii. *Email communications exchanged between the parties* - The following email communications involving payments were presented by the parties to the case:

- a) *Email from Complainant dated 4 February 2020* - The subject of this email sent by the Complainant to AKFX's support and to AKFX's payments section, was titled *'sofort problem'*.<sup>27</sup> As indicated above, the Complainant had, a day earlier on 3 February 2020, done two deposits of £300 each (that is, the maximum indicated limit subject to this complaint).
- b) *Email from AKFX dated 4 February 2020 in relation to the 'sofort problem'* – AKFX provided the Complainant with the *'bank details for bank wire transfer'*.<sup>28</sup>
- c) *Email from AKFX dated 28 February (2020)* - AKFX informed the Complainant that *'our payments team have concluded their investigation. They contacted the card processor company and there is no issue or limit from their side'*.<sup>29</sup>

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<sup>24</sup> A fol. 24

<sup>25</sup> A means of payment

<sup>26</sup> A fol. 28

<sup>27</sup> A fol. 29 - The Complainant's email was not reproduced in full.

<sup>28</sup> A fol. 29

<sup>29</sup> A fol. 14

In the said email, it was further noted by AKFX that *'As you clearly stated, there is a 300 GBP daily limit on your card. If you wish to deposit more, then you will need to have this limit removed from your card. Once removed, then you will be able to deposit any amount you wish ...'*<sup>30</sup>

- d) *Email from AKFX dated 6 March (2020) – AKFX's official stated to the Complainant inter alia that 'Finally I do have an update with regards to the deposit limit. It transpires that there was a limit placed by the payment processor. We have spoken to them and requested to raise the limits. They will be raising the limits to the equivalent of €5,000 (Euros). Larger transactions will have to be handled via a bank transfer. I am still awaiting a call to confirm that this has been completed ...'*<sup>31</sup>
- e) *Email from AKFX dated 10 March (2020) - In its email of 10 March 2020, AKFX confirmed to the Complainant that 'We have received an update from the Payments Team. The limits have now been raised to 5,000 Euros per card per day. This is the new limit for all clients if a larger amount is required to be deposited then this can be done through a bank wire transfer.'*<sup>32</sup>

iv. *Trading history report* - The trading history of the Complainant over the period 1 January 2020 to 27 February 2020 (presented by the Service Provider) indicates *inter alia* the following:<sup>33</sup>

- as at 01.01.2020 the Complainant's *'Balance'* of £54,657.09 constituted a *'Floating P/L'* of (-£11,532.29) and *'Equity'* of £43,124.80. He had a *'Used Margin'* of 22,218.34 and a *'Free Margin'* of 20,906.46;
- as at 31.01.2020 his *'Balance'* of £52,551.65 constituted a *'Floating P/L'* of (-£35,357.89) and *'Equity'* of £17,193.76. He had a *'Used Margin'* of 33,278.71 and a *'Free Margin'*, of (-16,084.95);

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<sup>30</sup> *Ibid.*

<sup>31</sup> *A fol. 13*

<sup>32</sup> *Ibid.*

<sup>33</sup> *A fol. 30*

- as at 27.02.2020 his 'Balance' of £53,691.31 constituted a 'Floating P/L' of (-£36,366.85) and 'Equity' of £17,324.46. He had a 'Used Margin' of 30,688.61 and a 'Free Margin', of (-13,364.15).

## Final Observations

- a) *Negative Free Margin* – Further to general searches undertaken over the internet, it is noted that various educational webpages relating to forex trading include explanations of the term 'Free Margin'.

Free Margin was, for example, explained in one such webpage as follows:

*'In its simplest definition, Free Margin is the money in a trading account that is available for trading. To calculate Free Margin, you must subtract the margin of your open positions from your Equity (i.e. your Balance plus or minus any profit/loss from open positions). ...'*<sup>34</sup>

It was further explained that Free Margin is important as it

*'is there to withstand any negative price fluctuations in your open trades and to open new leveraged trades. It increases with profitable positions and decreases with losing positions.'*<sup>35</sup>

As to the question of a 'safe level of margin' for forex trading it was, for example, explained that *'In forex trading, any Margin Level above 100% is considered healthy. It's calculated as the ratio of your Equity to the Margin you're using for open positions, using the formula: (Equity/Used Margin) x 100'*, with a good level of margin being described as *'Anything above 100% is considered healthy. If your trading account drops below that level, it's best to top up your deposit.'*<sup>36</sup>

Hence, a margin level below 100% indicates that one is low on funds and would affect whether the trader is allowed by the broker to open new positions.<sup>37</sup>

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<sup>34</sup> <https://www.forextime.com/eu/education/forex-videos/what-is-free-margin>

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*

<sup>37</sup> <https://traders-trust.com/en/blog/article/what-is-margin-level/>



As to the Complainant's level of Free Margin, it is noted that the Complainant's Free Margin turned negative and remained so as from 21 January 2021 onwards as reflected in the Trading History Report for 01.01.2020 to 27.02.2020.<sup>38</sup>

- b) *Low Margin Levels over a prolonged period* - Table A below includes an overview of the Complainant's Margin Level at different dates.

Based on the information available from the Trading History Report it is clear that the Complainant's Margin Level fell below the 100% benchmark as far back as from 21 January 2020 (when the Free Margin turned negative) and consistently remained below the said benchmark in the ensuing days including, and up to, 27.02.2020.

As indicated in Table A below, the Margin Level fell even to 52% in end January and beginning February 2020, *prior to the start of the disputed period*.

**Table A – Overview of the Margin Level at specific dates**

Date	Equity	Used Margin	Margin Level %
01.01.2020	43,124.80	22,218.34	194
21.01.2020	34,477.26	35,405.64	97
31.01.2020	17,193.76	33,278.71	52
02.02.2020	17,191.97	33,278.71	52
14.02.2020	28,095.12	31,334.98	90
27.02.2020	17,324.46	30,688.61	56

Whilst throughout February 2020, there were times when the margin level had improved, it is noted that, nevertheless, the Complainant's margin level remained consistently below the deemed 'healthy' benchmark of 100% as indicated in Table B below.

**Table B – Margin Level throughout period of negative Free Margin**

Date	Equity	Used Margin	Margin Level %
21.01.2020	34,477.26	35,405.64	97

<sup>38</sup> A fol. 30

22.01.2020	32,443.22	34,993.62	93
23.01.2020	33,662.36	34,332.19	98
24.01.2020	33,404.79	34,604.06	97
26.01.2020	33,402.40	34,604.06	97
27.01.2020	28,266.08	34,604.06	82
28.01.2020	29,452.06	34,024.37	87
29.01.2020	28,916.17	34,024.37	85
30.01.2020	23,849.86	34,024.37	70
31.01.2020	17,193.76	33,278.71	52
02.02.2020	17,191.97	33,278.71	52
03.02.2020	23,546.07	33,278.71	71
04.02.2020	27,480.76	33,044.39	83
05.02.2020	29,478.59	33,044.39	89
06.02.2020	30,042.05	32,873.25	91
07.02.2020	26,541.48	32,873.25	81
09.02.2020	26,539.93	32,873.25	81
10.02.2020	27,072.30	32,284.87	84
11.02.2020	28,307.21	31,657.14	89
12.02.2020	31,491.08	31,657.14	99
13.02.2020	28,340.38	31,334.98	90
14.02.2020	28,095.12	31,334.98	90
16.02.2020	28,093.92	31,334.98	90
17.02.2020	28,921.54	31,334.98	92
18.02.2020	27,081.34	31,334.98	86
19.02.2020	28,527.64	31,224.81	91
20.02.2020	24,753.77	30,943.17	80
21.02.2020	22,778.18	30,943.17	74
23.02.2020	22,776.92	30,943.17	74
24.02.2020	21,544.86	30,943.17	70
25.02.2020	18,803.01	30,943.17	61
26.02.2020	16,625.56	30,943.17	54
27.02.2020	17,324.46	30,688.61	56

**Whilst the Complainant disputed the losses and lost trading opportunities over the period 27 February 2020 to 10 March 2020, it is clear from the above that his margin levels had deteriorated much earlier, as far back as end January/beginning of February 2020.**

- c) ***Prior awareness of issues with usual payment method*** – It transpired that the Complainant had already experienced beforehand (in early February

**2020) certain limitations as to the amount of deposit that he could make through his chosen payment method.**

The Complainant did two deposits of £300 each on 3 February 2020, which amount reflects the £300 deposit limit (applicable over the contested trading period of 27.02.2020 to 10.03.2020).

**The deposits of £300 each in early February 2020 further correspond with the time when the Complainant raised the 'sofort problem' with the Service Provider on 4 February 2020 (at which point he was provided with the bank wire transfer details).<sup>39</sup>**

As the Complainant himself stated in his Complaint,

*'I managed to speak to someone who worked for AKFX and they did not resolve the issue but in that time my margin improved and I was able to continue trading but in late February I experienced the same issue again'.<sup>40</sup>*

**Hence, a few weeks prior to the disputed trading period of 27.02.2020 to 10.03.2020, the Complainant already had certain awareness that there were certain issues with his chosen payment method.**

- d) *Inaction to improve margin levels earlier and to increase deposits through other means – It is further noted that despite the Complainant was consistently below the 100% Margin Level throughout end January and during the whole month of February 2020, and he was seemingly aware of certain problems with his usual deposit method as far as in early February 2020, he still did not do any additional deposits to improve his margin and only intervened with further additional deposits when his margin level fell again around 50% in late February 2020 (27.02.2020), using his chosen payment method.*

The only additional deposits made by the Complainant during the contested trading period (of 27.02.2020 to 10.03.2020) were minor deposits of £300 each, twice on 27 February 2020, on 28 February 2020 and on 6 March 2020.<sup>41</sup>

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<sup>39</sup> A fol. 29

<sup>40</sup> A fol. 4

<sup>41</sup> A fol. 27

Additional deposits were not made for the reasons explained by the Complainant in his complaint – namely, in view of: the limit of £300 on his chosen payment method; given that he did not want to opt for an international bank transfer as he claimed delays with respect to the clearance of international bank transfers which he said could take up to 5 business days; and given that he was waiting for the Service Provider to quickly solve the matter for him to proceed with his chosen payment method as he would have been unable to deposit through his debit card payment if his funds had already left his account had he done a bank transfer.<sup>42</sup>

**The Arbiter noted that the Complainant, however, ultimately had other payment options at his disposal including SEPA bank account payments, as indicated by the Service Provider, which payments are processed rather promptly.**

**Accordingly, the argument made by the Complainant that bank wire transfers could have taken up to 5 business days is not really considered a satisfactory or sufficient reason for the Complainant for not taking action himself during the 10-day period (from 27.02.2020 to 10.03.2020) and pursue other payment options that were clearly available to him and communicated earlier.<sup>43</sup>**

**This is even more so when considering the context of the circumstances in question, including the urgent situation arising in view of the deteriorating margin positions during the disputed period; his consistent prior low levels of margin throughout the whole of February 2020 as outlined above; and his previous awareness of the difficulties which arose in early February 2020 regarding his chosen method of payment.**

e) *Trading approach involving certain risks* – Having considered the submissions made during the case and the voice recordings of the lengthy telephone conversations held between the Complainant and the Service Provider, it is furthermore noted that **the Complainant himself chose to only deposit funds into his account when needed, instead of opting to**

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<sup>42</sup> A fol. 8

<sup>43</sup> (Such as in the email of the Service Provider of 4 February 2020).

have a higher or more prudent equity level in place to cater for deteriorating margin positions.

Whilst the Complainant had every right to adopt such approach and the Service Provider had, in turn, the obligation to provide him with *'the means or resources'* to promptly deposit money into his account as mentioned by the Complainant,<sup>44</sup> however, it has to be acknowledged that such an approach came with its own risk, namely, of having the position closed earlier than wanted in case where the equity ended up not being at the adequate levels.

It is considered that the Complainant took upon himself such risk.

Ultimately, the Arbiter decides that he is not in a position either to award a compensation on the Complainant's presumption that his trades would have not ended up in loss, (had he undertaken additional deposits), and/or that the Complainant would have realised profits including on new trading positions. There are no reasonable assurances on the mentioned hypothetical situations, which can neither be verified nor can they be assumed on the basis of the historical trading performance. Even if past trading performance was always positive, (which is not the case as per the trading history report), it is a well-known concept that past performance is no guarantee for future results.

## Decision

For the above 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.

**Dr Reno Borg**  
**Arbiter for Financial Services**

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<sup>44</sup> A fol. 9