

FSCA Press Release

09 March 2021

The FSCA shares update on JP Markets case

The Financial Sector Conduct Authority (FSCA) reported previously that it successfully applied for a liquidation order against JP Markets (Pty) Limited and that it assisted the Asset Forfeiture Unit of the National Prosecuting Authority to obtain a preservation order for approximately R258 million in bank accounts under the control of JP Markets and its CEO, Mr Justin Paulsen.

This followed an intensive forensic investigation into the business activities of JP Markets, that concluded that JP Markets was unlawfully conducting unregistered OTC derivative provider business (ODP business). In short, JP Markets transacted extensively with its clients as principal, whilst it was only licensed as an intermediary.

In addition to conducting unregistered ODP business, the investigation also uncovered material misconduct on the part of JP Markets relating to the manipulation of the pricing of bid-offer spreads of profitable clients, operating a business model that created a conflict with each of its clients and failure to comply with the conditions of the provisional suspension of its license.

Two favourable rulings for the FSCA on the matter

In response to the successful application for the liquidation of JP Markets, the company and some of its officials launched several proceedings attacking the outcomes of the actions taken by the FSCA. It launched proceedings before the Financial Services Tribunal on the basis that the liquidation application launched by the FSCA in essence constituted a decision to withdraw JP Markets' FAIS licence. (The licence of liquidated financial services providers automatically lapses.)

This application was dismissed by the Tribunal on 2 March 2021. The Tribunal's decision is available for download [here](#).

JP Markets also launched business rescue proceedings in the High Court effectively requesting the Court to replace the liquidation with a business rescue process.

The application was dismissed with costs on 4 March 2021. The judgment is available for download [here](#).

Outstanding proceedings

JP Markets also lodged an application for leave to appeal against the liquidation order, this application must now be heard by the High Court. The FSCA is also in the process of taking regulatory action against Mr. Paulsen.

ODP regulation in South Africa

In 27 July 2018, ODP regulations were published by the FSCA and ODP operators were given a concession until 14 June 2019 to apply for a licence. They were also granted a further exemption to trade until the outcome of their licence applications were known, on condition that they applied in time.

JP Markets was one of the entities that continued to conduct ODP business but had failed to make timeous application for an ODP licence. It did not hedge its positions and attracted all the counter-party risk onto itself. JP Markets has subsequently made application for an ODP licence, which is currently pending and will be decided in due course.

The FSCA reminds industry that an FSP licence is not sufficient to conduct ODP business. It amounts to a criminal offence to do so. In other words, if the provider is the issuer or originator (counterparty) to the derivative contracts, it is conducting ODP business as opposed to intermediary business and must be duly authorised to do so by the FSCA.

The FSCA also stresses to industry that simultaneous hedging of its positions with a liquidity provider does not change the fact that the provider is conducting illegal business. In other words, if an entity fully hedges its open positions with clients, it is still an issuer of derivatives, and still requires an ODP licence.

Intermediaries that believe they are conducting illegal business are urged to approach the FSCA as a matter of urgency so that the situation can be addressed. The FSCA in its decision-making, will take into account that such intermediaries have reported themselves and co-operated with the FSCA.

ENDS

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