

FSCA Press Release

5 June 2020

FSCA withdraws the licence of Ecsponent Financial Services (Pty) Limited

The Financial Sector Conduct Authority (FSCA) has withdrawn the licence of Ecsponent Financial Services (Pty) Ltd (Ecsponent FS), FSP number 32968. This regulatory action is a result of breaches of financial sector laws by Ecsponent FS. In addition, the FSCA has imposed an administrative penalty of R3 million on Ecsponent FS for the breaches.

The FSCA had provisionally suspended this FSP's licence on 20 May 2020, pending consideration of the outcomes of its investigation. The investigation looked at how Ecsponent FS was selling and marketing the shares of its holding company, Ecsponent Limited (Ecsponent Ltd), which is a JSE-listed entity not under the jurisdiction of the FSCA. The FSCA's investigation focused solely on the advice and intermediary activities of the entity within its jurisdiction, Ecsponent FS, and not Ecsponent Ltd.

During the period of investigation Ecsponent Ltd raised capital through the sale of redeemable preference shares. These preference shares consisted of classes A, B, C and G. Ecsponent Ltd's preference shares were marketed through the media, and leads generated in this fashion were dealt with by Ecsponent FS, through a network of representatives. During interactions with potential clients, Ecsponent FS staff provided advice on the investment product, i.e. the classes of preference shares. While the classes of shares that paid monthly dividends were popular amongst pensioners as they mimicked a monthly pension payment, the one major difference between them and a pension investment was that they exposed investors to more risk.

The FSCA's investigation entailed extensive interaction with Ecsponent FS, mainly because the FSP was of the view that it was not required to conduct suitability testing and relied on a specific financial service agreement wherein the investor instructs the advisor or intermediary not to perform a comprehensive financial needs analysis, but to render a specific financial service. Ecsponent FS argued that by signing the agreement, the investor understood that a full analysis would not be undertaken by the advisor.

It is the view of the FSCA that such an agreement was unlawful, and that Ecsponent FS could not rely on it. The Authority also found that Ecsponent FS was in breach of suitability standards expected of FSPs as outlined in the FAIS Code of Conduct. After extensive consultation, Ecsponent FS agreed to immediately cease advising unsuitable investors to invest in the preference shares of Ecsponent Ltd. The entity also agreed to the following:

Transitional Management Committee:

AM Sithole (Commissioner) DP Tshidi CD da Silva JA Boyd MM du Toit LP Kekana K Gibson OB Makhubela P Mogase

- Conduct a re-evaluation of the risk requirements of all the clients who were advised to invest in the product, and to compare their risk requirements with the higher risk nature of the product.
- To engage the FSCA on a strategy to deal with those investors identified as unsuitable. Such a strategy would likely include some action or agreement from the product supplier.

In deciding on the regulatory action outlined above, the FSCA inter alia considered:

- I. The circumstances of this case;
- II. that Ecsponent FS fully co-operated with the investigation and had ceased past advisory practices and taken steps to remediate the position of investors for whom the preference share investments were unsuitable;
- III. that many clients were historically locked into five-year contracts and could not trade out of such contracts, because the preference share of the product supplier (Ecsponent Limited) did not trade in any significant volumes on the JSE;
- IV. the diminished possibility of the unsuitable clients to recover their investments without losses due to factors outside the control of Ecsponent FS.

The FSCA encourages FSPs and key individuals to always act in the best interests of their clients and treat them fairly.

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