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Fund Manager CEO and CFO Fined and Banned for Misleading Investors and Market Abuse

The Upper Tribunal (Tax and Chancery Chamber) has published its decision in *Michiel Visser and Oluwole Fagbulu v. FSA*.

Michiel Visser and Oluwole Fagbulu were fined respectively £2 million (approximately $3.3 million) and £500,000 (approximately $830,000). The fine on Fagbulu was reduced to £100,000 (approximately $166,000) on the grounds of financial hardship. Visser was CEO and Fagbulu CFO of Mercurius Capital Management Ltd (Mercurius), a UK FSA authorized entity that managed Mercurius International Fund Ltd (the Fund), a Cayman Islands hedge fund. During the relevant period from July 2006 to January 2008, the Fund had about 20 investors who had collectively invested approximately EUR 35 million (approximately $50 million). The Fund was placed in voluntary liquidation on January 11, 2008.

The Tribunal upheld the FSA's findings that Visser and Fagbulu:

- committed market abuse in the form of market manipulation to bolster the Fund's net asset value;
- repeatedly disregarded the investment restrictions set out in the Fund's offering memorandum;
- undertook fictitious transactions designed to give an inflated and false impression of the value of the Fund's assets; and
- repeatedly issued misleading communications to investors.

The fines were imposed for breach of Principle 1 of the FSA's statements of principle for approved persons (APER), which requires an approved person to act with integrity, and for market abuse. Both men were also banned from performing any regulated activity in the future.

The Tribunal accepted that Fagbulu may not have fully understood the nature of his actions. This was not a defense nor an excuse. As the designated compliance officer, he failed to perform his duty to ensure that Mercurius complied with the relevant regulatory requirements.

The fine imposed on Visser is the largest ever imposed on an individual by the FSA.

Tracey McDermott, acting director of enforcement and financial crime, said:

“Visser and Fagbulu’s conduct fell woefully short of the standards required of approved persons. They showed a flagrant disregard for the interests of their investors and over a considerable period engaged in a sustained and deliberate course of deception to present a picture of the fund’s performance that was entirely false.

“The Tribunal described Visser’s conduct as the worst it had seen. We welcome the significant penalties imposed by the Tribunal in this case and its reiteration of the fundamental principles underpinning the regulatory regime – that approved persons must take responsibility for their conduct, that bans must be imposed where misconduct such as this is identified in order to protect the public and that penalties must both register disapproval of the individuals’ misconduct and be sufficient to deter others from similar actions.”

To read the decision, click here.

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