



FCA Prosecution

This briefing looks at the recent prosecution of Alex Hope by the Financial Conduct Authority (“FCA”) and the wider implications of this decision for firms.

Alex Hope was sentenced to seven years imprisonment for fraud and carrying on a regulated activity without authorisation, contrary to the general prohibition in s19 Financial Services and Markets Act 2000 (“FSMA”).

Alongside his friend Raj Von Badlo, Hope had been operating a Collective Investment Scheme (“CIS”) without authorisation. Before being closed down by the FCA in April 2012, Hope and Von Badlo had managed to convince over 100 investors to invest over £5.5 million. It has emerged that, contrary to the image of a successful trader he presented, Hope spent the vast majority of his money on funding his lavish lifestyle and only traded around 12% of his investors’ money (almost all of which was lost to poor trades).

This prosecution was brought by the FCA under their powers given by FSMA.

What is the maximum sentence for breach of the general prohibition?

The 16 month sentence for breach of the general prohibition (to run concurrently with the seven year fraud sentence) is one of the longest secured by the FCA in a prosecution.

The maximum sentence possible under the legislation is two years imprisonment and an unlimited fine.

FCA approach to prosecution

Prosecutions such as this are a key part of the FCA’s second operational objective: to protect and enhance the integrity of the UK financial system.

Georgina Philippou, acting director of enforcement and market oversight at the FCA commented that this case “shows that the FCA will vigorously protect consumers from those who break the law”.

The FCA are taking a firm stance against offenders, with their 2014/15 business plan promising a continued focus on the accountability of senior individuals in firms and a dedication of resources to tackle financial crime.

Key terms

The general prohibition

Under s19 of FSMA, a person is prohibited from carrying out a regulated activity unless they are authorised by the FCA or exempt.

Regulated activities include:

- accepting deposits
- effecting and carrying out insurance contracts
- investment activities (including operating a CIS)
- consumer credit activities

Collective Investment Scheme (CIS)

A Collective Investment Scheme (CIS) is broadly defined in s235 FSMA. In summary, it encompasses any arrangement where the purpose or effect is for the investors to receive profits or income from the property and where the investors do not have day-to-day control of the property management.

This attitude has been demonstrated, not only in this case, but in two other prosecutions in the last year.

1. **Benjamin Wilson** – who was found guilty of defrauding investors of £21m, forgery and operating a CIS without authorisation and sentenced to seven years imprisonment.
2. **Capital Alternatives** – who were found to be promoting and operating a CIS without authorisation.

How could this affect me?

Individual responsibility

Hiding behind a corporate entity would not have prevented an individual like Hope from being prosecuted.

In fact, if an organisation is found to be in breach, the FCA can investigate and in some circumstances, individuals within the organisation could find themselves facing criminal prosecution.

In an instance where a corporate entity is found to have committed an offence under FSMA, s400 allows that if either:

- i) the offence was committed with the consent or connivance of an officer; or
- ii) it is attributable to neglect by an officer,

then the officer is also liable for the offence.

'Officer' is widely defined in the legislation to include directors, managers and secretaries. More broadly, it also includes anyone purporting to act in that capacity or a 'controller'. This gives the Court a very wide remit in which to find someone responsible for breaches under this section.

Therefore, any individual with responsibility for regulated activities needs to make sure they understand the nature of the activities being carried out and the authorised status of their company.

Collective Investment Schemes

As you can see from the box above, CIS are very widely defined. In the case against Capital Alternatives, the FCA successfully argued that the defendants were running investments schemes which constituted CIS and required authorisation of the firm.

The Court held that, even though the defendants had intentionally structured their schemes to avoid regulation, the Court was able to consider whether it was in the interests of consumer protection for the scheme to be regulated.

These wide-ranging powers of the Court mean that before launching any investment scheme, a firm must be careful to analyse whether it is subject to regulation and if it requires the firm to be FCA authorised.

In the future

The FCA is demonstrating a clear commitment to ensuring consumers are protected from unauthorised firms offering CIS. It is likely that their continued use of supervision and enforcement powers will result in more prosecutions of this type in the coming years.

The threat of a custodial sentence is one that many will take very seriously and the FCA may well be hoping that sentences such as that given to Hope will be an effective deterrent against other individuals looking to run unauthorised investment schemes.

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