

# Chrysostomides

ADVOCATES AND LEGAL CONSULTANTS

## **CYSEC and FCA Take Joint Action against Four Cypriot Investment Firms**

On 1 June 2020 the Cyprus Security and Exchange Commission (CYSEC) and the UK Financial Conduct Authority (FCA) took joint action against four Cypriot Investment Firms: F1 Markets Ltd (trading as “Investous”, “Stratton Markets” and “Europrime”) Magnum FX (Cyprus) Ltd (trading as “ET Finance”), Rodeler Ltd (trading as “24 Option”) and Hoch Capital Ltd (trading as “IT Trader” and “tradeATF”). CYSEC considers that there are “suspicions of alleged violations” of the Investment Services and Activities and Regulated Markets law (L87(I)/2017) implementing the Markets in Financial Instruments Directive (“MiFID”) into domestic legislation. The FCA considers that the firms have acted in contravention of MiFID “as implemented in Cypriot law”.

The actions taken by CYSEC and the FCA are noteworthy due to the simultaneous and coordinated nature of the action taken by the two regulators and because of the actions taken by a UK regulatory authority against firms based overseas with no physical presence in the UK.

The FCA issued Supervisory Notices against all four firms individually detailing the facts and matters giving rise to the regulatory action. All four firms offered trading in Contracts for Difference (“CFDs”) to clients. CFDs are complex financial derivative products which involve high levels of leverage and can lead to substantial losses for investors. The FCA found that the firms used misleading advertising to attract customers, put significant pressure on customers to invest additional amounts including pressure to take out loans or credit cards to fund these additional investments, provided customers with advice on which trades to make despite not being authorised to provide investment advice, charged customers unjustified fees and failed to process customers’ requests for withdrawal of their funds.

CYSEC exercised its powers under section 71(6)(c) L87(I)/2017 to fully suspend the authorisations of Hoch Capital Ltd and Rodeler Ltd and to partially suspend the authorisations of Magnum FX (Cyprus) Ltd and F1 Markets Ltd. The only difference between the full and partial suspensions is that Magnum FX and F1 Markets can continue to provide investment services to existing clients provided that they are not based in the UK. All four firms are prohibited from accepting new clients and from advertising themselves as providers of investment services. CYSEC has afforded all four firms a month from the date of suspension to comply with the Investment Services and Activities and Regulated Markets law.

The FCA exercised its statutory early intervention powers under sections 55L, 55N and 55P of the Financial Services and Markets Act 2000 to, inter alia, prevent the firms from marketing or providing their services in the United Kingdom. The firms are also required to close all open trading positions, display on their websites that they are not permitted to provide financial services in the UK and are prevented from disposing, withdrawing, transferring or dealing with any payments deriving from bank accounts or credit cards issued in the UK without the FCA’s written consent. As the firms are authorised by CYSEC, in addition to its early intervention powers, the FCA also had to exercise its power under section 196 of the Financial Services and Markets Act 2000 to impose requirements on them. Section 196 allows the FCA to exercise its early intervention powers against any EEA firms exercising passporting rights under MiFID into the UK as if those firms they had been based in the UK and authorised and regulated by the FCA itself.

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What is notable about the actions, quite apart from their severe nature, is the degree of coordination between the two regulators' actions. In its supervisory notices the FCA reaches the view that the firms have contravened MiFID "as implemented under Cypriot law"; a finding that perhaps oversteps the FCA's competence as a UK regulatory authority and which might not have been reached without a significant degree of communication and cooperation with CYSEC. Further CYSEC's notices setting out the suspension of the firms' licenses set out that CYSEC's decision "was reached on the basis of information received by CYSEC from the [FCA] regarding the [Companies'] operation in the [UK] market".

Further, even though CYSEC's suspension of the firms' licenses would prevent them from taking on any new customers (whether in the UK or otherwise) the FCA decided to also exercise its powers to achieve the same outcome, in effect placing a second layer of restrictions upon the firms and ensuring an additional degree of protection, at least for UK consumers. It should also be noted that the FCA's actions are more prescriptive than CYSEC's in that where CYSEC afforded the firms one month to ensure compliance with suspected violations of L87(I)/2017, the FCA has imposed detailed requirements that inter alia, oblige the firms to place notices on their websites and trading platforms and to take action to return balances to customers. Given the increasing interconnectedness of financial markets and investment services across the EU, this coordinated action by the two regulators, may be a sign of things to come, Brexit notwithstanding.