



Prioritising consumer redress over fines: FCA's H2O Final Notice

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On the 7 August 2024, the FCA issued its Final Notice to the asset manager H2O AM LLP (“H2O”), in the context of which H2O agreed to pay €250 million to investors who have been unable to access their funds since 2020. In the accompanying Press Release, Steve Smart, joint Executive Director of Enforcement and Market Oversight, emphasised that “the FCA has secured money for affected investors”.

The decision against H2O

As set-out in its [Final Notice issued to H2O](#), the FCA determined that, between April 2015 and November 2019, H2O:

1. Failed to carry out adequate due diligence on investments, which were high risk and hard to sell, in relation to the Tennor Group of companies owned by Lars Windhorst, alongside other companies he introduced.
2. Failed to have adequate policies or procedures or to exercise due care and skill in managing potential conflicts of interest. As a result, the FCA identified over 50 instances where hospitality was provided by H2O employees but was not adequately declared, including the use of a private jet and superyacht.
3. Provided false and misleading statements and documentation to the regulator, which included fabricated records and minutes of meetings.

Respectively, the FCA found H2O to have acted in contravention of Principles 2, 3 and 11 of its Principles for Business.

Interestingly, whilst the FCA stated that it would usually have imposed a substantial fine on H2O for its breaches, the FCA has agreed in this instance that the firm will instead make €250 million available through a compensation scheme to all those whose investments remain trapped and inaccessible. A significant part of this sum has been made available by way of voluntary contribution from the H2O Group. The Final Notice confirms that investors who participate in the scheme and relinquish their rights to pursue claims against H2O will receive “an enhanced and earlier payment”.

The FCA stated that, in reaching this decision, it had also considered the fact that the French financial services regulator, the Autorité des marchés financiers, has previously issued a penalty to H2O (which is currently subject to appeal) in relation to the same investments.

In addition, H2O has waived its rights to fees and investments totalling €320 million and will apply to cancel its UK authorisation by the end of the year.

A continued trend towards consumer redress

On 27 February 2024, Therese Chambers affirmed in a speech that the FCA “*will prioritise compensation to consumers over fines where that is the right thing to do.*” The H2O Final Notice appears to be a clear example of the FCA putting these words into practice.

This is not the first time that the FCA has done so this year. In March 2024, the FCA agreed not to pursue a £50 million penalty against Link Fund Solutions (“LFS”) in relation to its failure to appropriately manage the liquidity of the Woodford Equity Income Fund. It did so in exchange for LFS agreeing to make a settlement fund of up to £230 million available by way of a scheme of arrangement to 250,000 investors who lost out following the winding-up of that fund.

This apparent new shift in strategy by the FCA is a laudable one. As a matter of justice, it makes more sense for funds to end up in the hands of consumers who have been harmed, rather than, in the case of fines, being remitted in large part to the Treasury. In addition, it will, by ensuring an efficient route to consumer redress, help to take the burden of the Financial Ombudsman Service and the Courts.

Importantly for firms, the FCA’s apparent new strategy also provides an increased level of reassurance that, where they have identified widespread harm to consumers and sought to remediate that harm (as the Consumer Duty now requires firms to do more clearly than ever before), there may well be some real upside to having done this when they come to the end of the FCA’s enforcement process.

Conclusion

We expect to see continued focus from the regulator on securing consumer redress, particularly in light of the Consumer Duty and the FCA having consumer protection as one of its key objectives. This does, however, offer real opportunities for firms to manage their regulatory exposure and follow-on litigation risk when things have gone wrong.

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