

FSCA Press Release

23 January 2020

36ONE Asset Management’s application against FSCA dismissed by Financial Services Tribunal, fined R350 000.

The Financial Services Tribunal has dismissed an application by 36One Asset Management (Pty) Ltd (36ONE) to have a decision taken by the Financial Sector Conduct Authority (FSCA) that 36ONE had solicited investment into unapproved funds set aside.

The FSCA imposed an administrative penalty of R350 000 on 36ONE, which the tribunal upheld. The ruling was made on 20 January 2020.

The FSCA’s decision relates to the publication by 36ONE of certain unapproved offshore funds on their website, periodic newsletters and presentations made to their clients between August 2015 and March 2018. The FSCA found that by publishing and marketing these funds, 36ONE effectively solicited investment in those unapproved funds which contravened section 65(3) of the Collective Investment Schemes Control Act 45 of 2002 (CISA).

Collective investment schemes are governed by CISA and in terms of section 65(1), soliciting of investment in offshore hedge funds may only be done upon approval by the FSCA. Section 65(3) criminalises soliciting of investment in unapproved offshore investment funds.

In their argument, 36ONE contended that the word solicit in CISA means an “intentional and earnest request to the public to invest”, and that although the unapproved funds were included in their publications, this did not mean there was intent to promote investment into those funds.

The tribunal, however, rejected this argument as improbable, and agreed with the FSCA that the unapproved funds were promoted in these publications, and this amounted to soliciting.

The judgement was also clear that the publication of investment funds in a company's portfolio, whose business entails administration of those investment funds, cannot be separated from the marketing of those funds.

36ONE also contested the quantum of the administrative penalty levied by the FSCA, indicating that no investment actually materialised from the relevant publications and therefore no penalty should have been imposed. The FSCA said that when considering the appropriate administrative penalty it sought to strike a balance between effective deterrence from contravention of financial sector laws and unreasonably harsh penalties.

The Tribunal ruled that in the context of a fund manager that manages assets worth over R14 billion, as at the relevant period, the administrative penalty was not deemed to be inappropriate.

“The significance of the risk posed by soliciting investment in unapproved or unregulated funds cannot be over-emphasised in a society like ours, this is why this ruling is so important,” says the FSCA.

To access the full order, click on the following link:

[https://www.fsca.co.za/Enforcement-Matters/Publications and Documents/Decision - 36ONE Asset Management \(Pty\) Ltd v FSCA.pdf](https://www.fsca.co.za/Enforcement-Matters/Publications and Documents/Decision - 36ONE Asset Management (Pty) Ltd v FSCA.pdf)

ENDS

Enquiries: Financial Sector Conduct Authority
Email address: fscacommunications@fsca.co.za
Telephone: 012 422 2823

Transitional Management Committee:

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

