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Insider Dealing and the Credit Markets: a recent UK case

The UK Financial Services Authority ("FSA") announced on 9 September 2008 that it had fined a former hedge fund manager for using restricted and inside information relating to a company undergoing debt restructuring. As part of the settlement with the FSA, the hedge fund manager also agreed not to act as a fund manager or trader for 12 months.

The information concerned details of bonds which were to form part of a refinancing deal. Following receipt of this restricted information he purchased the bonds for his fund. Because the restricted and inside information had a material influence on his decision to buy the bonds, that indicated that his behaviour took place "on the basis of" that inside information and so constituted market abuse.

The case shows the FSA's focus on insider dealing - and not just where it relates to equity trading, this being the first time the FSA has brought a case concerning the credit markets. It also demonstrates the FSA's focus on the hedge fund industry.

The other point to note about this case is that the FSA used its powers to impose sanctions for the civil wrong of market abuse, which is easier to establish than the equivalent criminal offence of insider dealing. Indeed to establish market abuse, it was not necessary to establish that the hedge fund manager knew at the time that the information he was given was inside information - just that he should have recognised that the information constituted inside information.

The FSA has said that this case highlights the importance of City professionals taking care to recognise inside information when they see it and not to misuse it.

The FSA announcement can be found here.

For related US issues, please see our Client Memorandum "Revisiting Insider Trading in the Debt Markets: Lessons For Debt Investors and Members of Committees in Bankruptcy Cases."

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