

**IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA  
TĀMAKI MAKĀURAU ROHE**

**CIV-2023-404-852  
[2023] NZHC 1701**

|               |                                                                                |
|---------------|--------------------------------------------------------------------------------|
| UNDER         | the Financial Markets Conduct Act 2013 and<br>Part 20 of the High Court Rules  |
| IN THE MATTER | of an appeal under section 532(g) of the<br>Financial Markets Conduct Act 2013 |
| BETWEEN       | VALIDUS FZCO<br>Appellant                                                      |
| AND           | FINANCIAL MARKETS AUTHORITY<br>Respondent                                      |

Hearing: 21 June 2023

Appearances: B A Keown and S R Hiebendaal for appellant  
N F Flanagan and Y Fu for respondent

Date of judgment: 4 July 2023

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**JUDGMENT OF JAGOSE J**

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*This judgment was delivered by me on 4 July 2023 at 3.30pm.  
Pursuant to Rule 11.5 of the High Court Rules.*

.....  
*Registrar/Deputy Registrar*

*Solicitors:*  
Bell Gully, Auckland  
Meredith Connell, Auckland

[1] Validus FZCO (Validus) is a Dubai corporation the Financial Markets Authority (the FMA) considered, after media publicity, may have been offering financial services in New Zealand without registration, predominantly within the Tongan community.

[2] In this proceeding, Validus appeals against the FMA's consequent 'stop order', prohibiting it from offering financial products,<sup>1</sup> necessarily as wrong in law.<sup>2</sup> Validus' notice of appeal contends the FMA erred in law by failing to give Validus proper notice or opportunity to be heard in respect of the proposed stop order and because the ultimate stop order was in any event ultra vires, irrational and unreasonable.

### **Background**

[3] By letter of 24 March 2023, under the Financial Markets Conduct Act 2013, the FMA gave Validus notice it intended to make a stop order in respect of which Validus had opportunity to make written submissions and to be heard. The letter explained the FMA was:

... considering exercising the power to make a stop order under section 462 (and, in particular, under section 462(1)(f)) of the Act because it is satisfied that a restricted communication (authorised or instigated by, or on behalf of, Validus) relating to an offer, or intended offer, of financial products (namely, Validus Pool Products) is false or misleading, or is likely to mislead or confuse, in a material particular.

[4] By 'Validus Pool Products', the FMA meant rights to participate in, or receive, financial benefits in a pool of crypto currencies, equities, forex, NFTs and other products promoted (inexplicably) as "educational packages" at a Validus seminar held on 19 November 2022 at Auckland's Mt Smart Arena. The seminar included a visual presentation illustrating "2–3% weekly loyalty rewards for 60 weeks", earning compounding 'rewards' of 100 per cent after 29 weeks, 200 per cent after 45 weeks and up to 350 per cent after 60 weeks as affirmed in accompanying oral commentary. A \$250 initial weekly contribution was illustrated as compounding at those periods respectively to \$10,000, \$20,000 and up to \$35,000. Withdrawals would incur a five per cent fee, for processing within 48 hours.

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<sup>1</sup> Financial Markets Conduct Act 2013, s 463.

<sup>2</sup> Section 532.

[5] The FMA referred to prior correspondence from Validus dated 1 March 2023 (responding to the FMA’s earlier queries of it, after the FMA imposed an interim stop order) in which Validus contended the pool “has been removed and no longer exists”. Validus added:

The ValidusPOOL referred solely to the Company’s own investments, which it made using its own funds — we have not and do not pool any funds from our Members or any third parties at all. Nonetheless, we have stopped and removed any mentions of the ValidusPOOL.

...

... Validus is not, and does not intend to be, a financial product and no person should ever enter into a commercial relationship with Validus intending or expecting to make returns of any sort, as no such returns are promised or guaranteed in any way.

Of those contentions, the FMA said it “proceeded on the basis that the ... statements ... are true and correct”. “Accordingly”, said the FMA, the contentions undermined the seminar’s presentations and materials to the contrary; and those communications thus were false and misleading representations, in reliance on which the FMA was “concerned that attendees at the [seminar] were induced to purchase, purchases or intend to purchase” Validus’ offerings and “likely to suffer material financial harm”.

[6] The FMA considered a stop order in that circumstance was “the exercise of an appropriate regulatory power and is proportionate to any actual or potential client harm caused by [Validus’] actions”. It was concerned, absent a stop order, the conduct otherwise to be prohibited “will occur and contraventions of the Act will result”; the stop order would prohibit Validus “taking steps that will, or are likely to, result in repeat unlawful behaviour”. The FMA’s 24 March 2023 letter annexed the “[f]orm of stop order proposed at the date of this notice”.

[7] Validus’ solicitors responded by letter of 30 March 2023. They disputed the notice had a proper foundation “because Validus has explained and the FMA has accepted that Validus is not offering and does not intend to offer financial products”. In the solicitors’ view, a compliant notice “must articulate and properly establish that a misleading or deceptive communication relating to an offer of financial products will occur in the future”, which the FMA’s notice did not do. Thus the solicitors contended a stop order here “would be ultra vires, unreasonable and irrational because the Notice

does not disclose any existing conduct or future conduct that needs to be stopped”. So obvious was the solicitors’ contentions they did “not require further elaboration at a meeting with the FMA”.

[8] The FMA made a stop order on 2 May 2023, prohibiting Validus from offering financial products. As will be seen, in particular issue are differences between the proposed and ultimate stop order. A marked-up copy of the ultimate stop order, showing those differences from that proposed, appears at the schedule to this judgment. The FMA separately responded to Validus’ solicitors’ letter, rejecting its foundation contention (requiring a qualifying communication as to a discernible future offer of financial products), and therefore also rejecting any lack of jurisdiction for the stop order or such otherwise being unreasonable, irrational or improperly motivated.

### **Law on stop orders**

[9] The FMA’s stop order jurisdiction is not the subject of prior judicial decision.

[10] Part 8, subpart 1 of the Financial Markets Conduct Act 2013 entitles the FMA to make a “stop order” as defined in s 463, on the various grounds set out in s 462. So far as those sections are relevant here, they provide:

#### **462 When FMA may make stop orders**

(1) The FMA may make a stop order if it is satisfied that—

...

(f) a restricted communication relating to an offer, or intended offer, of financial products, or the supply, or possible supply, of financial services,—

(i) is false or misleading, or is likely to mislead or confuse, in a material particular;

....

#### **463 Terms of stop order**

A stop order may, in relation to the offer, financial products, registered scheme, or market or other financial services referred to in section 462(1), do 1 or more of the following:

(a) prohibit offers, issues, sales, or other acquisitions or disposals of financial products specified in the order from being made while the order is in force:

- (b) prohibit an offeror from accepting applications for financial products specified in the order while the order is in force:
- (c) prohibit the distribution of 1 or more of the following while the order is in force:
  - (i) a PDS or any other disclosure document:
  - (ii) a restricted communication referred to in section 462(1)(f):
  - (iii) any restricted communication that relates to the offer of financial products, or supply of financial services, specified in the order:
- (d) prohibit a person from accepting further contributions, investments, or deposits in respect of financial products specified in the order while the order is in force:
- (e) prohibit the supply of financial services specified in the order from being made while the order is in force.

Section 464 defines ‘restricted communication’ as a form of communication from an offeror, issuer or service provider that “directly or indirectly refers to an offer, or intended offer, of financial products or the supply, or possible supply, of a financial service” or “is reasonably likely to induce persons” to seek such. A ‘financial product’ includes a “debt security”,<sup>3</sup> meaning “a right to be repaid money or paid interest on money that is, or is to be, deposited with, lent to, or otherwise owing by, any person”.<sup>4</sup>

[11] Section 475(1) relevantly provides:

**FMA must follow steps before making orders**

- (1) The FMA may make an order under this Part only if it first takes the following steps:
  - (a) gives the person to whom the order is proposed to be directed written notice—
    - (i) that the FMA may make an order under this Part; and
    - (ii) of the reasons why it is considering exercising that power; and
  - ...
  - (c) gives the notice referred to in paragraph (a) ... at least 5 working days before the FMA makes the order; and
  - (d) gives each person to whom notice of the order must be given or the person’s representative an opportunity to make written submissions and to be heard on the matter within that notice period.

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<sup>3</sup> Section 7(1)(a).  
<sup>4</sup> Section 8(1).

## Approach on appeal

[12] It is well-established appeals limited to questions of law are to address “only if in the process of determination the decision-maker misdirects itself in law”,<sup>5</sup> and the error is material to the decision under appeal;<sup>6</sup> if the decision-maker has misinterpreted what it is required to do as a matter of law or misapplied it “in a way that contradicts the true and only reasonable conclusion available on the facts”.<sup>7</sup> It is not a general appeal against the substance of the decision.

## Discussion

[13] In written and oral submissions for hearing before me, Validus’ contentions of the unlawfulness of the FMA’s decision were restated and expanded:

- (a) The grounds and terms of the Permanent Stop Order differ materially from what had been notified to Validus FZCO, so Validus FZCO was denied a proper opportunity to be heard before the Permanent Stop Order was made.
- (b) The FMA was not authorised to make the Permanent Stop Order because the statutory provision relied on requires there to be a “restricted communication” and an actual financial product, but the FMA has accepted that the financial products in respect of which the order was made do not exist.
- (c) The FMA also needed to be satisfied that absent the Permanent Stop Order, the conduct prohibited by the order would occur and contraventions of the FMCA would result. However, the FMA could not be so satisfied because it had accepted as true and correct that Validus “make it clear, both through written and verbal communication, that Validus is not and does not intend to be, a financial product”.

[14] The FMA objects to the appeal’s expansion to those second and third grounds but nonetheless is prepared to meet them. In those circumstances, little is served by pontification on the expansion’s impropriety, except the notice of appeal should formally have been sought amended to encompass the expansion and not permitted if prejudicial to the FMA.<sup>8</sup>

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<sup>5</sup> *Bryson v Three Foot Six Ltd* [2005] NZSC 34, [2005] 3 NZLR 721 at [21].

<sup>6</sup> *Manos v Waitakere City Council* [1996] NZRMA 145 (CA) at 148.

<sup>7</sup> *Vodafone New Zealand Ltd v Telecom New Zealand Ltd* [2011] NZSC 138, [2021] 3 NZLR 153 at [58].

<sup>8</sup> *Financial Markets Authority v Vivier and Company Ltd* [2016] NZCA 197, [2016] 3 NZLR 70 at [79].

—*did Validus have proper opportunity to be heard?*

[15] Turning first to Validus’ contention it was not given proper opportunity to be heard, as has been seen,<sup>9</sup> s 475(1)(d) gives prospective stop order recipients an opportunity to make written submissions and to be heard on the matter “within that notice period”. But Validus’ solicitors, in making such written submission, expressly waived “further elaboration at a meeting with the FMA”. The FMA plainly and expressly had regard for Validus’ written submission. At least to that extent, the FMA cannot be said to have erred in law if not also hearing Validus in person.

[16] Rather, “subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society”,<sup>10</sup> Validus’ contention here is founded in a claim to natural justice.<sup>11</sup> Generally the question is if the person affected had notice of what was to be decided, on what foundation and why and opportunity fairly to present its case.<sup>12</sup> But it is well recognised the right to natural justice in any case depends on the context: “[t]he question is what form of procedure is necessary to achieve justice without frustrating the apparent purpose of the legislation”.<sup>13</sup>

[17] There may be circumstances in which natural justice is not met by notice of a proposed decision materially differing from the decision made.<sup>14</sup> But that is not determinative or even instructional in the context of s 475, where written notice only is to be given “that the FMA may make an order under [Part 8]” and “of the reasons why it is considering exercising that power”. The statute omits any requirement to give notice of what was to be decided.

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<sup>9</sup> At [11] above.

<sup>10</sup> New Zealand Bill of Rights Act 1990, s 5.

<sup>11</sup> Sections 3(b) and 27(1).

<sup>12</sup> *Xiao v Department of Internal Affairs* [2019] NZCA 326, [219] 3 NZLR 622 at [34], citing *Ali v Deportation Review Authority* [1997] NZAR 208 (HC) at 220.

<sup>13</sup> *Dotcom v United States of America* [2014] NZSC 24, [2014] 1 NZLR 355 at [118]–[120].

<sup>14</sup> See, for example, *Island Bay Residents’ Association v Wellington City Council* [2019] NZHC 1240, [2020] NZRMA 157 at [130], or *Hawke’s Bay and Eastern Fish and Game Councils v Hawke’s Bay Regional Council* [2014] NZHC 3191, [2015] 2 NZLR 688 at [130]. Similarly, *Murdoch v New Zealand Milk Board* [1982] 2 NZLR 108 (HC) at 116–117, citing *Ridge v Baldwin* [1964] AC 40 (HL) at 79, 113 and 121, *Maradana Mosque Trustees v Mahmud* [1967] 1 AC 13 (PC) at 23, *Banks v Transport Regulation Board (Victoria)* (1968) 119 CLR 222 (HCA) at 234, *Russell v Duke of Norfolk* [1949] 1 All ER 109 (CA) at 118; *Stevenson v United Road Transport Union* [1977] ICR 893 (CA) at 905, *Kanda v Government of Malaya* [1962] AC 322 (HL) at 337 and *Mockford v New Zealand Milk Board* HC Dunedin A44/80, 14 October 1981.

[18] By reference to “may make an order”, the FMA’s notice relevantly here must engage with s 462, by identifying the applicable grounds for its necessary satisfaction. Given the discretion then established, the FMA’s notice also must explain the FMA’s reasons for “considering exercising that power”. Those two aspects are “the matter” on which the notified person is to have opportunity to make written submissions and to be heard under s 475.

[19] Such is distinguishable from post-order notice under s 477 of “the terms and conditions of the order”, “the reasons for the order” and “any other information the FMA thinks relevant in the circumstances”. Notably, if making an interim stop order pending exercise of powers, s 465(4) is explicit the FMA may do so “without giving the issuer, offeror, or service provider to which the order relates an opportunity to make submissions to, or be heard before, the FMA in respect of the matter”, but after so acting “must ... give that issuer, offeror, or service provider or that person’s representative an opportunity to make written submissions and to be heard on the matter”.

[20] Nothing in the Act’s preparatory papers or debates illuminates the distinctions available to be drawn from the escalating provisions for notice and opportunity to be heard. Their meaning is to “be ascertained from its text and in the light of its purpose and its context”.<sup>15</sup> The statute distinguishes between notice of prospective exercise of the FMA’s powers and notice of that exercise. Only in the latter circumstance is the substance of the order required to be notified.

[21] Thus the right to make submissions and to be heard under s 475 relates to the FMA’s powers and not to the consequences for the notified person. It further is distinguishing s 475’s right to contribute to the FMA’s decision-making from s 477’s right to know of its consequence. The statute makes no provision at all for notified persons to respond to any case against them, but only to the FMA’s prospective exercise of power and the reason(s) for it. That most clearly is illustrated in s 465’s procedure, affording only post-facto opportunity to be heard.

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<sup>15</sup> Legislation Act 2019, s 10.

[22] And there is no case to be met, when the Act regulates rather than empowers participation in financial markets.<sup>16</sup> Validus’ claimed interests affected by the stop order — “adverse publicity, a permanent legal prohibition on prima facie lawful activities, and civil penalties and criminal prosecution in the event of non-compliance — are assertions of self-entitlement, not afforded by the Act.

[23] Under pt 8’s statutory scheme, natural justice thus is to be construed in favour of the FMA’s exercise of enforcement powers. Such makes sense in terms of the statute’s purposes — beyond “to promote the confident and informed participation of businesses, investors, and consumers in the financial markets” and “to promote and facilitate the development of fair, efficient, and transparent financial markets”<sup>17</sup> — to include:<sup>18</sup>

- (a) to provide for timely, accurate, and understandable information to be provided to persons to assist those persons to make decisions relating to financial products or the provision of financial services:
- (b) to ensure that appropriate governance arrangements apply to financial products and certain financial services that allow for effective monitoring and reduce governance risks:

The statutory scheme promotes supervision of participation, rather than rights to participate, in financial markets.<sup>19</sup> Participation is subject to the FMA’s regulatory function.<sup>20</sup> Natural justice under the statutory scheme is not to be correlated with natural justice as it may arise in other contexts: for example, when an accused party is entitled to know of the accusation to be able to rebut it (if it can).

[24] Accordingly, even material difference between the stop order and any previously notified does not of itself undermine the notified party’s right to be heard, which right is limited to the prospective exercise of the FMA’s powers and the reasons for it. That precisely is what Validus was afforded, without any error of law on the part of the FMA.

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<sup>16</sup> *Financial Markets Authority v ANZ Bank New Zealand Ltd* [2018] NZCA 590 at [69].

<sup>17</sup> Financial Markets Conduct Act, s 3.

<sup>18</sup> Section 4.

<sup>19</sup> *Du Val Capital Partners Ltd v Financial Markets Authority* [2022] NZHC 1529, [2022] NZCCLR 17 at [18]; *Financial Markets Authority v Patterson* [2018] NZDC 13765 at [8].

<sup>20</sup> See *Financial Markets Authority v Vivier and Company Ltd*, above n 8, at [87].

[25] In any event, the stop order did not materially differ from that notified. Rather, the substantial changes clarified the order was not dependent on Validus' offer of rights to participate in an *existing* pool. '[P]roceeding on the basis' Validus' conduct at the seminar was to invite participation in a non-existent pool, the FMA was satisfied to the s 462(1)(f)(i) threshold. As to reasons for so exercising its power, absent the stop order, the FMA was concerned for Validus' "repeat unlawful behaviour" irrespective of the pool's existence. Validus' contention the FMA is to be taken to have accepted the pool did not exist is irrelevant. It also is wrong: by 'proceeding on the basis', the FMA expressly was saying only it was prepared for the purposes of its notice and stop order to take Validus' representations at face value.

*—is the FMA's 'stop order' jurisdiction predicated on 'restricted communications' about an "actual financial product"?*

[26] Next, to turn to Validus' contention there must be an 'actual financial product', s 462(1)(f)'s relevant focus is on false or misleading offers. They must be offers or intended offers of financial products to fall within the FMA's mandate. The reference to 'intended offers' alone may be construed to extend to financial products not yet in existence.

[27] Similarly, the subsidiary definition of 'debt security' includes a right to repayment of money "that is, or *is to be*" (emphasis added) deposited with or lent to another person,<sup>21</sup> indicating futurity. Plainly money yet to be paid cannot be repaid. Thus the 'right' includes to a future entitlement. There is nothing in the statutory language to suggest the financial products must be in existence at the time of the offer or intended offer.

[28] A moment's reflection identifies the construction contended by Validus would be to exclude outright scams, baldly inviting participation in non-existent financial products, from the FMA's enforcement function. Nothing in the statutory purposes justifies such exclusion. Promotion of "confident and informed participation" in financial markets would be undermined by the exclusion; it would retard, rather than advance, "fair, efficient, and transparent" financial markets. The contention instead is

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<sup>21</sup> Section 8(1)(a).

an impermissible attempt to parlay Validus’ already unwarranted interpretation of the FMA’s ‘proceeding on the basis’ into ‘acceptance’ of the exclusion.

[29] Validus’ contention also the requisite ‘restricted communication’, by reference to “offeror” or “issuer” as defined, requires an existing financial product is a similar attempt to bootstrap from its wayward construction of the FMA’s language. Validus’ strained reliance on s 462(1)(f)(i)–(iv)’s present tense to that end is unsustainable.<sup>22</sup> The sub-paragraphs’ present tense is as to the offer’s false or misleading or otherwise improper nature. Again, the focus of s 462(1)(f) on a restricted communication is on its offer as “authorised or instigated” by someone at least agreeing to transfer the financial product on the offer’s acceptance. There is no basis on which to read that agreement down to mean only of a financial product in existence. Such construction, as I have explained,<sup>23</sup> would be contrary to the Act’s purposes.

[30] The FMA’s decision to issue the stop order did not err in law, even if Validus’ pool did not exist for participation.

*—must the FMA be satisfied, but for the stop order, the Act would be contravened?*

[31] Validus’ final contention of necessary future contravention or harm is its attempt further to capitalise on its mischaracterisation of the FMA ‘proceeding on the basis’ Validus’ representations to it were true as the FMA’s acceptance of such. But, even without that faulty foundation, the FMA’s s 462(1)(f) jurisdiction to make a stop order in the present circumstances rests on its satisfaction only the subject communication is false or misleading or otherwise improper as stipulated.

[32] Section 462(2) is express the FMA’s satisfaction of any likelihood of future contravention or harm only has materiality for the making of stop orders in relation to s 462(1)(b) to (d) or (h). It would be an unacceptable exercise of construction nonetheless to graft that qualification onto s 462(1)(f) stop orders. There is no justification for it. The FMA did not err in law in making the stop order even if unable to be satisfied of Validus’ likely future contravention or harm caused.

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<sup>22</sup> Section 464(1)(b).

<sup>23</sup> At [28] above.

[33] The question instead is if the FMA’s proposed exercise of power is supported by legitimate reason. Except for the FMA’s s 462(1)(f) ‘satisfaction’ for exercise of its stop order power, the only suggestion of any other qualification arises from s 475(1)(a)(ii)’s requirement the FMA give notice “of the reasons why it is considering exercising that power”. Inferentially, that means reasons at least consistent with exercise of the power,<sup>24</sup> to aid in understanding why the power is to be exercised,<sup>25</sup> and demonstrate its propriety.<sup>26</sup> Validus’ prospective contravention absent the stop order may be such a reason.

[34] More compelling, however, is the FMA ‘proceeding on the basis of’ Validus’ effectively acknowledged past contravention, as it did. Although not directly relevant to a stop order made under s 462(1)(f), s 462(2) indicates at least three reasons for stop orders: past contravention, likely future contravention or “imminent danger of substantial damage” by any contravention. Such reasons are implicit in the statute’s purposes. Any such reason independently may sustain exercise of the FMA’s stop order power, as may others.

## **Result**

[35] Validus’ appeal is dismissed.

## **Interim suppression orders**

[36] Validus sought interim orders prohibiting publication of the stop order pending determination of its appeal, on grounds its right of appeal would be rendered nugatory and of contended prejudice including by way of “significant reputational harm” if the stop order was publicised.

[37] Although the FMA undertook not so to publish pending determination of the application, media interests sought time to consider. The Court prohibited publication

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<sup>24</sup> See *Unison Networks Ltd v Commerce Commission* [2007] NZSC 74, [2008] 1 NZLR 42 at [51]; *Singh v Chief Executive Officer Department of Labour* [1999] NZAR 258 (CA) at 263; and *Butler v Removal Review Authority* [1998] NZAR 409 (HC) at 420, citing *Patel v Removal Review Authority* [1994] NZAR 419 (HC) at 424–425 (adopting *Ansett Transport Industries (Operation) Pty Ltd v Wraith* (1993) 48 ALR 500 (FCA) at 507) and *Ronberg v Chief Executive of Department of Labour* [1995] NZAR 509 (HC) at 520–521.

<sup>25</sup> *Lewis v Wilson & Horton Ltd* [2000] 3 NZLR 546 (CA) at [76].

<sup>26</sup> *Bouvaird v J* [2008] NZCA 325, [2008] NZAR 667 at [74].

for that purpose.<sup>27</sup> Thereafter all parties accepted suppression orders could continue pending determination of the appeal, and the interim suppression orders were continued.<sup>28</sup>

[38] Validus' appeal now having been determined, the suppression orders are at an end. I did not understand any party to contend for their continuation after the appeal's determination. To my mind, that is appropriate: any grounds for interim suppression are invalidated by this Court's judgment on the appeal, irrespective of outcome.

### **Costs**

[39] As requested by counsel, costs are reserved for determination on short memoranda each of no more than five pages — annexing a single-page table setting out any contended allowable steps, time allocation and daily recovery rate — to be filed and served by the FMA within ten working days of the date of this judgment, with any response or reply to be filed within five working day intervals after service.

—Jagose J

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<sup>27</sup> *Validus FZCO v Financial Markets Authority* HC Auckland CIV-2023-404-0852, 17 May 2023.

<sup>28</sup> *Validus FZCO v Financial Markets Authority* HC Auckland CIV-2023-404-0852, 31 May 2023.

## SCHEDULE

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|                                                                                                                                                               |                                                                                                                                                          |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|
| <br><b>Appendix</b><br>FINANCIAL MARKETS AUTHORITY<br>TE MANA TATAI HOKOHOKO | <b>AUCKLAND OFFICE</b><br>Level 5, Ernst & Young Building<br>2 Takutai Square, Britomart<br>PO Box 106 672, Auckland 1143<br><b>PHONE</b> +64 9 300 0400 |
| <b>Form of stop order proposed at the date of this notice</b>                                                                                                 |                                                                                                                                                          |

To: **Validus International LLC** (a Delaware registered company) (**Validus**);

**Validus-FZCO** (duly formed as a Free Zone Company with limited liability pursuant to Law no. 16 of 2021 by H.H. Ruler of Dubai and Implementing Regulations issued thereunder by the Dubai Integrated Economic Zones Authority); and

All associated persons of Validus as offeror of the Validus Financial Products (separately, and together, the **Associated Persons**)

**STOP ORDER**

made by the Financial Markets Authority (**FMA**) pursuant to  
sections 462, 463 and 466 of the Financial Markets Conduct Act 2013 (**Act**)

While this stop order (**Order**) is in force:

(a) Validus and Validus-FZCO are prohibited from:

- (i) making offers, ~~issues, sales or other acquisitions or disposals~~ of Validus Financial Products; and
- (ii) distributing any restricted communication that relates to the offer of Validus Financial Products; and
- (iii) accepting further contributions, investments, or deposits in respect of Validus Financial Products; and

(b) Validus, as offeror of the Validus Financial Products, is prohibited from accepting applications for Validus Financial Products; and

(c) the Associated Persons are prohibited from distributing any restricted communication that relates to the offer of Validus Financial Products.

The Associated Persons (including associated persons that may be incorporated or formed after the date of this Order) are required to comply with paragraph (c) above of this Order.

Validus is required to provide a copy of this Order to the Associated Persons.

**Definitions**

In this Order (unless the context otherwise requires):

**associated person** has the meaning given to that term in section 12(1) of the Act;

**distribute, offeror and person** have the meanings given to those terms in section 6(1) of the Act;

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**financial benefit** has the meaning given to that term in section 9(1) of the Act;

**financial product** has the meaning given to that term in section 7 of the Act;

**issuer**~~issued~~ has the meaning given to that term in section 11 of the Act;

**managed investment product** has the meaning given to that term in section 8(3)

of the Act; **managed investment scheme** has the meaning given to that term in

section 9 of the Act; ~~regulated offer has the meaning given to that term in~~

~~section 41(1) of the Act~~; **restricted communication** has the meaning given to that

term in section 464 of the Act; **Seminar** means the seminar held on 19 November

2022 at the Mt Smart ~~Arena~~Stadium, Auckland, New Zealand;

**Validus Financial Products** means:

(a) the Validus Pool Products; and

(b) any other financial products ~~issued~~that are used (including by reference to their claimed performance characteristics) to promote the purchase of Validus educational packages (irrespective of whether or not those financial products actually exist or are, or are not, intended to be issued, ~~by Validus and offered in New Zealand~~);

**Validus Letter** means the letter dated 1 March 2023 from Howard Friend, in his capacity of “CEO Validus”, to the FMA;

**Validus Pool** means the pool of crypto currencies, equities, forex, NFTs and other products referred to in the oral presentations and materials (including slides) distributed at the Seminar and entitled “The Validus Pool”; and

**Validus Pool Products** means interests in (being rights to participate in, or receive, financial benefits in) the Validus Pool.

#### Period for which this Order is in force

This Order is in force from the time at which it is made until such time (if any) as the FMA varies, suspends or revokes this Order.

#### Reasons for this Order

The FMA has exercised the power to make this Order under section 462 (and, in particular, under section 462(1)(f)) of the Act because it is satisfied that a restricted communication (authorised or instigated by, or on behalf of, Validus) relating to an offer, or intended offer, of financial products (namely, Validus Pool Products) is false or misleading, or is likely to mislead or confuse, in a material particular.

More particularly, the FMA is satisfied that:

- (a) Validus held a seminar on 19 November 2022 at the Mt Smart ~~Arena~~Stadium, Auckland, New Zealand at which, through oral presentations and materials (including slides) distributed, Validus referred to an offer to attendees, and encouraged attendees, to participate in the Validus Pool.

The Validus Letter confirms that the Seminar was organised and planned by "Validus". Dr Parwiz Daud, Chief Network Officer of Validus, attended and spoke at the Seminar.

- (b) A key speaker at the Seminar, Souai Tito, advised attendees that:

"... once you purchase a [education] pack you get rewarded ... so with the money that you purchased your education packs, we have a team of experts that trade your money in the forex market. And with that you get paid 2 to 3% weekly loyalty points over 60 weeks."

"We trade in stocks, and gaming, crypto, NFTs, staking..."

Souai Tito then said, "after 60 weeks you get 350% [of your money] back".

- (c) Souai Tito's statements were said against the background of certain slides distributed on a screen for attendees to view. The slides in the Appendix to this Order form part of the slides distributed at the Seminar. The clear message to attendees from Souai Tito's statements and the slides in the Appendix was that 100% of the money spent on Validus educational packages is invested in the forex market through the Validus Pool from which investors can receive a 2%-3% return on their money each week for 60 weeks. The Validus Pool is represented in the first slide as a pool of crypto currencies, equities, forex, NFTs and other products. The second and third slides showed the benefit of compounding. The second slide shows compounding "UPTO 350%" over 60 weeks and, in the third slide, \$250 compounds "UPTO \$35,000" over 60 weeks. The fourth slide shows that withdrawals will be subject to a 5% withdrawal fee.
- (d) Investments in the Validus Pool as described at the Seminar are financial products (in particular, managed investment products) because they are (or result in) interests in a managed investment scheme referred to in paragraph (b) of the definition of that term in section 9(1) of the Act (see below).
- (e) The Validus Pool is a managed investment scheme because (in accordance with section 9(1)(a), ~~(b)~~ and ~~(c)~~ and (c) of the Act) it is a scheme to which each of the following applies:
- (i) the purpose or effect of the scheme is to enable persons taking part in the scheme [e.g., attendees at the Seminar who choose to do so] to contribute money [i.e., the money spent on educational packages] to the scheme [i.e., the Validus Pool] as consideration to acquire interests [see para (ii) following] in the scheme [i.e., the Validus Pool]; and
  - (ii) those interests are rights to participate in, or receive, financial benefits [i.e., the 2%-3% return on money spent on Validus education packages each week for 60 weeks] produced principally by the efforts of another person [e.g., Validus] under the scheme [i.e., the Validus Pool] (whether those rights are actual, prospective, or contingent, and whether they are enforceable or not); and
  - (iii) the holders of those interests [e.g., the participating attendees] do not have day-to-day control over the operation of the scheme [i.e., the Validus Pool] (whether or not they have the right to be consulted or to give directions). [Validus has day-to-day control over the operation of the scheme.]
- (f) The various oral presentations and materials (including slides) distributed at the Seminar are together a restricted communication being (in terms of section 464 of the Act) a form of communication:
- (i) that—

- A. directly or indirectly refers to an offer, or intended offer, of financial products [i.e., the offer of Validus Pool Products]; or
  - B. is reasonably likely to induce persons [i.e., attendees at the Seminar] to apply for financial products [i.e., the Validus Pool Products]; and
- (ii) that is authorised or instigated by, or on behalf of, the offeror [i.e., ~~Validus~~, ~~the issuer~~ (i.e., Validus) or an associated person of the offeror ~~or issuer~~ [i.e., Dr Parwiz Daud] or that is prepared with the co-operation of, or by arrangement with, any of those persons; and
- (iii) that is to be, or has been, distributed to a person [i.e., attendees at the Seminar].
- (g) Subsequently, Howard Friend, in his capacity of "CEO Validus", made a number of statements to the FMA in the Validus Letter that contradict, or are contrary to, the communications at the Seminar. In particular, Mr Friend said:

**"(b) ValidusPOOL**

Please kindly note that the ValidusPOOL has been removed and no longer exists. The ValidusPOOL referred solely to the Company's own investments, which it made using its own funds – we have not and do not pool any funds from our Members or any third parties at all. Nonetheless, we have stopped and removed any mentions of the ValidusPOOL.

**(c) Please explain why you are of the view that none of the products and/or services Validus provides involve the provision of financial services or products. ...**

...

We make it clear, both through written and verbal communication, that Validus is not, and does not intend to be, a financial product and no person should ever enter into a commercial relationship with Validus intending or expecting to make returns of any sort, as no such returns are promised or guaranteed in any way."

- (h) Since receiving the Validus Letter, the FMA has proceeded on the basis that the above statements in the Validus Letter are true and correct. On that basis, the various oral presentations and materials (including slides) distributed at the Seminar [i.e., the restricted communication] are false or misleading, or are likely to mislead or confuse, in a material particular. Contrary to the communications at the Seminar, the Validus Letter states (among other things):
- (i) the Validus Pool has been removed and no longer exists;
  - (ii) the Validus Pool referred solely to the Company's own investments, which it made using its own funds;
  - (iii) Validus does not pool any funds from its members or any third parties at all;
  - (iv) Validus is not, and does not intend to be, a financial product; and
  - (v) Validus does not promise or guarantee returns in any way.
- (i) Accordingly, the oral presentations and materials (including slides) distributed at the Seminar [i.e., the restricted communication] related to an offer of financial products that either did not exist at the time the restricted communication was distributed or was materially different from that described in the restricted communication. The FMA is concerned that attendees at the Seminar were induced to purchase, purchased, or intend to purchase, educational packages in reliance on false or misleading representations. Those attendees are likely to suffer material financial harm. They will not receive the

2-3% return on their money, or be able to withdraw that money, because the money was not, or will not be, invested in a managed investment scheme.

(j) In the Validus Letter, Mr Friend also states:

“As part of the complete restructuring we have undergone, we have moved our main operations to the United Arab Emirates, from which we provide our Memberships. For your reference, we have attached Validus FZCO’s certificate of formation to our email.”

For this reason, this Order applies to both Validus and Validus-FZCO.

The FMA is concerned that, in the absence of this Order, the conduct prohibited by this Order will occur and contraventions of the Act will result. This Order prohibits Validus, Validus-FZCO and the Associated Persons from taking steps that will, or are likely to, result in repeat unlawful behaviour that may cause material financial harm. This Order therefore prevents:

- (a) Validus and Validus-FZCO from accepting money from attendees at the Seminar and others who are aware of the presentations and materials distributed at the Seminar and who, in each case, pay that money in reliance on false or misleading representations they are investing in Validus Pool Products;
- (b) Validus and Validus-FZCO from:
  - (i) offering financial products to promote the purchase of Validus educational packages irrespective of whether or not those financial products actually exist or are, or are not, intended to be issued; and
  - (ii) accepting money from persons for the purchase of Validus educational packages who pay that money in reliance on false or misleading representations they are investing in financial products used to promote that purchase; and
- (c) Validus, Validus-FZCO and the Associated Persons from distributing restricted communications that relate to the offer of financial products to promote the purchase of Validus educational packages irrespective of whether or not those financial products actually exist or are, or are not, intended to be issued.

#### Other terms and conditions

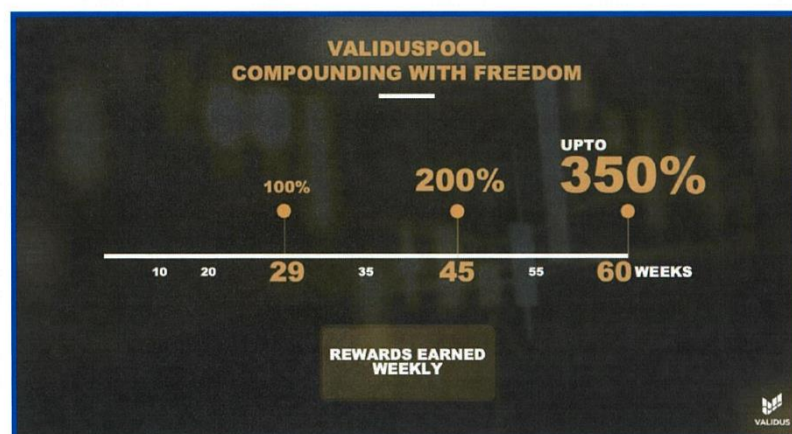
The FMA must give the Registrar of Financial Service Providers written notice of the terms and conditions of this Order, the reasons for this Order and any other information the FMA thinks relevant in the circumstances and make the notice available on the FMA’s Internet site (<https://www.fma.govt.nz>) in accordance with section 477(1)(b) of the Act. Under section 477(1)(e) of the Act, the FMA may also give notice to any other person of those matters.

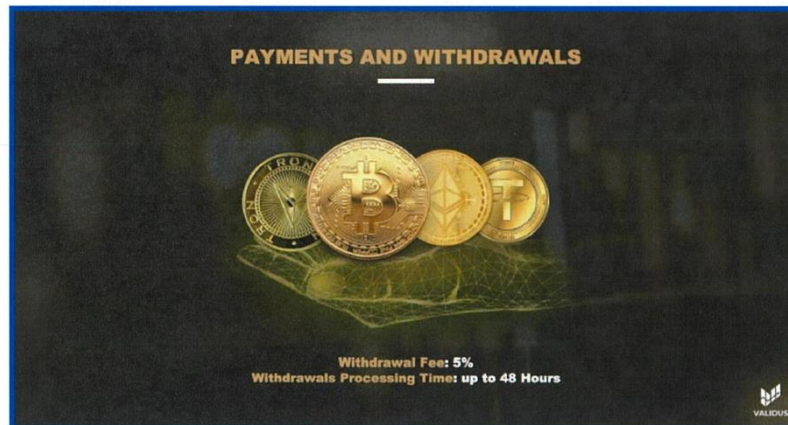
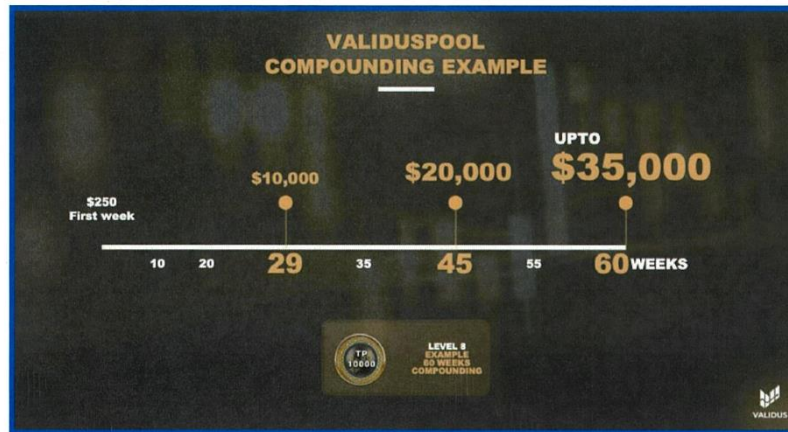
This Order is made at ~~10.50~~ am/pm on this ~~14th~~ 2nd day of ~~May~~ May 2023



Paul Gregory Executive Director – Response & Enforcement Financial Markets Authority

Appendix





Document comparison by Workshare Compare on Tuesday, 2 May 2023  
3:05:06 pm

| Input:        |                                                                                                    |
|---------------|----------------------------------------------------------------------------------------------------|
| Document 1 ID | file:///U:/Litigation/SXM2/MATTERS/Validus/2023-03-24 - notice of intention to make stop order.pdf |
| Description   | 2023-03-24 - notice of intention to make stop order                                                |
| Document 2 ID | file:///U:/Litigation/SXM2/MATTERS/Validus/Validus Stop Order.pdf                                  |
| Description   | Validus Stop Order                                                                                 |
| Rendering set | Standard                                                                                           |

| Legend:                   |  |
|---------------------------|--|
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| <u>Moved from</u>         |  |
| <u>Moved to</u>           |  |
| Style change              |  |
| Format change             |  |
| <del>Moved deletion</del> |  |
| Inserted cell             |  |
| Deleted cell              |  |
| Moved cell                |  |
| Split/Merged cell         |  |
| Padding cell              |  |

| Statistics:    |       |
|----------------|-------|
|                | Count |
| Insertions     | 32    |
| Deletions      | 18    |
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| Moved to       | 0     |
| Style changes  | 0     |
| Format changes | 0     |
| Total changes  | 50    |