ASIC FOI 140-2019

Memo

A S I C

Australian Securities & Investments Commission

SUBJECT OF MATTER:	RBS Morgans Limited (RBS Morgans)
M&PS TEAM PREPARING:	PARTICIPANT COMPLIANCE
M&PS SENIOR MANAGER:	BILL MCNICKLE
M&PS ACTION OFFICER/S:	ANN PHAM AND DAVID DE CARLI
DATE:	11 December 2012

KNOWN FACTS:

Introduction and Key Findings

As a result of a number of complaints from clients of RBS Morgans who invested in put option strategies MPS has reviewed a number of the complaints. Those reviews found a number of possible contraventions of the Corporations Act by the advisers' concerned primarily inappropriate advice.

The reviews also found RBS Morgans had likely failed to adequately supervise the advisers concerned. All of the advisers, except s 22 subsequently left RBS Morgans after RBS Morgans placed much stricter client trade limits on clients using options and put in place increased supervision of advisers, in part as a result of ASIC's surveillance.

The conduct of s 22 [redacted]. s 45 [redacted].

See below for a summary of each matter.

Matter 1 - s 22

Background

s 22 [redacted]

[redacted]

[redacted]

[redacted]

s 22 [redacted]

[redacted].

s 22 [redacted].

Below is a brief summary the possible breaches and the current status of the matter.

Possible breaches:

Appropriateness of advice – s945A of the CA

s 22 [redacted]

[redacted]

[redacted].

Obligation to give SOA, Prepare a ROA and content of SOA – s946A, s946C and s947C of the CA

s 22 [redacted]

Current Status

s 22 [redacted]

Matter 2 - Springwood Advisers of RBS Morgans

Background

The matter concerns the conduct of four authorised representatives of RBS Morgans – David Wilkins who was the principal/owner of the Springwood office s 22 [redacted]. The matter relates to alleged inappropriate personal advice, to clients and their self managed superfunds, to invest in the so called 'Income Machine' (aka Sold Put Options- ("IM") strategy. The strategy involved mainly clients holding a portfolio of shares and a cash account with a cash balance, clients then sell a number of put option contracts to generate income for the portfolio on a monthly basis.

As a result of complaints from clients who invested in the IM strategy and a complaint from another market participant ASIC reviewed the matter and looked at sample of the advisers client files. That review found a number of possible contraventions by the advisers' concerned primarily inappropriate advice. The review also found RBS Morgans had more than likely failed to adequately supervise the advisers concerned.

s 22 [redacted] after RBS Morgans placed much stricter client trade limits on clients using options, as a result of this matter and others and put in place much increased supervision of advisers, in part as a result of ASIC MPS surveillance. The conduct of the advisers has been referred to Deterrence (Terry Marks - action office) and RBS Morgans is the subject of ongoing review by MPS.

The amount of losses incurred by clients in this matter is currently unknown as RBS Morgans has been generally denying liability when claims have been lodged with it and referring clients to the FOS where it will take some time for the matters to be resolved.

Possible breaches:

The failure to comply with s946A and s946C of the CA - failure to provide SOA or SoAA for the specific advice in relation to the Income Machine strategy and failure to provide the SoA within required time frame.

Of the 30 client files, ASIC reviewed it found that no client file contained a SOA and only 14 files contained a SoAA for the IM strategy, however they were all provided in Feb 2011 more than 4 months after the advice was provided. Evidence found in the files also indicated that the clients did not understand how the strategy worked, what was involved in writing a put option and the risks associated with writing puts or subsequent margin call requirements.

S1041E (1) False or misleading statements

Emails sent to the clients may have mislead the clients about the IM Strategy as they give the client an impression that writing put options will generate a premium with little or no risk as the positions will always be rolled over, which is incorrect if client positions are closed out due to margin calls. There is also no explanation or disclosure of the cost incurred in closing out an out-of-money position.

ASIC also found that the Portfolio Summary used by Springwood office to provide monthly reports of profit and loss and financial position of the clients IM portfolio omitted key information such as the mark to market value of option positions..

S945A - appropriateness of advice

Based on the files reviewed it appears David Wilkins and the other Springwood advisors have collectively failed to comply with s945A of the CA as they recommended each client invest in the IM strategy no matter

what their personal circumstances and despite the fact that a majority of the clients were couples in their fifties, sixties and close to retirement with little knowledge and experience about options trading.

Current Status

s 22 [redacted]

Matter 3 - Rod Peters and Burleigh Heads ("BH") Advisers

Background

s 45 [redacted]

Over Aug'12 MPS enquiries identified that all of the BH advisers had promoted an aggressive options strategy ('bull puts') with the mainly retail client base and that most had significant unrealized or potential losses. Principal MPS concerns involved the likelihood of inappropriate advice having been provided to the mainly retail client base.

MPS then entered into discussions/negotiations with RBS Morgans the result of which was the appointment of an external compliance consultant, Acompli to review the appropriateness of advice provided by the four advisers. After agreement with the consultant's terms of reference the review work commenced on 10 Dec'12.

Possible breaches:

Appropriateness of advice – s945A of the CA

Based on the nature and quantum of complaints received by RBS Morgans MPS is concerned that the aggressive options strategies may not have been appropriate to the mainly retail clients' personal circumstances, a number of whom invested via SMSFs.

Current Status

1. The independent consultant has commenced the review (as above).
2. MPS has also engaged with Enforcement/Financial Services – D. McGuinness/A. Borchok to indicate details of the matter & commencement of the of client file reviews by the independent expert (an initial sample of clients s 22 [redacted]), and any early results will be provided to Enforcement to identify if early/pro-active action could be contemplated in respect of all four advisers.
3. s 22 [redacted]