
FINAL NOTICE

To: **Raiffeisen Zentralbank Österreich**
Of: **Austria House**
36-38 Botolph Lane
London
EC3R 8DE
Date: **5 April 2004**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") gives you final notice about a requirement to pay a financial penalty.

1. THE PENALTY

- 1.1. The FSA gave you a Decision Notice dated 18 March 2004 which notified you that, pursuant to section 206 of the Financial Services and Markets Act 2000 ("the Act"), the FSA had decided to impose a financial penalty of £150,000 on Raiffeisen Zentralbank Österreich ("RZB") in respect of breaches of Rule 2.1.1 and Rule 3.1.3 of the FSA's Money Laundering Sourcebook ("ML") relating to client identification procedures.
- 1.2. You have confirmed that you do not intend to refer the matter to the Financial Services and Markets Tribunal.
- 1.3. Accordingly, for the reasons set out below the FSA imposes a financial penalty on you in the amount of £150,000 ("the Penalty").

2. RELEVANT STATUTORY PROVISIONS AND REGULATORY RULES

- 2.1. Section 2(2) of the Act includes among the FSA's regulatory objectives the reduction of financial crime.

2.2. Section 146 of the Act states:

The Authority may make rules in relation to the prevention and detection of money laundering in connection with the carrying on of regulated activities by authorised persons.

2.3. Rule 2.1.1 of ML states:

A relevant firm must set up and operate arrangements, including the appointment of a money laundering reporting officer (MLRO) in accordance with the duty in ML 7, which are designed to ensure that it, and any appointed representatives that act on its behalf, are able to comply, and do comply, with the rules in this sourcebook.

Rule 3.1.3 of ML states:

A relevant firm must take reasonable steps to find out who its client is by obtaining sufficient evidence of the identity of any client who comes into contact with the relevant firm to be able to show that the client is who he claims to be.

2.4. Section 206(1) of the Act states:

If the Authority considers that an authorised person has contravened a requirement imposed on him by or under this Act, it may impose on him a penalty, in respect of the contravention, of such amount as it considers appropriate.

3. REASONS FOR ACTION

Summary

- 3.1. A visit by FSA Supervision to RZB's London Branch ("RZB London") in September 2002 identified that RZB London's anti-money laundering procedures had not been up-dated since June 1999 and in a number of cases RZB London may have failed to follow the Joint Money Laundering Steering Group Guidance Notes (December 2001 Edition) ("the Guidance Notes") when identifying clients or used other suitable means to verify identity.
- 3.2. As a result of the findings from the FSA Supervision visit, investigators were appointed on 20 November 2002 under section 168 of the Act.
- 3.3. As a result of the investigation, which included a review of RZB London's procedures and accounts opened between December 2001 and December 2002, the FSA has concluded that RZB has contravened ML 2.1.1 and ML 3.1.3.
- 3.4. These contraventions are viewed by the FSA as particularly serious in the light of the following factors:

- The breaches of ML occurred against a background where, in anticipation of the FSA's new powers to make Rules relating to the prevention of money laundering from December 2001, there had been greatly increased emphasis on preventing the use of the financial system for financial crime.
 - The FSA had notified RZB London in February 2002 that a Supervision visit to assess RZB London's anti-money laundering controls would take place in the fourth quarter of the year and subsequently notified RZB London in August 2002 that the visit would commence in September 2002. RZB London had also received, during the first six months of 2002, two internal reports which identified specific issues in respect of confusion over account opening and the documenting of identification procedures.
 - Nevertheless RZB London senior executive management did not sufficiently oversee RZB London's compliance with the client identification requirements of ML. RZB London failed to update its anti money laundering and compliance manual to take account of ML and, in particular, to contain enough information to ensure compliance with the requirement to identify clients. The updated manual in a form appropriate for the business undertaken by RZB London was not introduced until 1 November 2002, 11 months after ML came into force.
 - The nature of RZB London's business resulted in it routinely undertaking high value transactions. It would, therefore, have been possible for customers to launder significant amounts of money in a small number of transactions.
 - The failure to put in place adequate procedures to ensure that RZB London was complying and able to comply with the client identification provisions of ML exposed RZB London to an unacceptable risk that, in certain types of case, it would be used to launder money. This risk was identified by three instances where accounts were opened for customers who represented high risk in terms of money laundering when not identified in line with the Guidance Notes. These breaches illustrate that RZB London's anti-money laundering arrangements were inadequate and therefore in breach of ML 2.1.1.
- 3.5. Had it not been for the remedial action taken by RZB London, expedited following the FSA Supervision visit, and RZB London's refocusing its business on areas that represented a lower money laundering risk following N2, the financial penalty imposed would have been much higher.

Facts and Matters Relied On

The Statutory and Regulatory Background

- 3.6. Anti-money laundering requirements on financial sector firms were first imposed by the Money Laundering Regulations 1993 SI 1993/1933 ("the Regulations"), which took effect on 1 April 1994. The Regulations require financial sector firms to have procedures for, among other things, the identification of their clients.

- 3.7. Further, from 1990 the Joint Money Laundering Steering Group, of which the British Bankers' Association is a member, provided advice on best practice in anti-money laundering controls by issuing the Guidance Notes. Subsequent editions of the Guidance Notes took account of evolving best practice within the financial services industry.
- 3.8. Since 1994 the Guidance Notes have provided advice and guidance on complying with the Regulations such that a Court may take them into account in considering whether there has been a breach of the Regulations. Both the editions issued in 2001 reflected the provisions of ML that came into effect on 1 December 2001.
- 3.9. Prior to ML coming into force on 1 December 2001, and in anticipation of the FSA's statutory objective to reduce financial crime, the FSA repeatedly stressed the importance of high standards of compliance with UK anti-money laundering requirements and that, once its new enforcement powers came into effect, they would be rigorously applied to deal with breaches of ML.

RZB's Actions

- 3.10. RZB London is an authorised deposit taking institution with some 800 customers, concentrating on wholesale banking activities. It also provides foreign exchange products to a small number of corporations and up to October 2002 RZB London provided foreign exchange products to a small number of private individuals.
- 3.11. RZB London's anti-money laundering and compliance manual had last been updated in June 1999 and therefore did not take account of the introduction of ML and, in particular, it did not contain enough information to ensure compliance with the requirements to identify clients. The production of a new money laundering prevention manual was part of the objectives of RZB London's Money Laundering Reporting Officer ("MLRO"). RZB London set a deadline of September 2002 for the manual to be produced. In the lead up to N2, RZB London's MLRO resigned suddenly, in October 2001, due to ill health. RZB London undertook all reasonable steps to recruit an experienced MLRO. The replacement MLRO, a solicitor with experience in treasury matters, joined RZB London in January 2002. RZB London and the newly appointed MLRO were aware that the existing anti-money laundering procedures manual required up-dating and this requirement was on their agenda. The replacement MLRO left RZB London in July 2002. A third MLRO was appointed in August 2002. The new MLRO was aware that the anti-money laundering procedures manual required up-dating to cater for the identification of new customers, but was unable to devote sufficient resources to this task.
- 3.12. Following the FSA Supervision visit on 12 September 2002, the FSA recommended that RZB London review and revise its anti-money laundering procedures manual and a new manual, consistent with ML, was introduced on 1 November 2002.

The FSA's Investigation

- 3.13. The FSA reviewed RZB London's anti-money laundering procedures and, having regard to the identification criteria set out in the Guidance Notes, examined all accounts opened since December 2001 to determine whether there was sufficient evidence to show that in each case the client was who he claimed to be. The investigators found that RZB London's anti-money laundering procedures were not adequate to ensure that they were able to comply and did comply with the client identification provisions of ML. The investigators also found that for 23 of the accounts opened since the introduction of ML, RZB London had failed to take the required steps to verify that the client was who he claimed to be.
- 3.14. The procedures manual ("the June 1999 Manual") which RZB London continued to use (notwithstanding that it was 18 months old) after ML came into force on 1 December 2001 did not include sufficient assistance to staff in verifying the identity of certain categories of customers. It did not include:
- sufficiently clear guidance on the documentation required for agents, overseas corporations and trusts;
 - sufficient guidance for verifying the identity of non-EU financial institutions;
 - information on which countries are identified as non-co-operative by the Financial Action Task Force ("the FATF")¹ and what steps should be taken to verify the identity of customers resident in these countries;
 - sufficiently clear guidance on additional checks for customers where third party payments are available (although the majority of RZB London's business does not involve third party payments).
 - guidance on additional checks for non-face to face customers.
- 3.15. Checklists to help ensure that RZB London adhered to the customer identification requirements supplemented the June 1999 Manual. The account opening checklist in use in December 2001 formed part of the June 1999 Manual and had also not been updated. Between February and June 2002 revised and additional checklists were introduced. However, it was not until September 2002, when further revisions were made after the FSA Supervision visit, that the checklists in use were adequate to enable staff to obtain the correct documents required to establish customers' identity.
- 3.16. The investigators identified 93 new customer accounts in respect of regulated activity opened since December 2001, of which 77 were opened prior to the FSA Supervision visit in September 2002. Of those 77 accounts, 40 were subject to the requirement that the customer's identity be verified. Of these 40, the investigators found that 23 were opened without the customer's identity being verified in accordance with the Guidance Notes or using other means to verify identity.

¹ The FATF is an inter-governmental body, which develops and promotes policies to combat money laundering. The FATF monitors progress in building effective anti money laundering systems, it reviews laundering techniques and it promotes the adoption and implementation of money laundering countermeasures in non-member countries

- 3.17. RZB London's failure to identify correctly these new customers in the period between December 2001 and the FSA Supervision visit is itself a breach of ML 3.1.3. The majority of the accounts (16 accounts) were, in terms of money laundering, low risk e.g. they were financial institutions, mostly from FATF countries; SWIFT addresses had been established and, in some cases, checks had been undertaken with the Banker's Almanac.
- 3.18 The remaining accounts, however, included two private corporate companies and one of those was from the Turks and Caicos Islands, which does not have in place anti money laundering requirements that are equivalent to those operating in the UK. This reflected shortcomings in the procedures for such companies and these presented a serious risk in relation to money laundering and a serious breach of ML 3.1.3.
- 3.19 In addition, RZB London failed to take adequate steps to verify the identity of a bank from a country that was, at the time the account was opened, from a jurisdiction that had been classified by the FATF as one of 19 Non Co-operative Countries and Territories ("NCCT"). These countries are identified as not being co-operative in the international fight against money laundering and therefore represent a high risk. When the account was opened the country was in the process of introducing anti-money laundering legislation; within one month of the opening of the account the country came off the NCCT list. No transactions took place on the account while the country was on the NCCT list. It nevertheless remains the fact that in this one instance RZB London failed to take adequate steps to verify the identity of the bank which could have represented a high risk in money laundering terms.

4. RELEVANT GUIDANCE

- 4.1. The principal purpose of the imposition of a financial penalty is to promote high standards of regulatory conduct by deterring firms which have breached regulatory requirements from committing further contraventions, helping to deter other firms from committing contraventions and demonstrating generally to firms the benefit of compliant behaviour.
- 4.2. In determining whether a financial penalty is appropriate and its level, the FSA is required to consider all the relevant circumstances of the case. ENF 13.3.3 indicates the factors that may be of particular relevance in determining the level of a financial penalty. These are discussed in Part 5 in respect of the circumstances of this case.

5. FACTORS RELEVANT TO DETERMINING THE SANCTION

- 5.1. In determining that a financial penalty is appropriate in this case and that the amount imposed is proportionate to RZB London's breaches, the FSA considers the factors set out below to be particularly relevant.

The seriousness of the breaches

- 5.2. From December 2001 until September 2002, RZB London did not, contrary to ML, have adequate anti-money laundering procedures in relation to client identification

and verification. RZB London was aware that its procedures required updating but took insufficiently prompt action to do so. The FSA notes that, in most of the cases where ML 3.1.3 was breached, the clients were low risk in terms of money laundering and in all cases RZB London had made some attempt to verify their identity. However, the FSA is particularly concerned that in three instances the inadequacy of RZB London's procedures allowed clients who represented a high risk in money laundering terms, when not identified in line with the Guidance Notes, to open accounts without the client identification requirements of ML being followed. RZB London's consequent failure to comply with ML 2.1.1, even though there is no suggestion that money laundering took place, exposed RZB London to an unacceptable level of money laundering risk.

- 5.3. The seriousness of the breaches must be set against the following background. There had been a greatly increased regulatory emphasis on the importance of effective anti money laundering controls. Further, RZB London had been notified in February 2002 that a Supervision visit to assess its anti money laundering controls would take place in the fourth quarter of the year and was subsequently notified, in August 2002, that the visit would take place in September 2002.
- 5.4. The FSA notes that in the lead up to and following N2 the up-dating of RZB London's anti money laundering procedures had been disrupted by the change in MLRO personnel.

The size, financial resources and other circumstances of the firm

- 5.5. There can be no doubt as to the ability of RZB to pay the financial penalty imposed. RZB London itself has assets of £750mn.

Conduct following the contravention

- 5.6. The FSA notes that after the FSA Supervision visit in September 2002 RZB devoted considerable resources to rectify the position and has implemented a comprehensive remedial action plan including amending its account opening forms, introducing a revised anti-money laundering manual and establishing a designated compliance telephone helpline.
- 5.7. The FSA is satisfied that the remedial action plan has resulted in appropriate controls being introduced. Between the Supervision visit and the investigators' visit all new accounts had been opened in compliance with ML 3.1.3.
- 5.8. RZB London has also restructured its business to focus on customers who, in money laundering terms, present a lower risk.
- 5.9. RZB fully co-operated with the FSA investigation. This has assisted the FSA to work towards its regulatory objectives, which include the reduction of financial crime.

Previous action taken by the FSA

- 5.10. The FSA has taken action in respect of breaches of ML in four previous cases. However, these cases are not directly comparable as they involved large retail banks where the nature of business and the size of customer base were materially different.

6. Conclusion

- 6.1. Having regard to the lack of urgency with which RZB London dealt with introducing procedures to ensure it was able to meet the requirements of ML, the risks it was running in the absence of these procedures and the risks thereby posed to the FSA's regulatory objective of reducing financial crime, the FSA considers it appropriate in all the circumstances to impose on RZB London a financial penalty.
- 6.2. In all the circumstances the FSA has decided to impose a financial penalty of £150,000. Without the remedial steps taken by RZB London, the refocusing of its business, the co-operation afforded to the investigation and the early settlement of the case, the penalty would have been substantially greater.

7. IMPORTANT NOTICES

- 7.1. This Final Notice is given to you in accordance with section 390 of the Act.

Manner of payment

- 7.2. The penalty must be paid to the FSA in full.

Time for payment

- 7.3. The penalty must be paid to the FSA no later than 20 April 2004, being not less than 14 days beginning with the date on which the Notice is given to you.

If the penalty is not paid

- 7.4. If all or any of the Penalty is outstanding on 20 April 2004, the FSA may recover the outstanding amount as a debt owed by you and due to the FSA.

Publicity

- 7.5. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the FSA must publish such information about the matter to which this notice relates as the FSA considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to you or prejudicial to the interests of consumers.

- 7.6. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contact

- 7.7. For more information concerning this matter generally, you should contact William Amos at the FSA (direct line: 020 7066 1324/fax: 020 7066 1325).

Ian Mason
Head of Deposit Taking and Financial Stability