
FIRST SUPERVISORY NOTICE

To: **Roger Jay Financial Services**
Of: **31 Princess Drive**
 Sawston
 Cambridge
 CB2 4DL
Dated: **8 August 2002**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) proposes to take the following action

1. ACTION

For the reasons listed below and pursuant to section 45 of the Financial Services and Markets Act 2000 (“the Act”), the FSA has decided to vary the permission granted to Roger Jay Financial Services (“RJFS”) pursuant to Part IV of the Act (RJFS’ “Part IV permission”) by removing all regulated activities with immediate effect. Accordingly, RJFS’ Part IV permission no longer includes the following regulated activities:

- (a) advising (excluding Pension Transfers and Opt-Outs);
- (b) agreeing to carry on a regulated activity;
- (c) arranging deals in investments;
- (d) making arrangements.

The FSA has further decided to vary RJFS' Part IV permission by including the following requirements, namely that RJFS must:

- (i) immediately advise in writing all clients for its regulated activities that it has no professional indemnity insurance ("PII") cover in place and that it is no longer permitted by the FSA to carry on regulated activities;
- (ii) within 14 days provide the FSA with a copy of the written advice sent to all clients for its regulated activities pursuant to (i) above.

2. EFFECTIVE DATE

The action specified above takes effect immediately.

3. REASONS FOR ACTION

Summary

The FSA has concluded, on the basis of the facts and matters described below, that RJFS is failing to satisfy the threshold conditions set out in Schedule 6 to the Act ("the threshold conditions") in that, in the opinion of the FSA, the resources of RJFS are not adequate in relation to its permitted activities.

The FSA also considers, on the basis of those facts and matters, that it is necessary in order to protect the interests of consumers for the action specified above to take effect immediately.

Relevant Statutory Provisions

The FSA's regulatory objectives established in section 2(2) of the Act include the protection of consumers.

The FSA is authorised by section 45 of the Act to exercise the following powers:

- to vary an authorised person's permission where it appears to the FSA that such person is failing to satisfy the threshold conditions;
- to vary such a permission by removing a regulated activity from those for which the permission is given.
- to include any provision in the permission as varied that could be included if a fresh permission were being given in response to an application under section 40 of the Act, including the imposition pursuant to section 43 of the Act of such requirements as the FSA considers appropriate.

Section 53(3) of the Act allows such a variation to take effect immediately if the FSA reasonably considers that it is necessary for the variation to take effect immediately.

Relevant Guidance

In exercising its power to vary a Part IV permission, the FSA must have regard to guidance published in the FSA Handbook. The relevant considerations in relation to the action specified above and its effective date include:

COND 2.4 (Threshold condition 4: Adequate resources) which

- at paragraph 2.4.1(2), permits the FSA, when forming its opinion as to whether the resources of an authorised person are adequate in relation to the regulated activities that he carries on, to have regard to the provision he makes in respect of liabilities (including contingent and future liabilities);
- at paragraph 2.4.4(3), requires the FSA only to take into account relevant matters which are material in relation to the regulated activities for which the authorised person has permission;

ENF 3.5 (The FSA's policy on exercising its own-initiative power to vary Part IV permission) which

- at paragraph 3.5.2 requires the FSA to have regard to its regulatory objectives and the range of regulatory tools that are available to it;
- at paragraphs 3.5.6 and 3.5.8 provides that the circumstances in which the FSA will consider exercising its powers include where
 - an authorised person fails to comply with the FSA's reasonable request to take remedial steps and the consequences of the authorised person's unwillingness or inability to take adequate and timely steps to address the FSA's concerns may be serious, and
 - the FSA has serious concerns that the authorised person has breached requirements imposed on him by or under the Act (including Principles and rules) and the breaches are material in number or individual seriousness;
- at paragraph 3.5.13 includes among the factors which will determine whether the urgent exercise of the FSA's own-initiative power is an appropriate response to serious concerns the extent of any loss or risk of loss or other adverse effect on consumers.

Facts and matters relied on

RJFS is a small Independent Financial Adviser firm with one approved person, its sole trader principal.

RJFS has had no PII cover since 13 December 2000.

Despite repeated requests and warnings from PIA, the FSA's predecessor regulator, and the FSA over more than nineteen months, RJFS has been unwilling or unable to submit evidence of PII cover compliant with:

- PIA Rule 1.3.8 which required that:

“a Member must effect and maintain professional indemnity insurance cover for all the activities for which it carries on, or for which it is responsible, in accordance with the requirements prescribed by the Board from time to time and set out in the Professional Indemnity Insurance schedule which is available from PIA on request”

and
- FSA Rule 13.1.3 IPRU(INV) which requires that (unless an exception which is not relevant to RJFS applies):

“a firm must effect and maintain at all times adequate professional indemnity insurance cover for all business activities which it carries on, or for which it is responsible.”

RJFS has also declined to submit an application of its own volition for its Part IV permission to be varied by the removal of all regulated activities.

Conclusions

The facts and matters described above lead the FSA, having regard to its regulatory objectives which include the protection of consumers, to the following conclusions;

- RJFS, by failing to effect compliant PII cover, is failing to make adequate provision in respect of its liabilities, including contingent and future liabilities, and therefore fails to satisfy Threshold Condition 4: Adequate resources. That failure is material in relation to its permitted activities;
- having been for nearly 12 months in breach of PIA Rule 1.3.8, RJFS has for more than 8 months been in breach of FSA Rule 13.1.3 IPRU(INV), a requirement imposed upon it under the Act, and has failed to remedy that breach notwithstanding the FSA's reasonable requests to do so. That failure is material and its consequences may be serious;
- the risk of loss or other adverse effect on consumers constituted by RJFS's failings is such that the urgent exercise of the FSA's own-initiative power to vary RJFS' Part IV permission is an appropriate response to the FSA's serious concerns.

4. DECISION MAKER

The decision which gave rise to the obligation to give this Supervisory Notice was made by the Regulatory Decisions Committee.

5. IMPORTANT

This Supervisory Notice is given to you in accordance with section 53(4) of the Act. The following statutory rights are important.

The Tribunal

You may refer this matter to the Financial Services and Markets Tribunal ("the Tribunal"). Under section 133 of the Act, you have 28 days from the date you were sent this Supervisory Notice to refer the matter to the Tribunal or such other period as specified in the Tribunal Rules or as the Tribunal may allow. A reference to the Tribunal is made by way of a written notice signed by you and filed with a copy of this notice. The Tribunal's address is: 15-19 Bedford Avenue, London WC1B 3AS (telephone 020 7631 4242). The detailed procedures for making a reference to the Tribunal are contained in section 133 of the Act and the Tribunal Rules.

Representations

You have the right to make written and oral representations to the FSA (whether or not you refer this matter to the Tribunal). If you wish to make written representations you must do so within 28 days of receiving this Supervisory Notice or such longer period as may be permitted by the FSA. Written representations should be made to the Regulatory Decisions Committee and sent to Jackie Noonan, Regulatory Decisions Committee Secretariat, at the above address. If you wish to make oral representations, you should inform Mrs Noonan not less than 5 business days before the expiry of the 28 day period.

Confidentiality and publicity

You should note that this Supervisory Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining advice on its contents). You should also note that Section 391 of the Act requires the FSA when the Supervisory Notice takes effect to publish such information about the matter as it considers appropriate.

FSA contacts

If you have any questions regarding the procedures of the Regulatory Decisions Committee, you should contact either Jackie Noonan (direct line: 020 7676 3196/fax: 020 7676 3197), or Brian Whitbread, Head of Regulatory Decisions Committee Secretariat (direct line: 020 7676 3202/fax: 020 7676 3197).

For more information concerning this matter generally, you should contact Chris Walmsley at the FSA (direct line: 020 7676 5894 /fax: 020 7676 9718).

Christopher FitzGerald
Chairman, Regulatory Decisions Committee