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## **FIRST SUPERVISORY NOTICE**

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To:           **Teare Rose Independent Financial Advisers**  
Of:           **96 Walton Road**  
              **East Molesey**  
              **Surrey**  
              **KT8 0DL**

Dated:       **13 May 2004**

**TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) has taken 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 Teare Rose Independent Financial Advisers ("Teare Rose") pursuant to Part IV of the Act ("Teare Rose's Part IV permission") by removing all regulated activities with immediate effect. Accordingly, Teare Rose's Part IV permission no longer includes the following regulated activities:

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

## **2. REASONS FOR ACTION**

### **Summary**

The FSA has concluded, on the basis of the facts and matters described below, that Teare Rose 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, Teare Rose is not a fit and proper person because it has failed to conduct its business with integrity and in compliance with proper standards, and because it has failed deal with its regulator in an open and cooperative way.

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 immediate effect.

### **Relevant Statutory Provisions**

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

By section 45 of the Act, the FSA is authorised:

- to vary an authorised person's permission, where it appears to the FSA that such person is failing to satisfy the threshold conditions; and
- to vary such permission by removing a regulated activity from those for which the permission is given.

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 cancel 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 are set out below.

#### **ENF 3.5 - The FSA’s policy for exercising its own-initiative power to vary Part IV permission**

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.

Paragraph 3.5.8 provides that the circumstances in which the FSA will consider exercising its power include where the FSA has serious concerns that the authorised person has breached requirements imposed on it by or under the Act (including Principles and rules) and the breaches are material in number or individual seriousness.

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, and the steps the authorised person has taken or is taking to address the issue.

### **Relevant threshold condition**

#### **COND 2.5 - Threshold Condition 5: Suitability (paragraph 5, Schedule 6 to the Act)**

Paragraph 2.5.1 says:

“The person concerned must satisfy the FSA that he is a fit and proper person having regard to all the circumstances, including ... the need to ensure that his affairs are conducted soundly and prudently.”

Paragraph 2.5.4(2)(a) requires the FSA, when forming its opinion as to whether an authorised person is conducting its affairs soundly and prudently, to have regard to relevant matters, including whether it conducts its business with integrity and in compliance with proper standards.

Paragraph 2.5.4(3) requires the FSA only to take into account relevant matters which are significant in the context of the suitability of the firm.

Paragraph 2.5.6(1) permits the FSA, when forming its opinion as to whether an authorised person is conducting its business in compliance with proper standards, to have regard to relevant matters, including whether the authorised person is ready and willing to comply with the requirements and standards under the regulatory system.

### **Relevant Principles**

Principle 1 of the FSA's Principles for Businesses requires that a firm must conduct its business with integrity.

Principle 11 requires a firm to deal with its regulators in an open and cooperative way, and disclose to the FSA appropriately anything relating to the firm of which the FSA would reasonably expect notice.

### **Facts and matters relied on**

Teare Rose is a partnership which acts as an Independent Financial Adviser. The Firm has five approved persons including two partners, Mr Jonathan Elms and Mr David Morton, neither of whom are approved persons in relation to any other authorised firm.

On 24 September 2003 during a visit by the FSA, Teare Rose failed to produce documentary evidence to substantiate that the Firm had conducted a critical part of the Pensions Review as reported to the FSA in quarterly returns. Subsequently, following repeated requests by the FSA, the Firm has failed to produce documentary evidence to substantiate any of the material elements of its Pensions Review, as reported in its quarterly returns to the FSA.

## **Conclusions**

The facts and matters described above lead the FSA, having regard to its regulatory objectives, to the following conclusions:

- Teare Rose, by submitting Pensions Review quarterly returns to the FSA stating that it had completed its Pensions Review and being unable to produce documentary evidence that the review reported in its returns had actually been carried out, has deliberately misled the FSA, and has failed to conduct its business with integrity and in compliance with proper standards. These failures are material in relation to the regulated activities for which Teare Rose has permission and Teare Rose therefore fails to satisfy Threshold Condition 5: Suitability, Principle 1 (Integrity) and Principle 11 (Relations with Regulators).
- The risk of loss or other adverse effect on consumers arising from Teare Rose's actions, which are material breaches of requirements imposed upon Teare Rose by the FSA's Principles, causes the FSA to have very serious concerns about Teare Rose such that the exercise of the FSA's own-initiative power to vary Teare Rose's Part IV permission with immediate effect is an appropriate response to those concerns.

## **DECISION MAKER**

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

### **3. IMPORTANT**

This Supervisory Notice is given to you in accordance under 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 7612 9700). The detailed procedures for making a reference to the Tribunal are contained in section 133 of the Act and the Tribunal Rules.

You should note that the Tribunal Rules provide that at the same time as filing a reference notice with the Tribunal, you must send a copy of the notice to the FSA. Any copy notice should be sent to Matthew Fann at the FSA, 9<sup>th</sup> Floor, 25 The North Colonnade, Canary Wharf, London E14 5HS.

### **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 Jane Horncastle, Regulatory Decisions Committee Secretariat. The Regulatory Decisions Committee Secretariat's address is: 25 The North Colonnade, Canary Wharf, London E14 5HS. If you wish to make oral representations, you should inform Miss Horncastle 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 291 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 Jane Horncastle (direct line: 020 7066 3200/fax: 020 7066 3201) or Brian Whitbread, Head of Regulatory Decisions Committee Secretariat (direct line: 020 7066 3202/fax: 020 7066 3203).

For more information concerning this matter generally, you should contact Matthew Fann at the FSA (direct line: 020 7066 5328/fax: 020 7066 9720).

His Honour Colin Kolbert  
Deputy Chairman, Regulatory Decisions Committee