
FINAL NOTICE

To: GD Tancred Financial Services Limited ("GDT")

**Of: 104 Church Street
Market Deeping
Peterborough
PE6 8AL**

Date: 17 October 2006

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

1. DISCIPLINARY MEASURES

1.1 The FSA gave GDT a Decision Notice on **3 October 2006** which notified the firm that pursuant to section 205 of the Financial Services and Markets Act 2000 ("the Act"), and on the basis that GDT has agreed to vary its Part IV permission and to undertake certain remedial action (as further detailed at paragraphs 4.5 and 4.6 below), the FSA has decided to impose a public censure on GDT in respect of breaches of the following FSA Principles for Businesses (and related FSA Rules) between 1 January 2003 and 15 March 2006 ("the relevant period"):

- (1) FSA Principle 7 (a firm must pay due regard to the information needs of its customers, and communicate information to them in a way which is clear, fair and not misleading);**

- (2) **FSA Principle 6 (a firm must pay due regard to the interests of its customers and treat them fairly); and**
- (3) **FSA Principle 3 (a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems).**

1.2 GDT confirmed on **28 September 2006** that it will not be referring the matter to the Financial Services and Markets Tribunal.

1.3 GDT has also breached the FSA Rules summarised below:

- (1) FSA Rule 2.1.3R in the part of the FSA Handbook ("the Handbook") entitled Conduct of Business ("COB") – this sets out that a firm must take reasonable steps to communicate with its customers in a way which is clear, fair and not misleading;
- (2) COB 5.2.5R and 5.2.9R - these rules set out that a firm must take reasonable steps to ensure that it is in possession of sufficient personal and financial information about a customer relevant to the services that the firm has agreed to provide and that a firm must make and retain a record of such information;
- (3) COB 5.3.16R - this sets out that a suitability letter must explain why the firm has concluded the transaction is suitable and contain a summary of the main consequences and any possible disadvantages of the transaction. Relevant to this Rule is the Guidance set out in COB 5.3.29G(E) which outlines the information gathering requirements and disclosures appropriate to a suitability letter in relation to income withdrawal products;
- (4) COB 5.4.3R - this sets out that a firm must not advise a customer without ensuring the customer understands the nature of the risks involved; and
- (5) FSA Rule 3.2.6R in the part of the Handbook entitled Senior Management Arrangements, Systems and Controls ("SYSC") – this sets out that a firm must take reasonable care to establish and maintain effective systems and controls

for compliance with applicable requirements and standards under the regulatory system.

2. REASONS FOR THE ACTION

2.1 The FSA having agreed the facts and matters relied on with the Firm, has decided to impose a public censure of GDT in respect of breaches of **FSA Principles 7, 6 and 3** that occurred in the relevant period.

2.2 GDT's failings in the relevant period that are the subject of this Final Notice were in relation to customers who were sold pension income withdrawal ("income withdrawal") products involving funds of under £100,000 after deduction of tax free cash (hereinafter referred to as "small pot"). In summary, GDT gave its customers inadequate explanation of and/or failed to adequately document all of the risks involved in their income withdrawal product and/or the underlying investments for their income withdrawal product. More specifically GDT's failings were as follows:

(1) A number of the suitability letters produced by GDT did not properly (i) explain why the firm had concluded that the relevant transaction was suitable for the customer in question, having regard to his personal and financial circumstances and/or (ii) contain a summary of the main consequences and possible disadvantages of the transaction. In addition to failing to properly summarise risk factors specific to income withdrawal, the majority of GDT suitability letters failed to draw the customer's attention to the risks associated with investment in a single asset class. The majority of GDT's small pot income withdrawal customers invested their funds solely in property-backed assets. As a result GDT did not communicate in way which is clear fair and not misleading (in breach of **Principle 7**) and did not treat its customers fairly (in breach of **Principle 6**);

(2) On the basis of information recorded on customer files it appears GDT often failed to obtain sufficient personal and financial information about customers relevant to the provision of advice to enter into an income withdrawal contract. It therefore appears that GDT failed to take reasonable care to

organise and control its affairs responsibly and effectively (in breach of **Principle 3**); and

(3) GDT also failed to ensure that customer reviews were sufficiently frequent and adequately comprehensive in nature to mitigate the risks to customers identified above. It therefore appears that GDT failed to implement adequate risk management systems (**in breach of Principle 3**).

2.3 In the specific circumstances pertaining to GDT, the FSA considers that public censure of the firm together with the agreed remedial action (i.e. a variation of GDT's permission and GDT to write to all of its income withdrawal customers as set out at paragraphs 4.5 and 4.6 below) offers appropriate protection for consumers and improvement in public awareness of the risks involved in income withdrawal.

3. FACTS AND MATTERS RELIED UPON

Background to investigation

- 3.1 GDT is a small financial adviser firm, authorised by the FSA since 1 December 2001.
- 3.2 On 31 January 2005, Retail Intelligence and Regulatory Themes Department ("RIRT"), part of the FSA, as part of a focussed piece of work considering small pot income withdrawal cases, visited and conducted a review of GDT's files.
- 3.3 The results of the FSA's review were made known to GDT by a report dated 19 October 2005 inviting comment and proposals for, among other matters, corrective action to be taken in respect of issues identified.
- 3.4 GDT responded by way of a report dated 23 November 2005; RIRT was dissatisfied with the response received and referred the case to FSA's Enforcement Division on 15 March 2006.
- 3.5 During the relevant period GDT sold 38 income withdrawal products. Files relating to the sales of income withdrawal products for sixteen GDT customers were provided to Enforcement for review.
- 3.6 A number of failures to record information, or to provide adequate and suitable information to customers, were identified.

Requirement to know customers and to record such information

- 3.7 Of the files reviewed by the FSA, 75% failed to record sufficient information for GDT to be able to justify the reason why income withdrawal was considered the most suitable product to meet each of the individual customers needs.
- 3.8 GDT has acknowledged that although it did have access to, and generally employed, a standard fact finding form, there was no set procedure for recording customer information and needs, and that individual fact finds were inadequate and not compliant with FSA requirements.

Communications with customers

- 3.9 In the files reviewed all of the suitability letters failed adequately to explain why GDT had concluded that the transaction was suitable for the customer, having regard to his personal and financial circumstances and also failed to contain an adequate summary of the main consequences and possible disadvantages of the transaction. More specifically the suitability letters failed, to differing extents, to explain:
- (1) the customer's attitude to risk; and
 - (2) the risk factors involved in entering into a pension fund withdrawal or purchase of a short-term annuity, which include:
 - (i) the capital value of the fund may be eroded, especially if investment returns are poor and a high level of income is taken; this could result in a lower income in the future;
 - (ii) the investment returns may be less than those shown in the illustrations;
 - (iii) annuity or scheme pension rates may be at a worse level in the future;

- (iv) chosen levels of income may not be sustainable; and
- (v) the customer would be required to review the income drawdown regularly and, at the time of the sales, would have been required to purchase an annuity on reaching age 75.

3.10 Of the customers whose files were reviewed by the FSA and who had invested their funds solely in property-backed assets, fewer than 20% of the suitability letters warned of the risks inherent in investment in a single asset class.

3.11 As a result of the above, and the fact that the FSA has identified that GDT was using technical terms in written correspondence with customers without incorporating an appropriate explanation, GDT has failed to communicate with its customers in a manner that is clear, fair and not misleading.

Customer reviews

3.12 Analysis of the customer files also identified a number of cases where customer reviews were not adequately recorded, or where there was no evidence such reviews had taken place. The FSA considers it important that appropriate reviews take place to ensure customers are fully informed as to the ongoing suitability of the income withdrawal product and, in particular, to ensure the decision to defer purchasing an annuity can be periodically reconsidered.

4. ANALYSIS OF THE SANCTION

4.1 The FSA's policy in deciding whether to take disciplinary action in general is set out in Chapter 11 of the Enforcement Manual ("ENF") and its policy in deciding to impose public censure in particular is set out in Chapter 12 of ENF. The principal purpose of disciplinary action is to promote high standards of regulatory conduct by deterring firms who have breached regulatory requirements from committing further contraventions, helping to deter other firms from committing contraventions and demonstrating generally to firms the benefits of compliant behaviour.

4.2 As stated at ENF 11.4.1G, in determining whether to take disciplinary action the criteria listed in ENF are not exhaustive and all relevant circumstances of the case will be taken into consideration.

- 4.3 As stated at paragraph ENF 12.3.3, in determining whether it is appropriate to issue a public censure rather than impose a financial penalty, the starting point is that the FSA considers all the relevant circumstances of the case. The FSA considers the following factors to be particularly relevant in this case.

Mitigating and aggravating factors

- 4.4 In fixing the level and type of disciplinary action, the FSA has recognised the potential and actual impact of GDT's failings and the mitigating and aggravating factors detailed below:

Mitigating

- (1) none of the customers reviewed by the FSA appeared to have lost any investment money relative to other products which could have been offered at the relevant time until the current date;
- (2) there is no evidence that the failings identified have led to increased sales by GDT or that GDT has accrued additional profits/avoided a loss as a result of its failings;
- (3) GDT has acknowledged the breaches and co-operated with the FSA, including taking the remedial action detailed at paragraphs 4.5 and 4.6 below.

Aggravating

- (4) Following the FSA's report of 19 October 2005, GDT's understanding of the FSA's concerns remained poor as reflected in the customer file reviews carried out after that date; and
- (5) GDT did not itself identify the breaches (although its co-operation once aware of FSA concerns has been noted above).

Remedial action

- 4.5 GDT has agreed to write, in a form of letter signed off by an external compliance consultant, to all existing income withdrawal customers to inform them:

- (1) of the risks associated with income withdrawal as a product (including, in particular, an explanation of the important distinction between income withdrawal and an annuity);
- (2) of the risks of investing in a single asset class; and
- (3) that if on reading GDT's letter a customer wished to change the asset class(es) in which he has invested or purchase an annuity, GDT would resolve the matter to the customer's satisfaction at no cost to the customer.

4.6 GDT has agreed to vary its Part IV permission so that future sales of all pension income withdrawal products by GDT will require a suitably qualified external compliance consultant to sign off on the sale.

Whether GDT has made a profit/avoided a loss as a result of the breach

4.7 Whilst GDT would potentially have earned higher commission from its sale of income withdrawal products compared to the sale of similar value annuities, as stated above there is no evidence that the failings identified have led to increased sales by GDT or that GDT has accrued additional profits/avoided a loss as a result of its failings.

The seriousness of the misconduct or contravention

4.8 The breaches identified in this case are serious due to the potential risk that, following the completion of the GDT sales process, customers do not fully understand the risks attached to income withdrawal products or the underlying investments; the apparent lack of understanding of the failures identified; and the firm's failure to put right, within a reasonable timescale, the breaches originally identified by the FSA.

The extent to which the contravention or misconduct was deliberate or reckless

4.9 The FSA has not concluded that the contraventions were deliberate or reckless.

Disciplinary record and compliance history

4.10 GDT has not been subject to any previous enforcement action.

Previous action by the FSA in relation to similar behaviour

4.11 In determining that public censure is appropriate, the FSA has taken into account penalties on other authorised persons for similar behaviour. The FSA considers that whilst GDT's failures merit a financial penalty, its objectives are better met by the proposed outcome.

5. DECISION MAKER

5.1 The decision which gave rise to the obligation to give this Final Notice was made by as the Executive Settlement Decision Makers on behalf of the FSA.

6. IMPORTANT

6.1 This Final Notice is given to GDT in accordance with section 390 of the Act.

6.2 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.

FSA contacts

6.3 For more information concerning this matter generally, you should contact John Tutt at the FSA (direct line: 020 7066 1240 /fax: 020 7066 1241).

Jonathan Phelan
Head of Department
FSA Enforcement Division