
FINAL NOTICE

To: RSM Tenon Financial Services Limited

Of: Clifton House, Bunnian Place, Basingstoke, Hampshire, RG21 7JE

Dated: 24 February 2010

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 RSM Tenon Financial Services Limited, who during the relevant periods referred to below, was Tenon Financial Services Limited (hereafter referred to as “Tenon”/“the firm”) a Decision Notice on 3 February 2010 which notified the firm 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 £700,000 in respect of breaches of Principles 3 (Management and Control) and 9 (Customers: relationships of trust) of the FSA Principles for Businesses (“Principles”) and Rules 9.2.1R(2) and 9.2.2R in the Conduct of Business Sourcebook (“COBS”) relating to the firm’s structured product business during the period between 1 November 2007 and 31 August 2008 (“the Structured Product Relevant Period”) and breaches of Principle 3 (Management and Control) relating to the firm’s pension switching business during

the period between 6 April 2006 and 31 December 2008 (“the Pension Switching Relevant Period”).

- 1.2. Tenon confirmed on 27 January 2010 that it will not be referring the matter to the Financial Services and Markets Tribunal. The firm agreed to settle this matter at an early stage of the FSA’s investigation. It therefore received a 30% (Stage 1) reduction in penalty, pursuant to the FSA’s executive settlement procedures. Were it not for this discount, the FSA would have sought to impose a financial penalty of £1,000,000 on Tenon.
- 1.3. Tenon will conduct a past business review of all of its sales of structured products backed by Lehman Brothers (“Lehman”), to assess the suitability of recommendations made to customers. Appropriate redress, including interest on the amount of capital invested, will then be provided to customers who received unsuitable advice, and to customers who received advice that the Firm cannot demonstrate was suitable. This will include a customer contact exercise. Any such customers who have suffered a loss that has already crystallised, will be provided with the option of transferring the product to Tenon and receiving compensation for their loss. The population of Lehman-backed Structured Products which may be subject to redress is estimated to be £1.8 million.
- 1.4. Tenon will conduct a past business review of sales of all structured products, excluding Lehman backed structured products, between the period from 1 November 2007 and 1 December 2009 to assess the suitability of recommendations made to customers. This will include a customer contact exercise. Appropriate redress, including interest on the amount of capital invested, will then be provided to customers who received unsuitable advice, and to customers who received advice that the Firm cannot demonstrate was suitable.
- 1.5. Tenon will conduct a past business review of its pension switching business between 6 April 2006 and 1 December 2009, to assess the suitability of recommendations made to customers. If appropriate, the firm will then implement a customer redress programme for pension switching business conducted during that period.

- 1.6. The past business reviews and redress processes to be conducted in relation to Tenon's structured product and pension switching business will be overseen by the FSA and an independent third party will review the work undertaken by the firm.
- 1.7. Tenon will instruct a skilled person to undertake a review of its current sales and compliance processes relating to the sale of all investment products, to assess their appropriateness and the suitability of recommendations made to customers.

2. REASONS FOR THE ACTION

- 2.1. The breaches of Principle 3, which are described in more detail in section 4 below, relate to failings by Tenon:
 - (1) during the Structured Product Relevant Period in relation to its advice and sales processes and compliance systems and controls relating to structured products; and
 - (2) during the Pension Switching Relevant Period in relation to its advice and sales processes and compliance systems and controls relating to pension switching business.
- 2.2. The breaches of Principle 9, which are described in more detail in section 4 below, relate to the firm's failure to take reasonable care to ensure the suitability of its advice for customers in relation to structured products during the Structured Product Relevant Period.
- 2.3. As a result of the breaches of Principles 3 and 9, Tenon failed to treat some of its customers fairly.

Management and Control – Structured Products and Pension Switching

- 2.4. Tenon breached Principle 3 during the Structured Product Relevant Period and Pension Switching Relevant Period by failing to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems. In particular, the firm failed to prevent or minimise the risk of unsuitable sales in its structured product and pension switching business in that it:

- (1) failed to implement and maintain appropriate sales processes, including information gathering and retention processes, so it could not know if it provided some customers with suitable advice; and
- (2) failed to operate effective compliance monitoring to identify and/or remedy failings in the sales process, such as unsuitable advice provided to customers and the absence of information sufficient to demonstrate the suitability of advice.

2.5. Further, in relation to its structured product sales, Tenon:

- (1) failed to fully assess the product and portfolio concentration risks of structured products to ensure that the firm's advisers adequately considered those risks or communicated them to customers when providing advice to customers; and
- (2) failed to implement and maintain appropriate compliance monitoring to identify and remedy the use of non-compliant direct offer financial promotions issued in relation to one structured product.

Customers: Relationships of Trust – Structured Products

2.6. Tenon breached Principle 9 during the Structured Product Relevant Period in that it failed to take reasonable care to ensure the suitability of its advice for customers in relation to structured products. In particular, the outcome of reviews by the FSA, Tenon and an independent third party engaged by Tenon of a sample of Tenon's customer files identified that in three cases (all relating to a single adviser) the firm had provided unsuitable advice to customers in relation to Lehman-backed structured capital-at-risk products in that:

- (1) the recommendation made conflicted with, or did not adequately take into account, the customer's investment objectives and/or financial circumstances;
- (2) the recommended product did not match the customer's attitude to investment risk; and/or

- (3) the recommendation resulted in an excessive concentration of the customers' overall savings and investment portfolio in the one recommended structured product and/or structured products generally.
- 2.7. These customer file reviews also identified that in some cases Tenon had failed to demonstrate the suitability of its advice in that there was insufficient personal and/or financial information recorded on the customer file to demonstrate that the recommendation was suitable taking into account the customer's financial circumstances and investment objectives. There is a risk that these customers were provided with unsuitable advice.
- 2.8. Tenon also breached COBS 9.2.1R(2), 9.2.2R in relation to the facts described at paragraphs 2.5 and 2.6 above.
- 2.9. Accordingly, these findings merit the imposition of a substantial financial penalty on the firm. In deciding the appropriate disciplinary sanction, the FSA recognises the following factors which mitigate the seriousness of the findings:
 - (1) Tenon's senior management have worked in an open and co-operative way with the FSA during the investigation, and agreed the facts quickly, ensuring early resolution of the matter and a timely redress programme for customers;
 - (2) Tenon engaged external advisers to assist in resolving issues identified by the FSA at the earliest possible opportunity;
 - (3) Tenon was proactive in suggesting a customer contact and redress programme in relation to the sale of structured products. In particular, Tenon elected to review all Lehman-backed structured products sales at an early stage; and
 - (4) Tenon has substantially revised its compliance checking processes and revised its sales processes since the Structured Product Relevant Period and had commenced this work prior to the FSA's visits to the firm.

3. RELEVANT STATUTORY PROVISIONS AND REGULATORY REQUIREMENTS

- 3.1. The FSA's statutory objectives are set out in section 2(2) of the Act. The relevant objectives for the purpose of this case are maintaining market confidence and the protection of consumers.

Section 206 of the Act provides:

“(1) 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.”

- 3.2. Tenon is an authorised person for the purposes of section 206 of the Act. A requirement imposed on a firm includes the Principles and Rules made under section 138 of the Act, which provides that the FSA may make such rules applying to authorised persons as appear to be necessary or expedient for the purposes of protecting the interests of consumers.

- 3.3. The FSA's Principles constitute requirements imposed on authorised persons under the Act; breaching a Principle and/or a Rule makes a firm liable to disciplinary sanctions.

- 3.4. Principle 3 provides that:

“A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.”

- 3.5. Principle 9 provides that:

“A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment.”

- 3.6. The procedures to be followed in relation to the imposition of a financial penalty are set out in section 207 and 208 of FSMA.

- 3.7. COBS 9.2.1 R provides:

(1) A firm must take reasonable steps to ensure that a personal recommendation, or a decision to trade, is suitable for its client.

(2) When making the personal recommendation or managing his investments, the firm must obtain the necessary information regarding the client's:

(a) knowledge and experience in the investment field relevant to the specific type of designated investment or service;

(b) financial situation; and

(c) investment objectives;

so as to enable the firm to make the recommendation, or take the decision, which is suitable for him."

3.8. COBS 9.2.2 R provides:

"(1) A firm must obtain from the client such information as is necessary for the firm to understand the essential facts about him and have a reasonable basis for believing, giving due consideration to the nature and extent of the service provided, that the specific transaction to be recommended, or entered into in the course of managing:

(a) meets his investment objectives;

(b) is such that he is able financially to bear any related investment risks consistent with his investment objectives; and

(c) is such that he has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio.

(2) The information regarding the investment objectives of a client must include, where relevant, information on the length of time for which he wishes to hold the investment, his preferences regarding risk taking, his risk profile, and the purposes of the investment.

(3) The information regarding the financial situation of a client must include, where relevant, information on the source and extent of his regular income, his assets, including liquid assets, investments and real property, and his regular financial commitments."

4. FACTS AND MATTERS RELIED ON

Background

4.1. Tenon is authorised by the FSA to carry on regulated activities in relation to, amongst other things:

- (1) advising on investments (except pension transfers and pension opt outs);
 - (2) arranging (bringing about) deals in investments;
 - (3) managing investments;
 - (4) advising on regulated mortgage contracts; and
 - (5) advising on pension transfers and pension opt outs.
- 4.2. Tenon is a high net worth financial advice firm which, during the Relevant Periods, had around 68 advisers in 11 offices across the UK. It is a member of RSM Tenon Group Plc, and operates alongside the Group's accountancy and taxation practices to provide corporate and retail clients with, amongst other things, financial planning, investment, pension and protection advice.
- 4.3. During the Relevant Periods, the firm's different offices used different processes and procedures for collating and recording customer information such as investment objectives, financial situation and attitude to risk. Further, customer information was not always collated on one customer file, but instead it was often spread over a number of different files relating to different transactions conducted by the firm on behalf of the same individual.
- 4.4. During the Structured Product Relevant Period, net commission generated from the firm's sales of 425 structured products amounted to approximately £268,345. 88 of these structured product sales related to structured products backed by Lehman.
- 4.5. Between April 2006 and December 2008, Tenon conducted 1,522 pension switches for 829 customers generating gross income of £3,240,032.

Structured Products

- 4.6. Tenon was one of the firms that took part in the FSA's thematic work to review the quality of advice provided in connection with Lehman-backed structured products. A visit to the firm took place in September 2009. The FSA reviewed recommendations made to customers during the period November 2007 to August 2008, relating to Lehman-backed structured products. The risks relating to these products included:

- (1) investment risk – investment returns and return of capital were dependent on the performance of market indices;
 - (2) credit risk – the return of capital was subject to counterparty risk; and
 - (3) liquidity risk – restrictions on the ability to realise the investment during the investment term to meet a need for capital or according to market sentiment.
- 4.7. Further, the nature of the products, backed by one counterparty, highlighted the need for appropriate diversification of customer portfolios to mitigate concentration risk, i.e. the risk involved in the customer holding a significant percentage of their investments in one structured product, or structured investment products as a product type.
- 4.8. The FSA identified that there were inadequate risk management systems at Tenon, resulting in the firm failing to prevent or minimise the risk of unsuitable sales in its structured product business, in that:
- (1) Tenon failed to fully assess product and portfolio concentration risk in relation to structured products, and to ensure that the firm's advisers adequately considered those risks or communicated them to customers when providing advice to customers;
 - (2) Tenon's compliance monitoring programme failed to identify and remedy issues relating to the provision of unsuitable advice and their advisers failed to obtain and record sufficient personal and financial information to demonstrate the suitability of the recommendation made; and
 - (3) Tenon failed to implement and maintain appropriate compliance monitoring to identify and remedy the use of non-compliant direct offer financial promotions issued in relation to one structured product. This resulted in customers being sent letters relating to one structured product that claimed to be direct offer financial promotions, but as they contained recommendations, were actually advisory direct offer financial promotions sent out without the firm conducting a suitability assessment.

4.9. The FSA's visit included a review of a sample of 22 transactions related to Lehman-backed structured products. These 22 transactions were subsequently reviewed by Tenon and an independent party engaged by the firm. The outcome of the reviews by Tenon and the independent third party ("the Reviews") was that:

- (1) 3 transactions (14%) were considered unsuitable; and
- (2) in relation to 14 transactions (64%) the suitability of the advice provided was unclear as there was insufficient information maintained on the file to determine whether the advice provided to the customer by the firm was suitable or unsuitable.

4.10. Based on the outcome of the Reviews, unsuitable recommendations were made to three customers in that:

- (1) the recommendation made to customers conflicted with, or did not adequately take into account the customer's investment objectives and/or financial situation (14% of files);
- (2) the recommended product did not match the customer's attitude to investment risk (14% of files), where a structured capital at risk product was recommended to a customer seeking a guaranteed return of their capital; and
- (3) the recommendation resulted in an excessive concentration of the customers' overall savings and investment portfolio in the one recommended structured product, or in structured products generally (14% of files).

4.11. Based on the outcome of the Reviews, in some cases Tenon had failed to demonstrate the suitability of its advice in that:

- (1) there was insufficient personal and/or financial information recorded on the file to demonstrate that the recommendation was suitable for the customer taking into account their financial circumstances and investment objectives (59% of files). Information that the firm failed to record included the customer's annual income, investment timescale, existing savings, existing investment portfolio and liabilities; and

- (2) one customer was advised to transfer out of their existing product, without consideration being given to transferring to other funds within the existing product and there was no analysis of alternative investments that could have met the customers' needs (5% of files).

4.12. These customers were potentially provided with unsuitable advice.

Pension Switching

4.13. A recent FSA review of Tenon's pension switching business during the Pension Switching Relevant Period identified failings by the firm in relation to the adequacy of its sales and compliance processes in preventing or minimising the risk of unsuitable sales in its pensions switching business. As a result of these findings, and those in relation to structured product sales, the FSA considers that the firm has failed to take reasonable care to organise and control its affairs responsibly and effectively.

4.14. The FSA's findings also raise serious concerns about suitability of advice failings relating to the firm's pension switching business. Tenon will therefore undertake a past business review of pension switching business undertaken between 6 April 2006 and 1 December 2009 to assess the suitability of recommendations made to customers. If necessary, a customer redress programme relating to pension business conducted between 6 April 2006 and 1 December 2009 will then be undertaken.

Investment products

4.15. As the FSA has identified breaches in relation to both Tenon's structured product and pension switching business, and they include systems and controls failings, Tenon will instruct a skilled person to undertake a review of the firm's current sales and compliance processes and outcomes in relation to the sale of all investment products, with a view to taking appropriate remedial action if further failings are identified.

5. ANALYSIS OF BREACHES

5.1. For the reasons set out in paragraphs 4.8 and 4.13 above, the FSA considers that Tenon has failed to take reasonable care to organise and control, responsibly and effectively, the suitability of its advice, record keeping and compliance checking

procedures in relation to its investment product and pension switching business. Such a failure amounts to a breach of Principle 3.

- 5.2. The FSA considers that as a result of the failings set out in paragraphs 4.9 to 4.11 above, Tenon breached Principle 9 by failing to take reasonable care to ensure the suitability of its advice. The firm also breached COBS 9.2.1R(2), 9.2.2R in relation to the facts described at paragraphs 4.6 to 4.10 above. As a result, Tenon was not able to demonstrate that it had treated some of its customers fairly, in that recommendations made by the firm led, amongst other things, to retail customers buying structured products that did not meet their needs, did not match their risk profile and/or resulted in an excessive concentration of their savings and/or investment portfolio in one structured product or structured products generally. Some customers were thereby exposed to an unacceptable risk of loss.

6. ANALYSIS OF SANCTION

- 6.1. When exercising its powers the FSA seeks to act in a way which it considers most appropriate for the purpose of meeting its regulatory objectives as set out in section 2(2) of the Act. The FSA considers that imposing a financial penalty in respect of Tenon meets the regulatory objectives of market confidence and protection of consumers.
- 6.2. In deciding on the proposed action, the FSA has had regard to the guidance published in the FSA Handbook, in particular as set out in Chapter 6 of the Decision Procedure and Penalties Manual (“DEPP”), which forms part of the FSA Handbook of Rules and Guidance. This manual sets out a non-exhaustive list of criteria that may be of particular relevance in determining the appropriate level of financial penalty for an approved person.

Deterrence

- 6.3. The principal purpose of imposing a financial penalty is to promote high standards of regulatory conduct by deterring firms who have breached regulatory requirements from committing further breaches, helping to deter other firms from committing similar breaches, and demonstrating generally the benefit of compliant behaviour.

The nature, seriousness and impact of the breach in question

- 6.4. In determining the appropriate sanction, the FSA has had regard to the seriousness of the contraventions by the firm, including the nature of the requirements breached, the number and duration of the breaches and the number of customers who may have suffered financial loss.
- 6.5. The FSA considers Tenon's failings to be serious because:
- (1) they involve the controls of both structured investment products and pension switching;
 - (2) they persisted over a significant period of time and had potential impact on a large number of customers;
 - (3) the firm failed to demonstrate the suitability of its advice and in some cases made recommendations that were unsuitable for customers, thereby failing to treat its customers fairly; and
 - (4) the failings were identified by thematic reviews on both the firm's structured product sales and pension switching.

The extent to which the breach was deliberate or reckless

- 6.6. The FSA has not determined that Tenon deliberately or recklessly contravened regulatory requirements.

The size, financial resources and other circumstances of the person on whom the penalty is to be imposed

- 6.7. There is no evidence to suggest that Tenon is unable to pay the financial penalty imposed on it.

The amount of benefit gained or loss avoided as a result of the breaches

- 6.8. The FSA has not determined that Tenon deliberately set out to accrue additional profits or avoid a loss through the way in which it operated its systems and controls and processes.

Conduct following the breaches

- 6.9. Tenon has been given full credit for co-operating with the FSA by agreeing a substantial customer contact and redress programme to ensure timely redress for consumers.

Disciplinary record and compliance history

- 6.10. Tenon has not previously been the subject of disciplinary action by the FSA.

7. CONCLUSION

- 7.1. Taking into account the seriousness of the breaches and the risks they posed to the FSA's statutory objectives of market confidence and the protection of consumers, the FSA has imposed a financial penalty of £700,000 on the firm.

8. DECISION MAKERS

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

IMPORTANT

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

Manner of and time for Payment

- 8.3. The financial penalty must be paid in full by the firm to the FSA by no later than 10 March 2010, 14 days from the date of the Final Notice.

If the financial penalty is not paid

- 8.4. If all or any of the financial penalty is outstanding on 10 March 2010, the FSA may recover the outstanding amount as a debt owed by the firm and due to the FSA.

Publicity

- 8.5. 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.

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

FSA contacts

- 8.7. For more information concerning this matter generally, you should contact Suzanne Burt at the FSA (direct line: 020 7066 1062 /fax: 020 7066 1063).

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Georgina Philippou

FSA Enforcement Division