
FINAL NOTICE

To: **Trigon Pensions Limited**

Of: Trigon House
69 Oakfield Road
Clifton
Bristol, Somerset
BS8 2BB

9 February 2007

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 Trigon Pensions Limited ("Trigon/ the firm") a Decision Notice on 18 January 2007 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 £10,500 on the firm in respect of breaches of Principle 2 (Skill, care and diligence), Principle 3 (Management and Control), Principle 6 (Customers' interests) and Principle 7 (Communications with clients) of the FSA's Principles for Businesses ("FSA Principles") and related FSA Rules that occurred between January 2005 and June 2006 ("the relevant period").
- 1.2 Trigon confirmed on 17 January 2007 that it will not be referring the matter to the Financial Services and Markets Tribunal.

1.3 Accordingly, for the reasons set out below and having agreed with Trigon the facts and matters relied on, the FSA imposes a financial penalty on Trigon in the amount of £10,500.

2. REASONS FOR THE ACTION

2.1 The FSA is imposing a financial penalty on Trigon for breaches of the FSA Principles and Rules as referred to above. These breaches relate to Trigon's failure within the relevant period to establish and maintain effective systems and controls in relation to the conduct of investment business by its appointed representative, Trigon Financial Services ("TFS") and its failure to ensure that such investment business was conducted in accordance with FSA requirements. These failings are set out in more detail in paragraph 3.2.3 below.

2.2 In summary the failings were as follows:

- (a) insufficient personal and financial information about customers was recorded on file and it was not possible without this information to demonstrate that investment advice provided to customers was suitable. In this respect it was identified that procedures relating to the gathering of customer information had not been adequately implemented. As a result of these failings Trigon has failed to ensure that investment business was conducted with due skill, care and diligence (**in breach of Principle 2**) and failed to take reasonable care to organise and control its affairs responsibly and effectively (**in breach of Principle 3**);
- (b) investment advice provided to customers was not adequately monitored. In this respect the FSA has identified that Trigon failed to put in place a process to ensure that investment business conducted by TFS was effectively and sufficiently monitored. In addition the Training and Competence ("T&C") scheme provided for investment advisers was not adequately implemented and followed. This led to a failure to identify and meet the training needs of investment advisers. These failings resulted from Trigon's failure to take reasonable care to organise and control its affairs responsibly and effectively (**in breach of Principle 3**); and
- (c) suitability letters did not adequately (i) explain why the relevant transaction was suitable for the customer in question, having regard to his personal and financial circumstances and attitude to risk and/or (ii) contain a summary of the main consequences and possible disadvantages of the transaction including appropriate explanations of the risks associated with the transaction. As a result, there was a failure to communicate with customers in a way that was clear, fair and not misleading (**in breach of Principle 7**) and a failure to treat its customers fairly (**in breach of Principle 6**).

2.3 Trigon's failings are viewed as being serious because:

- 1. it was Trigon's responsibility to ensure that investment business conducted by its appointed representative was adequately monitored and complied with FSA requirements;

2. the failure to record sufficient personal and financial information meant that the suitability of investment advice could not be demonstrated and exposed customers to a potential risk of loss from the provision of unsuitable advice;
3. the failure to adequately implement the T&C scheme resulted in investment advisers' training needs not being adequately identified or met;
4. the failure to provide adequate suitability letters meant that customers did not receive an adequate explanation as to how the recommended product met their investment objectives and needs and were not being provided with an adequate explanation of any risks associated with the recommended product; and
5. the failure to make and retain appropriate records of customer information and to adequately implement its T&C scheme were failings that were originally identified and notified to the firm at a Supervision visit in January 2006 and were subsequently also identified in a follow up visit in June 2006.

2.4 The FSA has also taken into account the following steps taken by Trigon which have served to mitigate the seriousness of its failings:

- (1) Trigon has cooperated fully with the FSA's investigation;
- (2) in order to address the risk of unsuitable recommendations having been made to customers, Trigon is committed to appointing an external compliance consultant to undertake a past business review ("PBR") with a view to:
 - (a) identifying any unsuitable recommendations;
 - (b) assessing any loss to customers; and
 - (c) paying appropriate redress where unsuitable advice has led to loss; and
- (3) Trigon has increased its level of external compliance monitoring.

2.5 The firm has received full credit for settlement of the disciplinary case at an early stage; it has received a 30% discount for settling the case at stage one. Were it not for this discount the penalty would have been £15,000. Without the firm's commitment to appoint an industry expert to carry out a past business review the financial penalty would have been higher.

3. FACTS AND MATTERS RELIED ON

3.1. Background

3.1.1 Trigon is an independent pension consultancy firm which was formed in March 1988 and has been authorised by FSA since 1 December 2001. Its authorised business activities include advising and arranging deals on investments, pension transfers and pension opt outs and assisting in the administration and performance of contracts of insurance. The principle business activities of Trigon are corporate pension consultancy and pension scheme administration.

- 3.1.2 TFS is the sole appointed representative of Trigon and is a wholly owned subsidiary of Trigon. Trigon assumes responsibility for the regulated business transacted by TFS and is required by FSA Rules and Principles to maintain appropriate systems and controls to ensure that TFS transacts business in a manner that complies with the relevant regulatory standards.
- 3.1.3 TFS's principal business activity is that of providing independent financial advice and its business activities generated around 17.5% of Trigon's income in the year ending March 2006. Enforcement's investigation relates solely to investment business activities and the systems and controls implemented by Trigon to ensure such business complies with FSA requirements.

Thematic Work

- 3.1.4 On 9 and 10 January 2006 the FSA's Small Firms Division ("SFD") visited Trigon and TFS as part of the "Quality of Advice in Financial Advice Firms" thematic project. During the visit, SFD reviewed a sample of six customers' files relating to investment business. On conclusion of the visit, Trigon was debriefed on SFD's findings. On 2 June 2006, SFD sent Trigon a supervision visit report which highlighted that the firm was deficient in the following areas:
- (i) inadequate "know your customer" information was found on customer files. The areas of particular concern were the inadequate recording of customers' objectives, customers' attitude to risk and affordability analysis;
 - (ii) insufficient management control over advice provided to customers. In this respect it was identified that there was no active monitoring undertaken by management of the investment business. Furthermore a lack of information about the type of business written meant that senior management did not have the ability to assess whether customers were being properly advised and/or treated fairly;
 - (iii) suitability letters were inadequate. Some disclosure documents had been provided to customers after a recommendation was made; and
 - (iv) although there was a documented T&C scheme, it was not being followed, in that individual advisers' training needs were not being assessed and there were no training plans. "Key Performance Indicators" were not being collated and analysed for advisers and Fit and Proper checks were not carried out on staff.
- 3.1.5 In the supervision visit report, SFD asked Trigon to review all six of the cases reviewed by SFD on its initial visit to establish whether customers had been suitably advised on their investments. At the 16 June visit, SFD identified that the director and adviser who had provided the advice had been given responsibility for the review of the adequacy of their own advice. Following the 16 June visit, SFD requested that the case review was carried out by Trigon's compliance officer. Trigon's review concluded that there were no serious concerns with the advice given and no redress was payable to its customers.

3.1.6 SFD revisited Trigon and TFS on 16 June 2006, when it reviewed six customers' files relating to investment business transacted subsequent to SFD's January visit¹. This review identified similar know your client ("KYC") deficiencies as had been identified at the January visit². Similar T&C failings were also identified at both visits in that no adequate assessment of advisers' training needs was documented and there were a lack of training plans to meet such needs. Over the course of the two visits, SFD reviewed a total of eleven of the firm's thirty customers' files relating to investment advice given during the period from January 2005 to June 2006.

3.2 Enforcement Investigation

3.2.1 The investigation by FSA's Enforcement department ("Enforcement") focussed on the following main consumer risk issues:

- (1) establishing the adequacy of the information obtained from customers;
- (2) establishing the adequacy of the firm's systems and controls for ensuring compliance with regulatory requirements; and
- (3) assessing whether the information on file demonstrated that any recommendations made were unsuitable.

3.2.2 As part of its investigation, Enforcement reviewed:

- (1) all eleven of the customer files examined by SFD (i.e. thirty six percent of the overall number of relevant files). The eleven files contained a total of twenty five separate transactions;
- (2) Trigon and TFS's compliance manual; and
- (3) responses to a questionnaire sent to each customer who received advice in relation to investments over the preceding eighteen month period.

3.2.3 Enforcement's investigation identified that inadequacies in Trigon's systems and controls had led to the following failings:

- (1) a failure to demonstrate that sufficient personal and financial information had been recorded. In particular, the following failings were noted;
 - (a) customers' aims and objectives were not routinely recorded³;
 - (b) customers' attitude to risk was not routinely recorded⁴;

¹ One of the six customer files had been reviewed on the previous visit, however transactions that had been advised on since SFD's first visit were reviewed.

² All six of the files reviewed had inadequate KYC information recorded.

³ Details of customers' aims and objectives were recorded in two instances.

⁴ Details of customers' attitude to risk were recorded in one transaction.

- (c) there was no evidence to show affordability had been assessed for more than half of the transactions⁵; and
- (d) a low level of product research was demonstrated in a quarter of transactions⁶.

The insufficient recording of personal and financial information meant that it could not be demonstrated that customers were given suitable advice.

- (2) There was no evidence to show that Trigon had adequately monitored whether investment business had been conducted in a compliant manner.
- (3) Although directors and advisers attended regular training sessions, there was no evidence to show that their training and development needs had been adequately assessed and identified or that a training plan had been provided, which would enable directors and advisers to meet their training needs.
- (4) The majority of suitability letters were inadequate⁷.

3.2.4 Enforcement concluded that the above failings demonstrated a failure by Trigon to ensure that its compliance procedures were being adequately followed.

4 RELEVANT STATUTORY PROVISIONS

4.1. The FSA's statutory objectives are set out in Section 2(2) of the Financial Services and Markets Act (2000) ("the Act"). The relevant objectives for the purpose of this case are public awareness and the protection of consumers.

4.2 Section 138 of the Act provides that the FSA may make such rules applying to authorised persons as (inter alia) appear to it to be necessary or expedient for the purpose of protecting the interests of consumers.

4.3. Section 206 of the Act provides:

"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 an amount as it considers appropriate."

4.4 Section 39(3) of the Act provides:

"The principal of an Appointed Representative is responsible, to the same extent as if he had expressly permitted it, for anything done or omitted by the

⁵ There was no evidence to show affordability had been assessed for seventeen of the transactions.

⁶ A low level of product research was demonstrated in six of twenty two transactions.

⁷ Most of the suitability letters issued lacked clarity and were generic in nature. Of the 21 issued, only 6 contained risk warnings.

representative in carrying on the business for which he has accepted responsibility."

Principles for Businesses

- 4.5. Under the FSA's rule-making powers, the FSA has published in the FSA Handbook the "Principles for Businesses" which apply either in whole, or in part, to all authorised persons.
- 4.6. These Principles are a general statement of the fundamental obligations of firms under the regulatory system and reflect the FSA's regulatory objectives.
- 4.7. Breaching a Principle makes a firm liable to disciplinary sanctions.
- 4.8. The Rules and Principles, which are relevant to this matter, are set out in section 5 below.

5 RELEVANT REGULATORY RULES

5.1 Principles for Business

Principle 2 (Skill, care and diligence) provides that

A firm must conduct its business with due skill, care and diligence.

Principle 3 (Management and control) provides that:

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

Principle 6 (Customers' interests) provides that:

A firm must pay due regard to the interests of its customers and treat them fairly.

Principle 7 (Communications with clients) provides that:

A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

5.2 Senior Management Arrangements, Systems and Controls

SYSC 3.1.1R provides that a firm must take reasonable care to establish and maintain such systems and controls as are appropriate to its business.

SYSC Rule 3.2.6R provides 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.

5.3 Conduct of Business

FSA Rule 2.1.3R in the part of the FSA Handbook ("the Handbook") entitled Conduct of Business ("COB") requires a firm to take reasonable steps to communicate with its customers in a way which is clear, fair and not misleading.

COB 5.4.3R requires a firm to ensure that it takes reasonable steps to ensure that a private customer understands the nature of the risks inherent in certain transactions.

COB 5.2.5R and 5.2.9R requires a firm to 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 requires a firm to make and retain a record of such information.

COB 5.3.14R requires that the firm must, in the stipulated circumstances, provide the customer with a suitability letter.

COB 5.3.16R requires 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.

5.4 Training and Competence

T&C 2.3.1R provides that where a firm's employees engage in or oversee an activity with or for private customers, the firm must:

- (1) at intervals appropriate to the circumstances, determine the training needs of those employees and organise appropriate training to address these needs; and
- (2) ensure that training is timely, planned, appropriately structured and evaluated.

T&C 2.8.1R requires a firm to make appropriate records to demonstrate compliance with the T&C rules. Such records must be retained by the firm for at least three years, except for the records of pension transfer specialists, which must be retained indefinitely.

6. SANCTION

- 6.1. In deciding to take the action described above the FSA has had regard to guidance published in the FSA Handbook. The FSA's general approach to taking disciplinary action is set out in ENF 11, which is part of the FSA's Handbook of rules and guidance.
- 6.2. The FSA's policy on the imposition of financial penalties is set out in ENF 13. The principal purpose of financial penalties is to promote high standards of regulatory conduct by deterring firms and approved persons who have breached regulatory requirements from committing further contraventions, helping to deter other firms and approved persons from committing contraventions, and demonstrating generally to firms and approved persons the benefits of compliant behaviour (ENF 13.1.2G).
- 6.3. In determining whether a financial penalty is proportionate the FSA will take into account all the relevant circumstances of a case. ENF 13.3.3 sets out a non-

exhaustive list of factors that may be of relevance in determining the amount of a financial penalty, which include the following:

ENF 13.3.3(1): The seriousness of the misconduct or contravention.

- 6.4. The FSA has had regard to the seriousness of the contraventions, including the nature of the requirements breached, the number and duration of the breaches and the number of customers affected and/or placed at risk. For the reasons set out at paragraph 2.3 above, the FSA considers that the breaches in this case are of a serious nature.

ENF 13.3.3(2): The extent to which the misconduct was deliberate or reckless

- 6.5. The FSA has found no evidence to show that Trigon acted in a deliberate or reckless manner.

ENF 13.3.3(3): Size, financial resources and other circumstances of the firm

- 6.6. The FSA is satisfied that Trigon has the means to pay the level of financial penalty imposed on it. In determining the level of penalty, the FSA has taken into account the likely costs associated with the conduct of the proposed PBR.

ENF 13.3.3(4): The amount of profits accrued or loss avoided.

- 6.7. The FSA found no evidence that Trigon sought to profit or avoid loss as a result of the identified failings.

ENF 13.3.3(5): Conduct following the contravention.

- 6.8. The FSA has taken into account Trigon's cooperation with the FSA's investigation and its stated commitment to ensuring that it will comply with the FSA's requirements on an ongoing basis. As detailed at paragraph 2.4 FSA has also taken into account Trigon's agreement to conduct a PBR in relation to investment business conducted during the period 1 January 2005 to 15 September 2006. The PBR will report on the suitability of advice provided and set out appropriate remedial steps

ENF 13.3.3(6): Disciplinary record and compliance history.

- 6.9. Trigon has not been the subject of previous disciplinary action.

ENF 13.3.3(7): Previous action taken by the FSA.

- 6.10. The FSA has taken into account penalties imposed by the FSA on other authorised persons for similar misconduct.

7. DECISION MAKERS

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

8. IMPORTANT

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

Manner of and time for payment

The financial penalty must be paid in full by Trigon to the FSA by no later than 23 February 2007, 14 days from the date of the Final Notice.

If the financial penalty is not paid

If all or any of the financial penalty is outstanding on 24 February 2007, the FSA may recover the outstanding amount as a debt owed by Trigon and due to the FSA.

Third Party Rights

The FSA gave a copy of the Decision Notice to TFS. Accordingly, the FSA must also give a copy of this Final Notice to TFS.

Publicity

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.

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

FSA contacts

For more information concerning this matter generally, you should contact Boura Tomlinson of the Enforcement Division of the FSA (direct line: 020 7066 5528 /fax: 020 7066 5529).

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Jonathan Phelan
Head of Department
FSA Enforcement Division