
SECOND SUPERVISORY NOTICE

To: **AJH Financial Services Limited**

Reference Number: **226955**

Address: **18 Tawe Business Village
Phoenix Way
Enterprise Park
Swansea
SA7 9LA**

Date: **31 March 2022**

1 ACTION

- 1.1 For the reasons given in this SSN, the Authority had decided not to rescind the Asset Requirement at paragraph 1.2 below which was imposed on the Firm via an FSN dated 14 February 2022. On 14 March 2022, the Firm submitted written Representations. The Authority has considered the Representations and concluded that the Asset Requirement remains proportionate and appropriate. A summary of the Decision-Maker's review is set out at Annex B.
- 1.2 The terms of the Asset Requirement, which has been imposed on AJH's Part 4A permission pursuant to sections 55L(2)(a) and (c) of the Act, are as follows:
- a) The Firm must not, without the prior written consent of the FCA, in any way dispose of, withdraw, transfer, deal with or diminish the value of any of its own assets. whether in the United Kingdom or elsewhere).
 - b) The assets restriction does not apply to monetary payments or the disposal of assets made by Firm in the ordinary course of business. For the avoidance of doubt the following payments or disposals shall not be regarded as payments in the ordinary course of business:
 - i. Payments of unusual or significant (meaning in excess of £5000 whether as a single transaction or combination of transactions)

amounts to the Firm's controllers, shareholders, directors, officers, employees or any connected persons;

- ii. The making of any capital distribution;
- iii. The making of any gift or loan by the Firm;
- iv. Payments made as part of any financial restructuring or reorganisation of its business (whether share or asset based);
- v. Disposal of some or all of the Firm's client bank or client files to another individual or entity; and
- vi. Payments of pension contributions in excess of £10,000 per company year to any individual.

c) The assets restriction does not apply to:

- i. Transactions giving effect to instructions initiated by customers;
- ii. Payments of funds to the Firm's suppliers in the ordinary course of business and in satisfaction of the Firm's contractual obligations; and
- iii. Usual and proper, contractually agreed salary payments

d) The Requirement at (a) above is imposed with immediate effect and will stay in effect until the Authority is satisfied that it can be lifted.

1.3 The Requirement detailed above is an Asset Requirement for the purposes of section 55P of the Act.

2 REASONS FOR ACTION

Summary

2.1 The Authority has concluded, on the basis of the facts and matters described below, that it is appropriate to exercise its power under sections 55L(2)(a) and (c) of the Act to because the Firm is failing, or is likely to fail, to satisfy the Appropriate Resources Threshold Condition. The action is also desirable in order to advance the Authority's operational objective of securing an appropriate degree of protection for consumers.

2.2 The Authority has identified serious concerns relating to AJH:

- a) The Firm does not appear to have made sufficient provision for potential redress liabilities arising from 9 FOS complaints relating to DB Transfer Advice given to BPS members. It does not appear that the Firm has the resources to meet these contingent liabilities, nor further liabilities which might arise from, for example, any future Consumer Redress Scheme;
- b) In 2021, the Firm agreed with the Authority that an Asset Requirement was appropriate in this case to preserve funds in the business for the potential payment of redress, but declined to agree to the voluntary imposition of such a requirement other than with conditions which were unacceptable to the Authority because they failed to provide appropriate protection to consumers. Since the FSN was issued to the Firm, it has made an offer to

preserve certain sums within the business, but these are likely to be insufficient to meet its redress liabilities; and

- c) The Firm has dissipated assets which might otherwise have been applied to the payment of redress. The Firm accepts that, since May 2020, a figure of at least £1.46 million has been dissipated to persons connected with AJH. These funds were removed from the business despite the Firm being made aware, at various times, of the Authority's concerns about its DB Transfer Advice and indeed of complaints from clients about the advice they had received.

- 2.3 The Authority considers that the Asset Requirement should continue to have immediate effect because the matters set out in this SSN demonstrate that the Firm is not meeting, or is likely not to meet, the Threshold Conditions and, separately, that its immediate and continuing imposition is necessary to address the serious risks to consumers posed by the Firm's conduct and financial position.

3 DEFINITIONS

- 3.1 The definitions below are used in this First Supervisory Notice:

"the Act" means the Financial Services and Markets Act 2000;

"AJH"/the Firm" means AJH Financial Services Ltd;

"Appropriate Resources Threshold Condition" means the condition imposed by Paragraph 2D to Schedule 6 of the Act;

"Asset Requirement" means a requirement imposed under section 55L of the Act which, per section 55P(4)(a), prohibits or restricts the disposal of or dealing with AJH's assets;

"Authorisations" means the Authority's Authorisations division;

"the Authority" means the Financial Conduct Authority;

"BSPS" means British Steel Pensions Scheme;

"Consumer Redress Scheme" means a scheme imposed by rules made by the Authority under section 404 of the Act;

"DB Pension Scheme"/DB transfer advice"; means an occupational pension scheme which is not a defined contribution occupational pension scheme and references to "advice" relate to advice on whether to transfer out of a DB Pension Scheme;

"EG" means the Authority's Enforcement Guide;

"FOS" means the Financial Ombudsman Service;

"FSCS" means the Financial Services Compensation Scheme;

"FSN" means First Supervisory Notice;

"Handbook" means the Authority's online handbook of rules and guidance (as in force from time to time);

"Individual A" means an Individual who performs certain functions at AJH;

"Information Requirement" means an information requirement pursuant to section 165 of the Act;

"Part 4A permission" means permission to conduct regulated activities, granted by the Authority under Part 4A of the Act;

"PBR" means Past Business Review;

"SMF Function Holders" means individuals who are approved to hold Senior Management Functions at AJH;

"SSN" means Second Supervisory Notice;

"Supervision" means the Authority's Supervision Division;

"Tribunal" means the Upper Tribunal (Tax and Chancery Chamber);

"VREQ" means, in this case, an Asset Requirement entered into by a firm on a voluntary basis

4 FACTS AND MATTERS

Background

- 4.1 AJH was incorporated on 22 December 1999. It has two SMF Function Holders and has a Part 4A permission to conduct various regulated activities relating to pensions, investments and insurance. AJH is not permitted to hold client money.
- 4.2 Between 1 April 2015 and 30 September 2018, it appears that AJH provided DB Transfer Advice to approximately 80 individuals who were members of BSPS. In approximately 72 cases, the client transferred out of the DB pension scheme.
- 4.3 On 22 December 2021, the Authority announced that it intends to prepare a consultation on a Consumer Redress Scheme for BPS members who were advised in relation to their DB Pension Scheme. This announcement was accompanied by a 'Dear CEO' letter, sent to AJH amongst many other firms, setting out the Authority's expectation that firms should retain assets with a view to the possible payment of redress. In January 2022, AJH attested that it would undertake actions specified in the 'Dear CEO' letter that were relevant to the Firm.

Engagement with the Authority regarding DB Transfer Advice to BPS Members

- 4.4 The Authority has for some years been taking steps in relation to DB Transfer Advice provided to BPS members. For example, on 5 June 2020, the Authority published data on file reviews – conducted across the market, not only in relation to AJH – where the advice was to transfer out of the DB Pension Scheme. Shortly after, on 17 June 2020, Supervision provided to AJH formal feedback relating to a review Supervision had carried out of 7 files.
- 4.5 One of the BPS files amongst those reviewed was deemed by Supervision to

contain unsuitable advice to transfer out of the DB Pension Scheme. Another BPS case demonstrated a non-compliant "*insistent client*" process. Supervision's feedback letter therefore requested information regarding the Firm's resources to redress the instance of unsuitable advice and to conduct a further sample of BPS cases in order to identify unsuitable advice (there was a further request in relation to obtaining missing information in another case). The feedback letter also noted concerns about the high volume of DB Transfer Advice AJH had provided within a particular period and the high "*conversion rate*" for the DB Transfer Advice (the rate of clients who subsequently transferred out of the DB Pension Scheme). Supervision noted that these were indicators of potential harm and of failing to act in accordance with guidance.

- 4.6 AJH challenged the Authority's findings, raising a number of points which Supervision took time to review. Supervision responded on 24 December 2020, stating that the findings remained unchanged and proposing the appointment of a Skilled Person (pursuant to Section 166 of the Act) to carry out a review of AJH's BPS DB Transfer Advice. There was subsequently considerable further discussion and correspondence between Supervision, AJH and the latter's legal representatives regarding the appointment of a Skilled Person, leading to a proposal from AJH (made via its legal representatives on 1 July 2021) for the appointment of a particular compliance consultant to carry out a PBR.
- 4.7 By August 2021, information gathered by the Authority (Supervision and Authorisations – the latter had been collecting information relating to an application by an individual to be an SMF Function Holder at AJH, amongst other matters) led to a request that AJH voluntarily agree to an Asset Requirement to ensure sufficient funds were preserved within the business to pay redress.
- 4.8 AJH raised a number of questions about the proposed VREQ in August and September 2021, during which time Supervision indicated that it was prepared to accept the proposal for a compliance consultant to carry out a PBR. However, AJH indicated in October 2021 that it no longer believed it could afford the cost of the PBR it had proposed.
- 4.9 AJH proposed therefore not to carry out the PBR, with a view to maximising the funds available to meet redress. Supervision informed AJH that it would agree that the PBR be paused if an Asset Requirement could be imposed to preserve within the business funds available for redress. AJH then (in discussions during October and November 2021) raised a number of questions and proposed a number of limitations on the effect of the Asset Requirement. In particular:
 - a) The Firm proposed that the Asset Requirement have an upper limit of £280,000, though the Firm proposed that the sum AJH would actually hold be below that figure;
 - b) The Firm would not agree to a VREQ which restricted the use of profits outside the stated limit; and
 - c) The Firm argued that the Asset Requirement did not prevent Individual A, who has a family connection to the SMF Function Holders, being able to remove clients from the business pursuant to a prior agreement between that individual and the Firm.
- 4.10 The Authority was and remains of the view that the terms proposed do not provide sufficient protection for consumers and therefore was not able to agree that AJH enter into a VREQ on such a basis.

- 4.11 After the FSN was issued, AJH told the Authority that it was prepared to place £250,000 into an account for the payment of redress, to which it would add £10,000 each month. This arrangement also appears not to provide sufficient protection for affected BPS members.

Contingent Liabilities

- 4.12 As noted above, it appears that approximately 72 BPS members advised by AJH transferred out of the DB Pension Scheme.
- 4.13 Between February 2020 and January 2022, 14 of AJH's clients have complained to AJH about the service provided. AJH has not yet upheld any of the complaints. At least 8 (data from the FOS indicates 9) of those complainants have subsequently referred the matter to the FOS, which has yet to make any final determinations. It is not clear how many of the other complainants will in due course make a reference to the FOS.
- 4.14 Management accounts provided by AJH in January 2022 (made up to 31 December 2021) indicate that the Firm has not made provision for redress liabilities. Further, it appears that the Firm does not have sufficient funds to cover the liabilities that may result from the existing FOS complaints and certainly not enough to pay costs and redress arising from any future Consumer Redress Scheme (though it has attested that it will seek to preserve assets to do so).

Dissipation of Assets

- 4.15 AJH was first informed of a complaint regarding its DB Transfer Advice to BPS members in February 2020. In May 2020 an application was made to the Authority for a Change in Control of the Firm. The nature of the application involved 100% control of AJH passing to an unregulated holding company. The beneficial owner of that company is related to senior individuals at AJH and the purchase was funded by £1.3m in dividend payments from AJH, mostly during 2020 but continuing until December 2021 (the Change in Control was completed in November 2020). The Firm accepts that a total of £1.46m has been paid out in dividends since May 2020.
- 4.16 Therefore, whilst the Firm asserts that it has cash reserves of around £340,000-£400,000, it has dissipated significant sums whilst failing to make provision for redress payments and indeed denying it could afford the costs of a PBR which were estimated at less than £80,000. Further, Authorisations noted phoenixing concerns emanating from an application from an individual linked to AJH – the application was withdrawn in June 2021 after these concerns were raised.

5 CONCLUSION

- 5.1 The regulatory provisions relevant to this First Supervisory Notice are set out in Annex A.

Analysis of failings and risks

- 5.2 The Authority has serious concerns about AJH's business and the way it is being run. In particular:
- a) AJH has failed to make sufficient provision for redress liabilities arising from DB Transfer Advice given to BPS members despite many months of engagement by the Authority regarding the need for a PBR and the

need to preserve funds for the payment of redress (reflecting publicly available guidance such as FG 20/1);

- b) Whilst the exact extent of redress, if any, arising from the current suite of FOS complaints is unknown, it appears that AJH does not have sufficient funds to meet the estimated liabilities arising from these complaints;
- c) Further, the Firm does not appear to have sufficient assets to meet costs and redress liabilities which may arise from additional complaints and/or any future Consumer Redress Scheme. The Firm has stated that it will agree to preserve £250,000 (with an additional £10,000 set aside each month) but is not prepared to enter voluntarily into an Asset Requirement acceptable to the Authority which prevents it from continuing to dissipate assets; and
- d) The Firm has dissipated significant assets from the business which could have been used for the payment of redress and, separately, other matters have come to the Authority's attention which have raised phoenixing concerns.

5.3 As a result of these matters, it appears to the Authority that the firm is failing, or is likely to fail, to satisfy the Appropriate Resources Threshold Condition. Separately, it also appears that imposing the proposed Asset Requirement is desirable in order to advance the Authority's statutory objective of ensuring an appropriate degree of protection for consumers.

Timing and duration of the Variation

5.4 The Authority considers it is necessary to impose the Asset Requirement to take immediate effect. This is because the Authority has serious concerns about the Firm which need to be addressed immediately (EG 8.3.2(1)). In particular:

- a) The Authority has information indicating significant loss, risk of loss or other adverse effects for consumers in circumstances where action is necessary to protect their interests (EG 8.3.3(1)); and
- b) Circumstances suggest a serious problem with the Firm or its controllers that calls into question its ability to meet the Threshold Conditions (EG 8.3.3(4)).

5.5 The Authority will consider the full circumstances of each case when it decides whether it is appropriate to impose an Asset Requirement on an urgent basis. The Authority has identified the following relevant factors within the circumstances of this case:

- a) The extent of any loss, or risk of loss, or other adverse effect on consumers (EG 8.3.4(1));
- b) The seriousness of any suspected breach of the requirements of the legislation (EG 8.3.4(4));
- c) The financial resources of the Firm, the likely need to pay redress and the risk of dissipation of assets (EG 8.3.4(5));
- d) The Firm's conduct (EG 8.3.4(8)); and
- e) The impact that use of these powers will have on the firm's business and on its customers (EG 8.3.4(9))

- 5.6 The Authority considers that it is necessary for the Asset Requirement to remain in place indefinitely.

6 PROCEDURAL MATTERS

- 6.1 This First Supervisory Notice is given under section 55Y(7) and in accordance with Section 55Y(9) of the Act and is being served on the Firm at its principal place of business as last notified to the Authority.

Decision-maker

- 6.2 The decision which gave rise to the obligation to give this First Supervisory Notice was made under Executive Procedures.

- 6.3 The following statutory rights are important.

The Tribunal

- 6.4 AJH has the right to refer the matter to which this Second Supervisory Notice relates to the Tribunal. The Tax and Chancery Chamber is part of the Tribunal which, amongst other things, hears references arising from decisions of the Authority. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, AJH has 28 days from the date on which this Second Supervisory Notice is given to it to refer the matter to the Tribunal.

- 6.5 A reference to the Tribunal can be made by way of a reference notice (Form FTC3) signed by or on behalf of AJH and filed with a copy of this Second Supervisory Notice. The Tribunal's contact details are: The Upper Tribunal, Tax and Chancery Chamber, 5th Floor, Rolls Building, Fetter Lane, London EC4A 1NL (telephone: 020 7612 9730; email: uttc@hmcts.gsi.gov.uk).

- 6.6 Further information on the Tribunal, including guidance and the relevant forms to complete, can be found on the HM Courts and Tribunal Service website: <http://www.justice.gov.uk/forms/hmcts/tax-and-chancery-upper-tribunal>

- 6.7 AJH should note that a copy of the reference notice (Form FTC3) must also be sent to the Authority at the same time as a reference is filed with the Tribunal. A copy of the reference notice should be sent to Jazz Tipton at the Financial Conduct Authority, 12 Endeavour Square, London, E20 1JN (please also provide a copy by email to jazz.tipton@fca.org.uk and SPCDecisionMakingSecretariat@fca.org.uk).

Confidentiality and publicity

- 6.8 The Firm should note that this Second Supervisory Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining legal advice on its contents).

- 6.9 AJH should note that section 391(5) of the Act requires the Authority, when the Second Supervisory Notice takes effect, to publish such information about the matter to which the notice relates as it considers appropriate.

Authority contacts

6.10 For more information concerning this matter generally, contact Jazz Tipton (Jazz.Tipton@fca.org.uk).

Decision made under Executive Procedures

ANNEX A

RELEVANT STATUTORY PROVISIONS

1. The Authority's operational objectives established in section 1B of the Act include securing an appropriate degree of protection for consumers (section 1C).
2. Section 55L of the Act allows the Authority to impose a requirement on the Part 4A permission of an authorised person if it appears to the Authority that the authorised person is failing, or likely to fail to satisfy the Threshold Conditions (section 55L(2)(a)), or it is desirable to exercise the power in order to advance one or more of the Authority's operational objectives (section 55L(2)(c)). This power is referred to as the Authority's own-initiative requirement power.
3. Section 55P(4)(a) defines an Asset Requirement as a requirement imposed under section 55L which prohibits the disposal of, or other dealing with, any of a Firm's assets (whether in the UK or elsewhere) or restricting such disposals or dealings.
4. Section 55Y(3) of the Act allows a requirement imposed under the own-initiative requirement power to take effect immediately (or on a specified date) only if the Authority, having regard to the ground on which it is exercising its own-initiative power, reasonably considers that it is necessary for the requirement to take effect immediately (or on that date).
5. Section 391 of the Act provides that:
" [...]
(5) When a supervisory notice takes effect, the Authority must publish such information about the matter to which the notice relates as it considers appropriate.
(6) But the Authority may not publish information under this section if in its opinion, publication of the information would, be unfair to the person with respect to whom the action was taken or proposed to be taken [or] prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
(7) Information is to be published under this section in such manner as the Authority considers appropriate."
6. Paragraph 2D of Schedule 6 to the Act provides:
"Appropriate Resources
(1) The resources of A must be appropriate in relation to the regulated activities that A carries on or seeks to carry on—
...
(3) the matters which are relevant in determining whether A has appropriate financial resources include:
(a) the provision A makes...in respect of liabilities

RELEVANT REGULATORY PROVISIONS

7. Principle 4 provides: "*A firm must maintain adequate financial resources*".
8. COND 2.41AUK reflects the provisions of FSMA (Paragraph 2D to Schedule 6) to the effect that a firm must have appropriate resources in relation to the regulated activities it carries on or seeks to carry on and that provision for liabilities is relevant to the question of whether a firm has appropriate financial resources.
9. COND 2.4.4G provides examples of the kind of relevant matters to which the Authority may have regard when assessing whether a firm satisfies and will continue to satisfy the Appropriate Resources Threshold Condition. These include, but are not limited to, whether the firm may have difficulties complying with any of the Authority's prudential rules and, further, whether firm may be able to meet its debts as they fall due.
10. The Authority's approach in relation to its own-initiative powers is set out in Chapter 8 of the Enforcement Guide (EG), certain provisions of which are summarised below.
11. EG 8.1.1 reflects the provisions of section 55L of the Act by stating that the Authority may use its own-initiative power to impose a variation on an authorised person where, amongst other factors, the person is failing or is likely to fail to satisfy the threshold conditions for which the Authority is responsible (EG 8.1.1(1)), or it is desirable to exercise the power in order to advance one or more of its operational objectives (EG 8.1.1(3)).
12. EG 8.2.1 states that when the Authority considers how it should deal with a concern about a firm, it will have regard to its statutory objectives and the range of regulatory tools that are available to it. It will also have regard to the principle that a restriction imposed on a firm should be proportionate to the objectives the Authority is seeking to achieve (EG 8.2.1(2)).
13. EG 8.2.3 states that in the course of its supervision and monitoring of a firm or as part of an enforcement action, the Authority may make it clear that it expects the firm to take certain steps to meet regulatory requirements. In the vast majority of cases the Authority will seek to agree with a firm those steps the firm must take to address the Authority's concerns. However, where the Authority considers it appropriate to do so, it will exercise its formal powers under section 55L of the Act to impose a variation to ensure such requirements are met. This may include where, amongst other factors, the Authority has serious concerns about a firm, or about the way its business is being or has been conducted (EG 8.2.3(1)), or is concerned that the consequences of a firm not taking the desired steps may be serious (EG 8.2.3(2)).
14. EG 8.3.1 states that the Authority may impose a requirement so that it takes effect immediately or on a specified date if it reasonably considers it necessary for the variation to take effect immediately (or on the date specified), having regard to the ground on which it is exercising its own-initiative powers.
15. EG 8.3.2 states that the Authority will consider exercising its own-initiative power as a matter of urgency where: 1) the information available to it indicates serious concerns about the firm or its business that need to be addressed immediately; and 2) circumstances indicate that it is appropriate to use statutory powers immediately to require and/or prohibit certain actions by the firm in order to ensure the firm addresses these concerns.

16. EG 8.3.3 states that it is not possible to provide an exhaustive list of the situations that will give rise to such serious concerns, but they are likely to include one or more of four listed characteristics, these include: information indicating significant loss, risk of loss or other adverse effects for consumers, where action is necessary to protect their interests; and circumstances suggesting a serious problem within a firm or with a firm's controllers that calls into question the firm's ability to continue to meet the threshold conditions.
17. EG 8.3.4 states that the Authority will consider the full circumstances of each case when it decides whether an imposition of a variation is appropriate and sets out a non-exhaustive list of factors the Authority may consider, these include: the extent of any loss, or risk of loss, or other adverse effect on consumers (EG 8.3.4(1)); seriousness of any suspected breach of the requirements of the legislation (EG 8.3.4(4)); the financial resources of the Firm, including the need to make provision for redress and the risk of dissipation of assets; and EG 8.3.4(8) the Firm's conduct.
18. EG 8.3.4(9) requires that the Authority take into account the impact that use of the Authority's own-initiative powers will have on the firm's business and on its customers. The Authority will need to be satisfied that the impact of any use of the own-initiative power is likely to be proportionate to the concerns being addressed, in the context of the overall aim of achieving its statutory objectives.

Annex B

Summary of Decision-Maker's Review

1. The Decision-Maker has reviewed the Representations and further evidence provided by AJH on 14 March 2022. The Representations made a number of points, including:
 - a) The FSN overstated the dividend payment, with the true figure not being "over £3m" but in fact £1.46m;
 - b) The Firm's financial position was healthier than stated in the FSN, with no further payments as a result of the acquisition of the Firm and cash reserves that were accumulating, not least due to income of at least £70,000 per month;
 - c) The Firm proposed to set aside £250,000 for the payment of redress, to be added to at a rate of £10,000 per month.
2. Even taking AJH's representations at their highest and at face value – and there were discrepancies between different sets of figures provided at different times by the Firm – it appears that it has insufficient resources to meet potential redress liabilities and that the sum it proposes to ring-fence will also not be adequate even taking into account issues which may impact on the possible redress total, such as applicable limitation periods.
3. The Representations accepted that approximately £1.5m had been dissipated from the Firm in dividend payments since May 2020 and in all the circumstances there remains a continuing dissipation risk.
4. Taking into account all the facts, the material provided by the Firm and relevant factors and guidance in Chapter 8 of the Authority's Enforcement Guide, it is appropriate and proportionate to impose the SSN.
5. Regarding publicity, and in line with the relevant statutory tests and the Authority's published guidance, it is appropriate for the SSN to be published on the day following the expiry of the deadline for referring this matter to the Tribunal.