



Public Statement

SWM Limited (SWM)

Issued: 29 June 2020

Financial Services (Jersey) Law 1998, as amended (FS(J)L)
Code of Practice for Investment Business (IB Code)

1 Action

- 1.1 The Jersey Financial Services Commission (JFSC) issues this public statement pursuant to Article 25 of the FS(J)L, following an investigation into SWM.
- 1.2 In doing so the JFSC seeks to support its objectives of protecting and enhancing the reputation and integrity of Jersey in commercial and financial matters and to highlight material contraventions of the IB Code.

2 Background

- 2.1 SWM is an Investment Business (Class D), currently registered with the JFSC to provide financial advice to individuals and businesses in relation to savings and investments, protection products and retirement planning services.
- 2.2 SWM has submitted a cessation of business plan to the JFSC. The plan is significantly progressed and SWM is no longer offering financial advice and is winding down its affairs.
- 2.3 Following an investigation into SWM, commencing in 2014 and concluding in 2017, and a Decision-Making Process, initially concluding in August 2018, the Board of Commissioners (the Board) of the JFSC imposed sanctions against SWM. The decision of the JFSC was subsequently appealed by SWM to the Royal Court, which issued its judgment on 4 June 2019 (the Judgment).
- 2.4 The JFSC issues this public statement in light of the Judgment, which quashed some of the findings and the sanction imposed on SWM by the JFSC, and remitted the matter back to the Board to reconsider. The Royal Court upheld the majority of the findings of the JFSC, including, in summary, the following matters.

Inadequate Processes for Due Diligenceⁱ

- 2.4.1 SWM displayed a lack of competence through its failure to maintain adequate contemporaneous records in several areas, including records of why its investment recommendation to a client was suitable, and records of the due diligence it carried out on the Products.ⁱⁱ

Failure to Maintain Adequate Insuranceⁱⁱⁱ

- 2.4.2 SWM demonstrated a lack of competence by failing to maintain adequate professional indemnity insurance (PII) or understand its obligations with respect to making notifications to its insurers and the JFSC.

Failing to Handle Complaints Properly^{iv}

- 2.4.3 SWM demonstrated a lack of integrity in the context of client complaints handling by refusing to reopen a client complaint when advised to do so by a reporting professional in its 2015 report, when the reporting professional had concerns regarding the robustness of SWM's investigation of the complaint (complaint 1); and
- 2.4.4 A similar lack of integrity when it applied, what was reasonably interpreted by another client as undue pressure to dissuade the client from bringing a complaint against it (complaint 2).
- 2.5 In quashing the JFSC's original sanction, the Court disagreed with the Board that failings which SWM had displayed were continuing, and acknowledged that considerable steps had been taken by SWM, in certain areas, to rectify the failings identified by the JFSC. In particular the Royal Court had regard to SWM's updated policies and procedures, templates and manuals etc., as having addressed the company's prior failings and breaches. A copy of the Judgment is available at the following website link:

[https://www.jerseylaw.je/judgments/unreported/Pages/\[2019\]JRC100.aspx](https://www.jerseylaw.je/judgments/unreported/Pages/[2019]JRC100.aspx)

3 Reconsideration of Sanction

- 3.1 In its reconsideration of sanction, as directed by the Royal Court, the JFSC has now reconsidered matters in light of the findings in the Judgment and the additional material and events that have occurred since the Board's decision and the Judgment. In particular it has noted that:
- 3.1.1 The JFSC conducted an on-site examination at the offices of SWM in June 2019 following the Judgment. The findings of the on-site examination concluded that whilst some shortcomings were identified, SWM, in the main, was operating in accordance with its policies and procedures.
- 3.1.2 Following the Judgment, SWM re-opened complaint 1 and submitted its complaint review to the JFSC. In respect of complaint 2, prior to the handing down of the Judgment SWM provided an apology letter to the client.
- 3.1.3 SWM has been unable to obtain PII for its business generally that is commensurate with its business arrangements^v. Following this, SWM submitted and is adhering to a cessation of business plan, and the company ceased investment business activity before 31 December 2019, with all clients having transferred to new service providers by this date. The JFSC, with the cooperation of the company, is supervising the closure of the company.

4 Conclusion and Sanction

- 4.1 In the JFSC's reconsideration of sanction, it has noted the number of material and substantial findings made and contraventions of the IB Code which were upheld by the Royal Court.
- 4.2 The JFSC has further considered the mitigation available to SWM arising since the Board's decision. In particular, in the Judgment the Royal Court had urged SWM to adopt a less adversarial approach to its dealings with the JFSC going forward. Subsequent to the Judgment, SWM's level of cooperation with the JFSC's Supervision Division improved, and this was to its credit.
- 4.3 The JFSC has concluded that the issuing of a public statement as a regulatory sanction against SWM is reasonable, proportionate and necessary, and that it is desirable given SWM's material contraventions of Codes of Practice.

For further enquiries, contact the Commission Secretary at: l.roe@jerseyfsc.org

ⁱ Pursuant to the IB Code a registered person must, inter alia, act with due skill, care and diligence, it must conduct due diligence in respect of products and assess the features of such products before they can be recommended to clients, and it must keep adequate and orderly records.

ⁱⁱ Two of the products were principally on SWM's Whitelist of Approved Investments (Whitelist) during the period 2004 to 2009. The other product was on SWM's Whitelist during 2015.

ⁱⁱⁱ Pursuant to the IB Code a registered person must maintain, and be able to demonstrate the existence of, adequate insurance, commensurate with its business arrangements, and such cover must include professional indemnity insurance (PII). A registered person must also have adequate procedures to ensure compliance with the terms and conditions of its PII policy, particularly in relation to timely notification of certain events to insurers. It must also provide timely notifications to the JFSC.

^{iv} A registered person must conduct its business with integrity, it must have the highest regard for the interests of its clients, and it must handle complaints from clients appropriately and treat clients who complain fairly in accordance with the requirements of the IB Code.

^v Paragraph 5.2.1 of the IB Code requires that "a registered person must have and maintain adequate insurance cover at all times commensurate with its business activities. Such cover must include Professional Indemnity Insurance..."