



JFSC statement on Royal Court Judgment dated 11 May 2016 re SWM Limited

The Jersey Financial Services Commission (JFSC) issues this Press Statement in respect of the recent Royal Court Judgment dated 11 May 2016, which made a procedural ruling following proceedings in November 2015 involving SWM Limited (SWM).

Whilst respecting the decision of the Royal Court, the JFSC wishes to clarify its stance in the context of the case and the terms of the judgment issued.

The JFSC believes it has at all times acted reasonably in seeking from SWM the details with respect to time-frame and cost of the second proposed professional opinion that SWM wanted to obtain to compare to the first professional opinion (produced at the direction of the JFSC), which had concluded that a number of SWM investors had previously been provided with unsuitable advice.

The JFSC requested key information from SWM, including, as noted, details of the anticipated time-frame and expected cost in relation to the proposed second professional opinion, in order to understand the potential financial impact on SWM. SWM failed to provide any of the requested information to the JFSC.

The JFSC considered the request for information to be appropriate in the light of the JFSC's overarching statutory duties, including the duty to have particular regard, amongst other matters, to the "reduction of the risk to the public of financial loss..." Protecting the interests of investors was an important consideration for the JFSC.

In this context, the JFSC makes the following observations:

- SWM had informed the JFSC that it intended to seek a second opinion on the findings of the first professional report: however, SWM declined to provide the JFSC with details, including time-frame and cost of a second opinion, for the JFSC to arrive at a decision as to reasonableness.
- Despite the observations of the Royal Court, the JFSC continues to believe that it was, and remains, reasonable and in the best interests of investors to have required SWM to inform the investors concerned that a professional opinion had been produced in respect of the products they had been sold but that the findings were disputed and under review by SWM.
- In the judgment, the Royal Court comments that the JFSC effectively acted too early in requiring SWM to write to clients to place them on notice that a professional opinion has been produced, which concluded that clients had been provided with unsuitable advice by SWM. The JFSC is conscious, however, that it has in the past (in an unrelated case) received public criticism for not informing investors early on of regulatory action, particularly where investors may be contemplating further investments with the same firm. In this particular case, the JFSC believes that it was, and

remains, reasonable to have required SWM to inform investors of pertinent matters regarding their investments at an early stage.

- Whilst the judgment may suggest that the JFSC rushed in arriving at a decision in this particular case, no conclusions have been reached by the JFSC. Any regulatory issues under review remain at an early stage.
- The JFSC has sought in this case to balance the interests of the regulated business against those of the investors who have suffered losses and achieving fairness between the interested parties can be difficult. The JFSC respects the decision of the Royal Court and is bound to take the Court's comments into account going forward.

Ends.

Note to Editors:

The JFSC will not be making any further comment at this stage.

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