

SEE [FINAL NOTICE ISSUED ON 14 JUNE 2012](#)

DECISION NOTICE

To: Athanass Stefanopoulos

FSA Ref No: 300557

Dated: 31 August 2011

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (the “FSA”) has decided to take the following action:

1. ACTION

- 1.1. For the reasons listed below and pursuant to section 45 of the Financial Services and Markets Act 2000 (the “Act”), the FSA has decided to cancel the permission granted to Athanass Stefanopoulos (“Mr Stefanopoulos”), pursuant to Part IV of the Act (“his Part IV permission”).

2. REASONS FOR ACTION

Summary

- 2.1. The FSA has concluded, on the basis of the facts and matters described below, that Mr Stefanopoulos is failing to satisfy the threshold conditions set out in Schedule 6 to the Act (“the Act”) (“the Threshold Conditions”). The FSA is not satisfied that the resources of Mr Stefanopoulos are adequate in relation to the regulated activities he carries on, as required by Threshold Condition 4 (Adequate resources). Neither is it satisfied that he is a fit and proper person having regard to all the circumstances, including the need to ensure that his business is conducted soundly and prudently and in compliance with proper standards, as required by Threshold Condition 5 (Suitability).

- 2.2. Specifically, the FSA is not satisfied that Mr Stefanopoulos is able to meet, or that there is a realistic possibility that he will be able to meet, the obligations of his business having regard to all the circumstances, including:
- (1) his repeated failure to pay promptly fees and levies owed to the FSA since August 2005;
 - (2) his failure to comply with the terms of a Settlement Agreement that he entered into with the FSA on 17 February 2009 (“the Agreement”), whereby Mr Stefanopoulos undertook to pay his the next two sets of periodic fees and levies by the due date, failing which he would apply for the cancellation of his Part IV permission;
 - (3) his failure to co-operate with the FSA’s requests that he apply for the cancellation of his Part IV permission; and
 - (4) his continuing health problems since being admitted to hospital in July 2005.
- 2.3. The FSA considers that Mr Stefanopoulos has not been open and co-operative in all of his dealings with the FSA and has thereby failed to comply with Principle 11 (Relations with regulators) of the FSA’s Principles for Businesses (“the Principles”), and to satisfy the FSA that he is ready, willing and organised to comply with the requirements and standards of the regulatory system and his legal obligations.
- 2.4. These failures, which are significant in the context of Mr Stefanopoulos’ suitability, lead the FSA to conclude that Mr Stefanopoulos is not conducting his business soundly and prudently and in compliance with proper standards. They also lead the FSA to conclude that Mr Stefanopoulos is not a fit and proper person, and therefore that he is failing, and is likely to fail, to satisfy the Threshold Conditions in relation to the regulated activities for which he has Part IV permission.

Relevant statutory provisions

- 2.5. The FSA's regulatory objectives established in section 2(2) of the Act include market confidence, the reduction of financial crime and the protection of consumers.
- 2.6. The FSA is authorised by section 45 of the Act to cancel an authorised person’s Part IV permission, where it appears to the FSA that it is failing, or is likely to fail, to satisfy the Threshold Conditions.
- 2.7. Paragraph 5 of Schedule 6 to the Act sets out Threshold Condition 5 which provides that:
- “The person concerned must satisfy the Authority that he is a fit and proper person having regard to all the circumstances, including –
- (c) the need to ensure that his affairs are conducted soundly and prudently.”
- 2.8. Paragraph 17(1 (a) of Schedule 1 to the Act states:
- “The Authority may make rules providing for the payment to it of such fees, in connection with the discharge of any of its functions under or as a result of this Act, as it considers will (taking account of its expected income from fees and charges provided for by any other provisions of this Act) enable it to meet expenses incurred in carrying out its functions or for any incidental purpose.”
- 2.9. Paragraph 17(4) of Schedule 1 to the Act states:

“Any fee which is owed to the Authority under any provision made by or under this Act may be recovered as a debt due to the Authority.”

Relevant Handbook provisions

- 2.10. In exercising its power to cancel a Part IV permission, the FSA must have regard to guidance published in the FSA's Handbook of Rules and Guidance (“the Handbook”). The relevant main considerations in relation to the action specified above are set out below.

Relevant Principle

- 2.11. Principle 11 requires a firm to deal with its regulator in an open and co-operative way, and to disclose to the FSA appropriately anything relating to the firm of which the FSA would reasonably expect notice.

Relevant Rules and Guidance

- 2.12. The rules and guidance relating to the payment of fees and levies are located in the Fees Manual (“FEES”). The rules relating to the imposition of administrative fees for late submission of regulatory returns are located in the Supervision Manual (“SUP”). Both manuals are part of the Handbook. From 1 January 2006, the principal rules regarding the payment of fees/levies were amended and relocated from SUP and to form part of the Fees Manual (“FEES”) in the Handbook. Both the previous and current rules in FEES and SUP are relevant in this case. Previous rules relating to the Financial Services Compensation Scheme levy, which were located in the Compensation Sourcebook (“COMP”), which is also part of the Handbook, are also relevant.

Rules effective until 31 December 2005

- 2.13. SUP 20.2.1R required that:
- “A *firm* must pay to the FSA an amount equal to:
- (1) each periodic fee applicable to it; less
 - (2) any deductions from the periodic fee specified in part 2 of SUP 20 Annex 2.”
- 2.14. SUP 20.2.7R(1) required that:
- “The *firm* must pay the total amount due under SUP 20.2.1 R, using one of the payment methods specified in SUP 20.2.7A R.”
- 2.15. COMP 13.8.1R required that:
- “A *participant firm* must pay its share of any levy made by the FSCS:
- (1) in one payment; or
 - (2) where the FSCS agrees, quarterly, at the beginning of each quarter, by direct debit agreement.”
- 2.16. COMP 13.8.3R required that:
- “A *participant firm's* share of a levy to which COMP 13.8.1 R(1) applies is due on, and payable within 30 days of, the date when the invoice is issued.”

Rules and Guidance effective since 1 January 2006

- 2.17. FEES 2.2.1R states that:

“If a *person* does not pay the total amount of a periodic fee (including fees relating to *transaction reports* to the *FSA* using the *FSA’s* Transaction Reporting System (see *SUP 17*)), *FOS* levy or case fee, or share of the *FSCS* levy or *CFEB* levy, before the end of the date on which it is due, under the relevant provision in *FEES 4, 5, 6 or 7*, that *person* must pay an additional amount as follows:

- (1) if the fee was not paid in full before the end of the due date, an administrative fee of £250; plus
 - (2) interest on any unpaid part of the fee at the rate of 5% per annum above the Bank of England's repo rate from time to time in force, accruing on a daily basis from the date on which the amount concerned became due.”
- 2.18. FEES 2.2.3G, which was amended in May 2009, and again in February 2011, currently provides that:
- “Paragraph 17(4) and paragraph 19B of Schedule 1 to and section 99(5) of the *Act* permit the *FSA* to recover fees (including fees relating to *payment services*, the issuance of electronic money, and, where relevant, *FOS* levies and *CFEB* levies), and section 213(6) permits the *FSCS* to recover shares of the *FSCS* levy payable, as a debt owed to the *FSA* and *FSCS* respectively, and the *FSA* and *FSCS*, as relevant, will consider taking action for recovery (including interest) through the civil courts. Also, the *FOS Ltd* (in respect of case fees) may take steps to recover any money owed to it (including interest).”
- 2.19. FEES 4.2.1R requires that:
- “A *person* shown in column (1) of the table in FEES 4.2.11 R as the relevant fee payer must pay each periodic fee applicable to it, calculated in accordance with the provisions referred to in column (2) of that table, as adjusted by any relevant provision in this chapter:
- (1) in full and without deduction (unless permitted or required by a provision in *FEES*); and
 - (2) on or before the date given in column (3) of that table, unless FEES 4.2.10 R applies.”
- 2.20. Between 1 January 2006 and 31 October 2009, FEES 4.3.1R stated that:
- “The periodic fee payable by a *firm* (except an *ICVC* or *UCITS qualifier*) is:
- (1) each periodic fee applicable to it calculated in accordance with FEES 4.3.3 R, using information obtained in accordance with FEES 4.4; less
 - (2) any deductions from the periodic fees specified in Part 2 of FEES 4 Annex 2 R.”
- 2.21. FEES 4.3.1R was amended on 1 November 2009, and it currently states that:
- “The periodic fee payable by a *firm* (except an *ICVC* or *UCITS qualifier*) is:
- (1) each periodic fee applicable to it calculated in accordance with FEES 4.3.3 R, using information obtained in accordance with FEES 4.4; plus
 - (1A) any periodic fee applicable to it calculated in accordance with FEES 4.3.3A R using information relating to its *UK* business obtained in accordance with FEES 4.4 (or by other means in the case of the Bank of England); less
 - (2) any deductions from the periodic fee specified in Part 2 of FEES 4 Annex 2 R or Parts 6 and/or 7 of FEES 4 Annex 11 R. For the purposes of this deduction, any deduction available in Part 2 of FEES 4 Annex 2 R shall

not be applied to any fee calculated in accordance with FEES 4.3.3A R and any deduction available in Part 6 and/or 7 of FEES 4 Annex 11 R shall not be applied to any fees calculated in accordance with FEES 4.3.3 R.”

2.22. FEES 5.7.1R states that:

“A *firm* must pay annually to the *FSA* the *general levy* on or before the later of 1 April and 30 calendar *days* after the date when the invoice is issued by the *FSA*.”

2.23. FEES 6.7.1R requires that:

“A *participant firm* must pay its share of any levy made by the *FSCS*:

- (1) in one payment; or
- (2) where the *FSCS* agrees, quarterly, at the beginning of each quarter, by direct debit agreement.”

2.24. FEES 6.7.3R states that:

“A *participant firm's* share of a levy to which FEES 6.7.1 R (1) applies is due on, and payable within 30 *days* of, the date when the invoice is issued.”

2.25. FEES 7.2.1R requires that:

“A *firm* must pay each *CFEB levy* applicable to it:

- (1) in full and without deduction (unless permitted or required by a provision in *FEES*); and
- (2) in accordance with the provisions of FEES 4.3.6 R.”

2.26. SUP 16.3.14R(1) states that:

“If a *firm* does not submit a complete report by the date on which it is due in accordance with the *rules* in, or referred to in, this chapter or the provisions of relevant legislation and any prescribed submission procedures, the *firm* must pay an administrative fee of £250.”

Guidance concerning the relevant Threshold Condition

2.27. Guidance on the Threshold Conditions is set out in the part of the Handbook entitled Threshold Conditions (“COND”).

COND 2.5 – Threshold Condition 5: Suitability (paragraph 5, Schedule 6 to the Act)

2.28. COND 2.5.1UK reproduces the relevant statutory provision that the person concerned must satisfy the FSA that he is a fit and proper person having regard to all the circumstances, including, among other things, the need to ensure that his affairs are conducted soundly and prudently.

2.29. COND 2.5.4G (1) and (2) state that the FSA, when forming its opinion as to whether a firm is conducting its affairs soundly and prudently, will have regard to relevant matters, including whether it conducts its business with integrity and in compliance with proper standards, and whether it can demonstrate that it conducts its affairs with the exercise of due skill, care and diligence.

2.30. COND 2.5.4G(3) states that the FSA will only take into account relevant matters which are significant in the context of the suitability of the firm.

- 2.31. COND 2.5.6G states that the FSA, when forming its opinion as to whether a firm is conducting its business with integrity and in compliance with proper standards, will have regard to relevant matters, including whether:
- the firm has been open and co-operative in all its dealings with the FSA and is ready and willing to comply with the requirements and standards under the regulatory system (COND 2.5.6G(1));
 - the firm has contravened, among other things, the requirements of the regulatory system, which include the Threshold Conditions, the Principles and other rules (COND 2.5.6G(4)).

Other relevant regulatory provisions

- 2.32. The FSA's policy on exercising its main enforcement powers is currently set out in the Enforcement Guide ("EG") certain provisions of which are summarised below. As some of the conduct described in the Warning Notice took place prior to 28 August 2007, the FSA has also had regard to the relevant sections of EG.
- 2.33. EG 8.1(1) provides that the FSA may use its own initiative power to vary or cancel the permission of an authorised firm under section 45 of the Act, where a firm is failing or is likely to fail to satisfy the Threshold Conditions.

Cancelling a firm's Part IV permission on the FSA's own initiative

- 2.34. EG 8.13(1) states that the FSA will consider cancelling a Part IV permission using its own initiative power contained in section 45 of the Act in circumstances where the FSA has very serious concerns about a firm, or the way its business is or has been conducted.
- 2.35. EG 8.14 provides examples of the circumstances in which the FSA will consider cancelling a Part IV permission. EG 8.14(5) specifies that non-payment of FSA fees is one such circumstance, and EG 8.14(7) specifies that repeated failure to comply with rules or requirements is another such circumstance.

Facts and matters relied on

- 2.36. Mr Stefanopoulos became authorised on 31 October 2004 to carry on insurance mediation and regulated home finance business.
- 2.37. Mr Stefanopoulos has repeatedly failed to pay promptly fees owed to the FSA since August 2005, and as a result Mr Stefanopoulos has been referred to Enforcement in December 2005, April 2007, November 2008 and February 2011. Following the three previous referrals to Enforcement, regulatory enforcement action was taken but was discontinued as Mr Stefanopoulos made belated payment of the outstanding fees. On all four occasions, Mr Stefanopoulos only took steps to comply when forced with the threat of imminent cancellation action. On this occasion, Mr Stefanopoulos paid the outstanding fees and levies the day before he was due to give his oral representations to the FSA.
- 2.38. Mr Stefanopoulos has also failed to comply with the Agreement which he entered into with the FSA on 17 February 2009. Under the terms of the Agreement Mr Stefanopoulos agreed to pay his next two sets of regulatory fees and levies by the date stated on the FSA invoice, failing which Mr Stefanopoulos would, upon the FSA's request, apply for the cancellation of his Part IV permission. Mr Stefanopoulos has failed to pay both his 2009/2010 and 2010/11 periodic fees and levies by the due

dates. Mr Stefanopoulos has subsequently failed to apply for the cancellation of his Part IV permission despite previously undertaking to do so under the terms of the Agreement and being requested by the FSA to do so.

- 2.39. Mr Stefanopoulos was admitted to hospital in July 2005, was readmitted and returned home in January 2006, he was in hospital in April 2007 (when he suffered a major heart attack) and October 2008, he had a number of health problems in December 2008.
- 2.40. In March 2011, Mr Stefanopoulos said that he had not traded for a year and that his business had suffered disastrously.

Representations

- 2.41. In his letter of 4 May 2011, Mr Stefanopoulos said the FSA was intent on terminating his authorisation and that it had no flexibility for dealing with scenarios such as his. He said that the attitude of the FSA in concentrating solely on unpaid fees was ethically unacceptable. He did not dispute that at times he was late in paying his fees but he had always paid them. He accepted that at the time of his letter there was a fee outstanding but he took exception to being labelled not 'fit and proper' to undertake regulated activities. Nothing had been found wrong with the way that he conducted his regulated activities in the visits in the last two years.
- 2.42. In his oral representations on 23 August 2011, supplemented by a number of documents, Mr Stefanopoulos emphasised his vast experience of handling mortgages cases. He also said that in the course of the FSA's last two visits he had been found to be doing nothing seriously wrong. He said that he felt hurt by the suggestion that he was not fit to be authorised solely on the basis of late payment of fees, for which he had a very good reason.
- 2.43. Mr Stefanopoulos explained that he was a sole trader, and that the deterioration in his health in 2005 had therefore had a severe impact on his business, which had previously been very successful. He said that on one occasion he was admitted to hospital for eight weeks. His business had suffered further as a result of the recession in 2008 and 2009, and the combination of these factors had made it difficult for him to keep his business afloat. His profits had fallen year on year since 2004, and he had suffered losses of £1,422 and £4,152 in 2009 and 2010 respectively. This explained his late payment of fees.
- 2.44. He said that both his health and his business were now on the road to recovery, so he would be able to pay his fees in future.
- 2.45. In relation to his health, Mr Stefanopoulos presented a recent letter from a cardiologist and drew their attention to the statements that his symptoms were better than before and that he appeared well on physical examination. He said that his remaining symptoms would not prevent him from working at a desk.
- 2.46. Mr Stefanopoulos said that although his business's income in 2011 to date was around £7,000, he believed that it would perform better this year than in 2010, when its total income was £16,644.
- 2.47. Mr Stefanopoulos provided accounts for the year ending on 30 December 2010 which indicated that his business had had £6,309 in assets. He said he believed this to be sufficient to meet the threshold conditions, taking into account the fact that 2010 was the worst year so far for his business. He said he was unsure why the FSA's fees did

not appear to be mentioned in the accounts and he said he would speak to his accountant. He explained that the disparities between the figures in his accounts and the RMARs were because he had only included paid, rather than payable, sums on the RMARs, and had not stated his income from unregulated activities as he did not think he was required to.

- 2.48. He felt that he had engaged openly with the FSA about his difficulties in paying fees. When contacted about his failure to comply with the terms of the settlement agreement, he explained why he was unable to do so. He was also preoccupied with his health problems at the time, and with the prospect of undergoing a heart bypass operation.
- 2.49. He explained that he was not ready to retire, and he asked the Panel to give him the chance to continue doing the job he loved for another three years. He stated that he had now paid all outstanding fees. He said that he had been told by his bank that he could take a loan large enough to pay the FSA's fees for that period. He also said that someone had offered to guarantee payment of the fees. While these options had been open to him in the past, he was only resorting to them now because he did not want to lose his authorisation.
- 2.50. Following the meeting, Mr Stefanopoulos indicated that his accountant would charge for an explanation for the lack of reference in his accounts to the FSA fees; he (Mr Stefanopoulos) would be in a position within the next 28 days to pay the next year's fees in full; the problems in the past were all due to unforeseen serious health problems; and he offered to pay three years fees in a lump sum. Another person wrote to the FSA with an offer to pay his fees by direct debit from their account.

Findings and conclusions

- 2.51. The question for the FSA is whether it is satisfied that Mr Stefanopoulos is failing, or is likely to fail, to satisfy the threshold conditions and in particular the conditions relating to adequate resources and suitability. In considering his resources, the FSA may have regard to the provision he makes for liabilities and the means by which he manages the incidence of risk in connection with his business (paragraph 4 of the Schedule 6 to the Act). In considering suitability, the FSA may have regard to the need to ensure that his affairs are conducted soundly and prudently (paragraph 5).
- 2.52. In relation to the representations, the FSA noted that –
 - (1) no provision had been made for liabilities in the accounts for the year ended 30 December (as on the face of the accounts) 2010;
 - (2) those accounts, and the profit and loss chart prepared separately, gave concern for the future ability to meet liabilities rather than comfort;
 - (3) there was no evidence of cover in the event of further ill-health;
 - (4) the medical evidence indicated an improvement in health, not a clean bill of health;
 - (5) there was no expression of regret for the past history of late payment including the breach of the Settlement Agreement;
 - (6) there was no recognition that supervisory visits from the FSA had given rise to concerns which went beyond the non-payment or the late payment of fees; and

- (7) the proposal to meet fees in the future depended on the goodwill of a third person, unknown to the FSA, rather than the resources of Mr Stefanopoulos, the authorised firm.
- 2.53. Whilst the FSA acknowledges that Mr Stefanopoulos loves his job and wishes to continue doing it, and it acknowledges that he has suffered serious ill-health over a number of years, on the evidence before it, the FSA has no power to permit his permission to continue having regard to the conditions laid down in the Act.
- 2.54. In the light of the history of compliance, and the current circumstances as disclosed in the representations, the clear conclusion is that the permission must be cancelled for the reasons given earlier in this notice.

3. DECISION MAKER

- 3.1. The decision which gave rise to the obligation to give this Decision Notice was made by the Regulatory Decisions Committee.

4. IMPORTANT

- 4.1. This Decision Notice is given to Mr Stefanopoulos, under section 54 and in accordance with section 388 of the Act and it is being served on him at the address he notified to the FSA as his principal place of business. The following statutory rights are important.

The Tribunal

- 4.2. You have the right to refer the matter to which this Decision Notice relates to the Upper Tribunal (the “Tribunal”). The Tax and Chancery Chamber is the part of the Upper Tribunal, which, among other things, hears references arising from decisions of the FSA. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, you have 28 days from the date on which this Decision Notice is given to you to refer the matter to the Tribunal.
- 4.3. A reference to the Tribunal is made by way of a reference notice (Form FTC3) signed by you (or on your behalf) and filed with a copy of this Notice. The Tribunal’s contact details are The Upper Tribunal, Tax and Chancery Chamber, 45 Bedford Square, London WC1B 3DN (tel: 020 7612 9700; email: financeandtaxappeals@tribunals.gsi.gov.uk).
- 4.4. Further details are contained in “Making a Reference to the UPPER TRIBUNAL (Tax and Chancery Chamber)” which is available from the Upper Tribunal website: <http://www.tribunals.gov.uk/financeandtax/FormsGuidance.htm>
- 4.5. A copy of Form FTC3 must also be sent to Alex Banerjea at the FSA, 25 The North Colonnade, Canary Wharf, London E14 5HS at the same time as filing a reference with the Tribunal.

Access to evidence

- 4.6. Section 394 of the Act applies to this Decision Notice. In accordance with section 394(1), Mr Stefanopoulos is entitled to have access to:
- (a) the material upon which the FSA has relied in deciding to give Mr Stefanopoulos this Notice - a schedule of such material is given with this Notice;

- (b) any secondary material which, in the opinion of the FSA, might undermine that decision. There is no such secondary material.

Confidentiality and publicity

- 4.7. You should note that this Decision Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining advice on its contents). The effect of section 391 of the Act is that neither you nor a person to whom this notice is copied may publish it or any details concerning it unless the FSA has published the notice or those details. The FSA must publish such information about the matter to which a Decision Notice or Final Notice relates as it considers appropriate. You should be aware, therefore, that the facts and matters contained in this notice may be made public.

FSA contacts

- 4.8 If Mr Stefanopoulos has any questions regarding the procedures of the Regulatory Decisions Committee, he should contact Adam Taylor (direct line: 020 7066 2546).
- 4.9 For more information concerning this matter generally, please contact Simone Bebbington at the FSA (direct line: 020 7066 0666/fax: 020 7066 0667).

Tim Herrington
Chairman, Regulatory Decisions Committee