

This Decision Notice has been superseded by a Final Notice issued to Pave Financial Management Limited on 22 March 2013. The Final Notice may be accessed at:

<http://www.fsa.gov.uk/static/pubs/final/pave-financial.pdf>

DECISION NOTICE

To: Pave Financial Management Limited
2 The Office Village
Roman Way, Bath Business Park
Peasedown St John
Bath BA2 8SG

Firm ref: 435205

Date: 3 November 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 Pave Financial Management Limited (“Pave”) pursuant to Part IV of the Act to carry on regulated activities.

2. REASONS FOR THE ACTION

- 2.1. The FSA has concluded, on the basis of the facts and matters set out in paragraph 4 below, that Pave is failing, or is likely to fail, to satisfy the threshold conditions set out in Schedule 6 to the Act (the “Threshold Conditions”).

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS

The Act

- 3.1. The FSA’s statutory objectives, set out in section 2(2) of the Act, are: market confidence; financial stability; the protection of consumers; and the reduction of financial crime.
- 3.2. The FSA has the power pursuant to section 45(2) of the Act to cancel an authorised person's Part IV permission where it appears that an authorised person is failing, or likely to fail, to satisfy the Threshold Conditions.

Regulatory requirements and guidance

- 3.3. In deciding on the action, the FSA has had regard to relevant guidance published in the section of the FSA Handbook that deals with the Threshold Conditions (“COND”) and the guidance set out in the regulatory guides, in particular in the Enforcement Guide (“EG”).
- 3.4. Within the Annex to this notice the relevant statutory provisions and regulatory requirements are set out in more detail.

4. FACTS AND MATTERS RELIED ON

Background

- 4.1. By a Decision Notice dated 3 November 2011 issued to Mr Timothy Pattison (“Mr Pattison”) the FSA has decided to:
- (1) impose a financial penalty of £90,000 pursuant to section 66 of the Act in respect of Mr Pattison’s contravention of Statement of Principle 1, 2 and 7 of

the FSA's Statements of Principle for Approved Persons ("Statements of Principle");

- (2) withdraw his approval to perform controlled functions in relation to Pave pursuant to section 63 of the Act; and
- (3) make an order, pursuant to section 56 of the Act, prohibiting him from performing any controlled function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm because he is not a fit and proper person in terms of a lack of integrity and a lack of competence and capability.

4.2. By a Decision Notice dated 3 November 2011 issued to Mr Stephen Hocking ("Mr Hocking") the FSA has decided to:

- (1) publish a statement of Mr Hocking's misconduct, pursuant to section 66 of the Act, in respect of Mr Hocking's contravention of the FSA's Statements of Principle 1, 2 and 7. The FSA considered that Mr Hocking's misconduct merited a financial penalty of £25,000. However the FSA has decided not to impose such a financial penalty as it would cause him serious financial hardship;
- (2) withdraw his approval to perform controlled functions in relation to Pave pursuant to section 63 of the Act; and
- (3) make a order, pursuant to section 56 of the Act, prohibiting him from performing any significant influence function in relation to any regulated activity carried out by an authorised person, exempt person or exempt professional firm because he is not a fit and proper person in terms of a lack of integrity and a lack of competence and capability.

4.3. As a result, having regard to all the circumstances, including Pave's connection with Mr Pattison and Mr Hocking and the overall need to ensure that its affairs are conducted soundly and prudently, the FSA considers that, contrary to Threshold Condition 5, Pave does not have competent and prudent management and cannot

demonstrate that it conducts or will conduct its affairs with;

(1) integrity and in compliance with proper standards; and

(2) with the exercise of due skill, care and diligence.

4.4. Furthermore, because Mr Pattison's and Mr Hocking's approvals have been withdrawn and they have been prohibited, on the basis that they are not fit and proper, Pave is failing to satisfy Threshold Condition 4, in that, in the opinion of the FSA, the firm does not have adequate resources in relation to the regulated activities it seeks to carry on or carries on. Specifically, Pave will not have adequate human resources.

5. REPRESENTATIONS, FINDINGS AND CONCLUSIONS

Representations

5.1. Mr Pattison and Mr Hocking made representations on their own behalf though their representations were also effectively made on behalf of Pave as no independent representations were made by Pave. The lack of separate representations from Pave reflects the fact that the FSA's decision to cancel Pave was dependent upon the decisions that the FSA made in the cases of Mr Hocking and Mr Pattison.

Findings

5.2. As a consequence of the Decision Notices given to Mr Hocking and Mr Pattison the FSA has decided that Pave does not have adequate human resources in relation to the regulated activities it seeks to carry on. Furthermore the FSA considers that Pave does not have competent and prudent management and it cannot demonstrate that it conducts, or will conduct, its affairs with integrity or with due skill care and diligence.

Conclusion

5.3. In the light of the foregoing the FSA has concluded that Pave is failing to meet Threshold Conditions 4 (Adequate Resources) or 5 (Suitability) and that it will continue to fail to meet these conditions.

6. ANALYSIS OF THE SANCTION

- 6.1. In light of the facts and matters set out it appears that Pave is failing and is likely to fail Threshold Conditions 4 and 5. Consequently, the FSA has decided to cancel Pave's part IV permission.

7. DECISION MAKER

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

8. IMPORTANT

- 8.1. This Decision Notice is given to Pave in accordance with s.54 of the Act. The following information is important.

The Tribunal

- 8.2. Pave has the right to refer the matter to which this Decision Notice relates to the Upper Tribunal (the "Tribunal"). Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, Pave has 28 days from the date on which this Decision Notice is given to it to refer the matter to the Tribunal. A reference to the Tribunal is made by way of a reference notice (Form FTC3) signed on the firm's behalf and filed with a copy of this Notice. The Tribunal's address is: The Upper Tribunal, Tax and Chancery Chamber, 45 Bedford Square, London WC1B 3DN (tel: 020 7612 9700; email financeandtaxappeals@tribunals.gsi.gov.uk). 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>

- 8.3. Pave should note that a copy of the reference notice (Form FTC3) must also be sent to the FSA at the same time as filing a reference with the Tribunal. A copy of the reference notice should be sent to Chris Walmsley at the FSA, 25 The North Colonnade, Canary Wharf, London, E14 5HS.

Access to evidence

8.4. Section 394 of the Act applies to this Decision Notice. In accordance with section 394, Pave is entitled to have access to:

- (1) the material upon which the FSA has relied in deciding to give the firm this Decision Notice; and
- (2) any material other than material falling within paragraph (a) which was considered by the FSA in reaching the decision that gave rise to the obligation to give this notice or was obtained by the FSA in connection with the matter to which this notice relates but which was not considered by it in reaching that decision (“secondary material”), which, in the opinion of the FSA, might undermine that decision.

8.5. A schedule of the material upon which the FSA has relied in deciding to give Pave this Decision Notice was sent to it with the Warning Notice. There is no secondary material to which the FSA must grant Pave access.

Confidentiality and publicity

8.6. Pave 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 Pave nor any other person to whom a Decision Notice is given or copied, may publish the notice or any details concerning it unless the FSA has published the notice or those details.

8.7. Pave should also be aware that, in addition to publishing a Decision Notice or any details concerning it, the FSA must publish such information about the matter to which a Final Notice relates as it considers appropriate. Pave should therefore note that any Final Notice in this matter may contain reference to the facts and matters contained in this Notice.

FSA contacts

- 8.8. For more information concerning this matter generally, Pave should contact Chris Walmsley at the FSA (direct telephone line: 020 7066 5894).

Tim Herrington
Chairman, Regulatory Decisions Committee

ANNEX A

RELEVANT STAUTORY PROVISIONS, REGULATORY REQUIREMENTS AND FSA GUIDANCE

1. The Act

- 1.1. Section 41 and Schedule 6 to the Act set out the Threshold Conditions which are conditions that the FSA must ensure a firm will satisfy, and continue to satisfy, in relation to regulated activities for which it has permission.
- 1.2. Paragraph 4 of Schedule 6 to the Act states that the resources of the person concerned must, in the opinion of the FSA, be adequate in relation to the regulated activities that he seeks to carry on or carries on (Threshold Condition 4: Adequate Resources).
- 1.3. Paragraph 5 of Schedule 6 to the Act states that the person concerned must satisfy the FSA that he is a fit and proper person having regard to all the circumstances including (a) his connection with any person; (b) the nature of any regulated activity that he carries on or seeks to carry on; and (c) the need to ensure that his affairs are conducted soundly and prudently (Threshold Condition 5: Suitability).
- 1.4. The FSA is authorised, pursuant to section 45 of the Act, to cancel an authorised person's Part IV permission where it appears that an authorised person is failing, or likely to fail, to satisfy the Threshold Conditions.

2. FSA's policy on exercising its power to cancel a Part IV permission

- 2.1. The FSA's policy on exercising its power to cancel a Part IV permission is set out in Chapter 8 of the Enforcement Guide ("EG").
- 2.2. EG 8.13(1) states that the FSA will consider cancelling a firm's Part IV permission in circumstances including where the FSA has very serious concerns about a firm, or the way its business is or has been conducted.
- 2.3. EG 8.14 sets out general grounds for the exercise of the section 45 power to cancel a Part IV permission. It states that the grounds on which the FSA may exercise its power to cancel an authorised person's permission under section 45 of the Act are set

out in section 45(1) (which includes, where it appears to the FSA that the authorised person is failing, or is likely to fail, to satisfy the threshold conditions in relation to one or more, or all, of the regulated activities for which the authorised person has Part IV permission).

3. Guidance on Threshold Condition 4: Adequate resources (Paragraph 4, Schedule 6 to the Act) – COND 2.4

- 3.1. COND gives guidance on the Threshold Conditions set out in Schedule 6 to the Act (COND 1.2.1G).
- 3.2. COND 2.4.1UK states that the resources of the person concerned must, in the opinion of the FSA, be adequate in relation to the regulated activities that he seeks to carry on, or carries on.
- 3.3. COND 2.4.2G(2) provides that the FSA will interpret the term 'adequate' as meaning sufficient in terms of quantity, quality and availability, and 'resources' as including all financial resources, non-financial resources and means of managing its resources such as, for example, human resources and effective means by which to manage risks.
- 3.4. COND 2.4.3G(1) provides that when assessing this Threshold Condition, the FSA may have regard to any person appearing to it to be, or likely to be, in a relevant relationship with the firm, in accordance with section 49 of the Act (Persons connected with an applicant); for example, a firm's controllers, its directors or partners, other persons with close links to the firm, and other persons that exert influence over the firm which might pose a risk to the firm's satisfaction of the Threshold Conditions and would, therefore, be in a relevant relationship with the firm.
- 3.5. COND 2.4.4G(1) states that the FSA will have regard to all relevant matters which includes at (d) whether the firm has taken reasonable steps to identify and measure any risks of regulatory concern that it may encounter in conducting its business and has installed appropriate systems and controls and appointed appropriate human resources to measure them prudently at all times.
- 3.6. COND 2.4.5G states that in complying with SYSC 5 (Systems and controls), a firm

should plan its business appropriately so that it is able to identify, measure and manage the likely risks of regulatory concern it will face.

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

- 4.1. COND 2.5.1UK states that the person concerned must satisfy the FSA that he is a fit and proper person having regard to all the circumstances including (a) his connection with any person; (b) the nature of any regulated activity that he carries on or seeks to carry on; and (c) the need to ensure that his affairs are conducted soundly and prudently.
- 4.2. COND 2.5.2G(1) provides that Threshold Condition 5 requires the firm to satisfy the FSA that it is 'fit and proper' to have Part IV permission having regard to all the circumstances, including its connection with other persons, the range of its regulated activities and the overall need to be satisfied that its affairs are and will be conducted soundly and prudently.
- 4.3. COND 2.5.3G(1) further provides that the emphasis of the Threshold Conditions is on the suitability of the firm itself (the suitability of each person who performs a controlled function will be assessed by the FSA under the approved persons regime). However, COND 2.5.3G(2) permits the FSA, when assessing this Threshold Condition in relation to a firm, to have regard to any person appearing to it to be, or likely to be, in a relevant relationship with the firm, as permitted by section 49 of the Act (Persons connected with the applicant). The guidance in COND 2.5.3G(2) also refers to COND 2.4.3G, which sets out examples of persons in a relevant relationship with the firm, including a firm's controllers, its directors or partners, other persons with close links to the firm and other persons that exert influence on the firm which might pose a risk to the firm's satisfaction of the Threshold Conditions and would, therefore, be in a relevant relationship with the firm.
- 4.4. COND 2.5.4G provides that in determining whether the firm will satisfy and continue to satisfy Threshold Condition 5, the FSA will have regard to all relevant matters arising including whether a firm has or will have a competent and prudent

management (COND 2.5.4G(2)(b)) and whether it can demonstrate that it conducts, or will conduct, its business with integrity, with due skill, care and diligence and in compliance with proper standards (COND 2.5.4G(2)(a) and (c)).

4.5. COND 2.5.6G, in giving guidance on the interpretation of whether a firm will satisfy and continue to satisfy Threshold Condition 5 in respect of conducting its business with integrity and in compliance with proper standards, gives examples of relevant matters which include:

- (1) whether the firm has been open and co-operative in all its dealings with the FSA, and is ready willing and organised to comply with the requirements under the regulatory system (COND 2.5.6G(1));
- (2) whether the firm has contravened, or is connected with any person who has contravened any provisions of the Act or the regulatory system (COND 2.5.6G(4)); and
- (3) whether the firm has taken reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system applicable to it (COND 2.5.6G(6)).

4.6. COND 2.5.7G provides guidance on the matters that are relevant to determining a firm satisfying and continuing to satisfy Threshold Condition 5 in respect of it having competent and prudent management and exercising due skill, care and diligence. Such matters include whether the firm has conducted enquiries that are sufficient to give it reasonable assurance that it will not be posing unacceptable risks to consumers or the financial system (COND 2.5.7G(9)).