
FIRST SUPERVISORY NOTICE

To: **Virendra Rai Agarwala (trading as Abbex Insurance)**
Of: **194 Cann Hall Road**
London
E11 3NH

Dated: **1 November 2006**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (the “FSA”) has taken 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 vary the permission granted to you, Virendra Rai Agarwala, pursuant to Part IV of the Act (“your Permission”) by removing all regulated activities with immediate effect. Accordingly, your Permission no longer includes the following regulated activities:

- a) Advising on investments (excluding pension transfers and opt-outs);
- b) Agreeing to carry on a regulated activity;
- c) Arranging (bringing about) deals in investments;
- d) Assisting in the administration and performance of a contract of insurance;
- e) Dealing in investments as agent;
- f) Making arrangements with a view to transactions in investments.

- 1.2 The FSA has further decided to vary your Permission by including the following requirements, namely that within 14 days you must:
- (i) notify in writing all clients for your regulated activities that you are no longer permitted by the FSA to carry on regulated activities;
 - (ii) provide the FSA with a copy of the written notification sent to all clients for your regulated activities pursuant to (i) above, together with a list of all clients to whom that notification has been sent.

2. REASONS FOR ACTION

Summary

- 2.1 The FSA has concluded, on the basis of the facts and matters described below, that you are failing to satisfy the threshold conditions set out in Schedule 6 to the Act (the “threshold conditions”) in that the FSA is not satisfied that you are a fit and proper person having regard to all the circumstances. That is because, in the opinion of the FSA, you have failed to conduct your business with integrity. You have also failed to meet the requirements of Principle 6 under which firms must pay due regard to the interests of their customers and treat them fairly. Further, your conduct has not met the requirements of Principle 11 under which firms must co-operate with the FSA.
- 2.2 The FSA also considers, on the basis of those facts and matters, that it is necessary, in order to protect the interests of consumers, for the action specified above to take immediate effect.

Relevant Statutory Provisions

- 2.3 The FSA’s regulatory objectives, established in section 2(2) of the Act, include the protection of consumers.
- 2.4 By section 45 of the Act, the FSA is authorised:
- to vary an authorised person’s permission, where it appears to the FSA that such person is failing to satisfy the threshold conditions;
 - to vary such permission by removing a regulated activity from those for which the permission is given;
 - to vary an authorised person’s permission, where it is desirable to exercise that power in order to protect the interests of consumers;
 - to include any provision in the permission as varied that could be included if a fresh permission were being given in response to an application under section 40 of the Act, including the imposition pursuant to section 43 of the Act of such requirements as the FSA considers appropriate.
- 2.5 Section 53(3) of the Act allows such a variation to take effect immediately if the FSA reasonably considers that it is necessary for the variation to take effect immediately.

Relevant Handbook Provisions

- 2.6 In exercising its power to vary a Part IV permission, the FSA must have regard to relevant provisions in the FSA Handbook of rules and guidance (the “FSA Handbook”). The main provisions relevant to the FSA’s action are set out below.

Relevant Principles

- 2.7 Principle 1 of the FSA’s Principles for Businesses requires that a firm must conduct its business with integrity.
- 2.8 Principle 6 requires that a firm must pay due regard to the interests of its customers and treat them fairly.
- 2.9 Principle 11 requires a firm to deal with its regulator in an open and cooperative way, and to disclose to the FSA appropriately anything relating to the firm of which the FSA would reasonably expect notice.

ENF 3.5 - The FSA’s policy for exercising its own-initiative power to vary a Part IV permission

- 2.10 ENF 3.5.2 requires the FSA to have regard to its regulatory objectives and the range of regulatory tools that are available to it.
- 2.11 ENF 3.5.3 provides that the FSA will take formal action affecting the conduct of a firm’s commercial business only if that business is being conducted in such a way that the FSA judges it necessary to act in order to address the consequences of non-compliance with the Act and the Principles for Businesses.
- 2.12 ENF 3.5.8 provides that the circumstances in which the FSA will consider exercising its power include where the FSA has serious concerns that the authorised person has breached requirements imposed on it by or under the Act (including Principles and rules) and the breaches are material in number or individual seriousness.
- 2.13 ENF 3.5.13 includes, among the factors which will determine whether the urgent exercise of the FSA’s own-initiative power is an appropriate response to serious concerns, the extent of any loss or risk of loss or other adverse effect on consumers.

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

- 2.14 COND 2.5.1 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.
- 2.15 COND 2.5.4(2) requires the FSA, when forming its opinion as to whether an authorised person is conducting its affairs soundly and prudently, to have regard to relevant matters, including:

- (a) whether it conducts its business with integrity and in compliance with proper standards; and
 - (b) whether it has, or will have, a competent and prudent management.
- 2.16 COND 2.5.4(3) requires the FSA only to take into account relevant matters which are significant in the context of the suitability of the firm.
- 2.17 COND 2.5.6 permits the FSA, when forming its opinion as to whether an authorised person is conducting its business with integrity and in compliance with proper standards, to 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;
 - the firm, or a person connected with the firm, has been refused registration, authorisation, membership or license to carry out a trade, business or profession or has had that registration, authorisation, membership or license revoked, withdrawn or terminated, or has been expelled by a regulatory or government body;
 - the firm has contravened, among other things, the requirements of the regulatory system, which includes the threshold conditions and the FSA Principles and other rules.

Facts and matters relied on

- 2.18 The FSA has become aware of the following material adverse information about you which was not disclosed by you to the FSA in your application for authorisation or at any later stage:
- your name was erased from the Register of Insurance Brokers, on 6 September 1993, by the Insurance Brokers Registration Council (the "IBRC");
 - an Intervention Notice was issued to you on 15 November 1996 by the Personal Investment Authority (the "PIA"), prohibiting you from conducting any investment business because you had failed to co-operate with the PIA;
 - your previous authorisation was revoked by the PIA on 30 July 1997 because you had admitted failing to co-operate with the PIA;
 - a Financial Ombudsman Service (the "FOS") Award was made against you on 15 December 2004 (the "Award"), in connection with inappropriate pension advice given to one of your clients. You were notified by the FOS on 30 September 2003 of its Adjudicator's view that the complaint should succeed, and you were notified on 5 January 2005 of its Final Decision, which found in favour of the client and directed you to pay redress to her.

2.19 You have failed to comply with the Award.

Conclusions

2.20 The facts and matters described above lead the FSA, having regard to its regulatory objectives which include the protection of consumers, to the following conclusions:

- your registration as an Insurance Broker was terminated by the IBRC (this issue was identified by the FSA itself during the authorisation process and thus considered despite your failure to disclose it);
- the PIA prohibited you from conducting any investment business, subsequently revoking your authorisation (this issue was not considered during the authorisation process, and is considered more serious than the IBRC termination mentioned above);
- a FOS Award was made against you in connection with inappropriate advice given to one of your clients;
- you did not disclose the IBRC termination or the PIA prohibition in your application for authorisation, nor did you disclose the existence of the FOS award after it had been made (contrary to the declaration signed by you in the authorisation application form), and by failing to do so you sought to prevent the FSA from making a fully informed assessment of your fitness to be authorised to conduct regulated activities, and you have breached Principles 1 and 11;
- these failings go directly to impugn your integrity and demonstrate that you are not a fit and proper person to be authorised to conduct regulated activities;
- you have breached DISP 3.9.14R, a requirement imposed by the FSA, and have failed to remedy the breach notwithstanding the FSA's reasonable requests for you to do so;
- by failing to comply with the Award you have also breached Principle 6 (Customers' interests) of the FSA's Principles of Businesses in that you have not paid due regard to a customer's interest or treated her fairly;
- by these material failures, you are failing to conduct your business soundly and prudently and in compliance with proper standards, and therefore fail to satisfy Threshold Condition 5: Suitability;
- your regulatory history, your failure to comply with the Award and your failure to disclose adverse material information cause the FSA to have very serious concerns about you such that the exercise of the FSA's own-initiative power to vary your Permission with immediate effect is an appropriate response to those concerns.

3. DECISION MAKER

The decision which gave rise to the obligation to give this First Supervisory Notice was made by the Regulatory Decisions Committee.

4. IMPORTANT

- 4.1 This First Supervisory Notice is given to Mr Agarwala in accordance with section 53(4) of the Act. The following statutory rights are important.

The Tribunal

- 4.2 You may refer this matter to the Financial Services and Markets Tribunal (the "Tribunal"). Under section 133 of the Act, you have 28 days from the date you were sent this First Supervisory Notice to refer the matter to the Tribunal or such other period as specified in the Tribunal Rules or as the Tribunal may allow. A reference to the Tribunal is made by way of a written notice signed by you and filed with a copy of this First Supervisory Notice. The Tribunal's address is: 15-19 Bedford Avenue, London WC1B 3AS (telephone 020 7612 9700). The detailed procedures for making a reference to the Tribunal are contained in section 133 of the Act and the Tribunal Rules.
- 4.3 You should note that the Tribunal Rules provide that at the same time as filing a reference notice with the Tribunal, you must send a copy of the notice to the FSA. Any copy notice should be sent to Raymond Raffaelli at the FSA, 25 The North Colonnade, Canary Wharf, London E14 5HS.

Representations

- 4.4 You have the right to make written and oral representations to the FSA (whether or not you refer this matter to the Tribunal). If you wish to make written representations you must do so by 5 December 2006 or such later date as may be permitted by the FSA. Written representations should be made to the Regulatory Decisions Committee and sent to Liane Silvester, Regulatory Decisions Committee Professional Support Services. The Regulatory Decisions Committee Professional Support Services' address is: 25 The North Colonnade, Canary Wharf, London E14 5HS. If you wish to make oral representations, you should inform Mrs Silvester not less than 5 business days before 5 December 2006.

Confidentiality and publicity

- 4.5 You should note that this First Supervisory Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining advice on its contents). You should also note that section 391 of the Act requires the FSA when the First Supervisory Notice takes effect, to publish such information about the matter as it considers appropriate.

FSA contacts

- 4.6 If you have any questions regarding the procedures of the Regulatory Decisions Committee, you should contact Liane Silvester (direct line: 020 7066 3198/direct fax: 020 7066 3199), Regulatory Decisions Committee Professional Support Services.
- 4.7 For more information concerning this matter generally, you should contact Raymond Raffaelli at the FSA (direct line: 020 7066 9530/fax: 020 7066 9721).

Elizabeth Filkin
Deputy Chairman, Regulatory Decisions Committee