
FIRST SUPERVISORY NOTICE

To: **Alpha Delta**
Of: **56 Ash Hill Crescent**
 Hatfield
 Doncaster
 South Yorkshire
 DN7 6QU

Dated: **19 December 2002**

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

For the reasons set out 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 Alpha Delta (“Alpha”) pursuant to Part IV of the Act (“Alpha’s Part IV permission”) by removing all regulated activities with effect from 31 January 2003. Accordingly, Alpha’s Part IV permission no longer includes the following regulated activities:

- (a) advising (excluding Pension Transfers and Opt-Outs);
- (b) agreeing to carry on a regulated activity;
- (c) arranging deals in investments;
- (d) making arrangements.

The FSA has further decided to vary Alpha's Part IV permission by including the following requirements, namely that by 31 January 2003 Alpha must:

- (i) advise in writing all clients for its regulated activities that it is no longer permitted by the FSA to carry on regulated activities;
- (ii) provide the FSA with a copy of the written advice sent to all clients for its regulated activities pursuant to (i) above.

2. EFFECTIVE DATE

The action specified above takes effect on 31 January 2003.

3. REASONS FOR ACTION

Summary

The FSA has concluded, on the basis of the facts and matters described below, that Alpha is failing to satisfy the threshold conditions set out in Schedule 6 to the Act ("the threshold conditions") in that Alpha has failed to ensure that its business is conducted with integrity and in compliance with proper standards, or to pay due regards to the interest of its customers.

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 effect immediately.

Relevant Statutory Provisions

The FSA's regulatory objectives, established in section 2(2) of the Act, include market confidence and the protection of consumers.

Section 41 of the Act with Schedule 6, paragraph 5, to the Act sets out the threshold conditions which authorised persons must satisfy and continue to satisfy.

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 a permission by removing a regulated activity from those for which the permission is given;
- 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.

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 Guidance

In exercising its power to vary a Part IV permission, the FSA must have regard to guidance published in the FSA Handbook. The main considerations in relation to the action specified above are set out below.

Relevant threshold conditions

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

Paragraph 2.5.1 says:

“The person concerned must satisfy the FSA that he is a fit and proper person having regard to all the circumstances, including ... the need to ensure that his affairs are conducted soundly and prudently.”

Paragraph 2.5.4(2)(a) 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 whether it conducts its business with integrity and in compliance with proper standards.

Paragraph 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.

Paragraph 2.5.6(4) 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 authorised person has contravened any provisions of the Act, the regulatory system, or the rules of other regulatory authorities, including the FSA’s predecessors.

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

Paragraph 3.5.2 requires the FSA to have regard to its regulatory objectives and the range of regulatory tools that are available to it.

Paragraphs 3.5.6 and 3.5.8 say the FSA will consider varying a Part IV permission in circumstances including:

- (i) where an authorised person fails to comply with the FSA’s reasonable request to take remedial steps and the consequences of the authorised person’s unwillingness or inability to take adequate and timely steps to address the FSA’s concerns may be serious;

- (ii) 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.

Paragraph 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, and the steps the authorised person has taken or is taking to address the issue.

Relevant Rules

Principle 6 of the FSA's Principles for Businesses ("FSA Principle 6") requires a firm to pay due regard to the interests of its customers and treat them fairly.

Principle 11 of the FSA's Principles for Businesses ("FSA Principle 11") requires a firm to deal with its regulator in a co-operative way.

Facts and matters relied on

Alpha is a sole trader independent financial adviser with one approved person, the principal, Mr Howard Roe.

Failure to comply with an Ombudsman Award

Alpha has failed to comply with a PIA Ombudsman Award made on 30 March 2000 ("the Award").

Despite repeated requests and warnings from the PIA Ombudsman Bureau and the FSA, Alpha has been unwilling or unable to comply with PIA Rule 8.6 which required it to comply promptly with any award made against it by the PIA Ombudsman, unless it exercised in good faith a right of appeal, or applied for other relief, to the Court. The FSA has seen no evidence that such action was taken by Alpha. Alpha's failure to comply with the Award also constitutes a breach of Principle 6 of the FSA's Principles for Businesses which requires an authorised person to pay due regard to the interests of customers and treat them fairly.

Failure to comply with an Order of the PIA Disciplinary Committee

Alpha has failed to comply with an Order of the PIA Disciplinary Committee made on 26 September 2001 which required Alpha to comply with the Award made by the PIA Ombudsman. Alpha, by failing to comply with an Order of the PIA Disciplinary Committee has breached Principle 11 of the FSA's Principles for Businesses in that it has not dealt with its regulator in a co-operative way.

Conclusions

The facts and matters described above lead the FSA, having regard to its regulatory objectives, to the following conclusions:

- Alpha, by having failed to comply with the PIA Ombudsman Award and the Order of the Disciplinary Committee, and by continuing to do so, has contravened and continues to contravene the regulatory system and the Principles and rules of the FSA.
- Alpha has therefore failed and continues to fail to conduct its business in compliance with proper standards. That failure is significant in the context of the suitability of Alpha and Alpha therefore fails to satisfy Threshold Condition 5: Suitability.
- The risk of loss or other adverse effect on consumers by Alpha's failings causes the FSA to have serious concerns about Alpha such that the exercise of the FSA's own-initiative powers to vary Alpha's Part IV permission is an appropriate response to those concerns. In particular it is necessary that Alpha's Part IV permission should be varied:
 - to help maintain consumer confidence in the Financial Ombudsman Service and
 - to address the FSA's serious concern that, if complaints in respect of new business transacted by Alpha were to arise, Alpha would again fail to co-operate with the Financial Ombudsman Service or comply with any Financial Ombudsman Service Awards.

4. DECISION MAKER

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

5. IMPORTANT

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

The Tribunal

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 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 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.

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. Please send the copy notice to John Bolton at the FSA, 9th Floor, 25 The North Colonnade, Canary Wharf, London E14 5HS.

Representations

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 31 January 2003 or such longer period as may be permitted by the FSA. Written representations should be made to the Regulatory Decisions Committee and sent to Mrs Liane Silvester, Regulatory Decisions Committee Secretariat, at the above address. If you wish to make oral representations, you should inform Mrs Silvester not less than 5 business days before 31 January 2003.

Confidentiality and publicity

You should note that this 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 Supervisory Notice takes effect, to publish such information about the matter as it considers appropriate.

FSA contacts

If you have any questions regarding the procedures of the Regulatory Decisions Committee, you should contact either Mrs Liane Silvester (direct line: 020 7676 3196/fax: 020 7676 3197), or Brian Whitbread, Head of the Regulatory Decisions Committee Secretariat (direct line: 020 7676 3202/fax: 020 7676 3197).

For more information concerning this matter generally, you should contact John Bolton at the FSA (direct line: 020 7676 5384/fax: 020 7676 9722).

Christopher FitzGerald
Chairman, Regulatory Decisions Committee