
SECOND SUPERVISORY NOTICE

To: **Bansal Estates and Insurance Agents**

Of: **Bansal House
14 Warwick Row
Coventry
West Midlands
CV1 1EX**

FSA
Reference
Number: **315101**

Dated: **22 April 2009**

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, having taken account of your written representations dated 2 March 2009 and pursuant to section 45 of the Financial Services and Markets Act 2000 (the "Act"), the FSA has decided not to rescind the variation of permission granted to you, Bansal Estates and Insurance Agents ("BEIA"), pursuant to Part IV of the Act ("BEIA's Part IV permission"). The variation of permission removed all regulated activities with immediate effect. Accordingly, BEIA's Part IV permission no longer includes the following regulated activities:

- (1) advising on investments (except on Pension Transfers and Pension Opt Outs);
- (2) agreeing to carry on a regulated activity;
- (3) arranging (bringing about) deals in investments;
- (4) assisting in the administration and performance of a contract of insurance;
- (5) dealing in investments as agent; and
- (6) making arrangements with a view to transactions in investments.

2. REASONS FOR ACTION

Summary

- 2.1 The FSA has concluded, on the basis of the facts and matters described below, that BEIA is failing to satisfy the Threshold Conditions set out in Schedule 6 to the Act (the "Threshold Conditions") in that, in the opinion of the FSA, BEIA's resources are not adequate in relation to the regulated activities BEIA has permission to carry on.
- 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 The FSA is authorised by section 45 of the Act to exercise the following powers:
- (1) to vary an authorised person's permission where it appears to the FSA that such person is failing to satisfy the Threshold Conditions;
 - (2) to vary such a permission by removing a regulated activity from those for which the permission is given, and
 - (3) 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.
- 2.6 Paragraph 4(1) of Schedule 6 to the Act sets out Threshold Condition 4, which states that:
- "The resources of the person concerned must, in the opinion of the Authority, be adequate in relation to the regulated activities that he seeks to carry on, or carries on."

Relevant Handbook provisions

- 2.7 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 relevant main considerations in relation to the action specified above are set out below.

Relevant Principle

- 2.8 Principle 4 (Financial prudence) requires a firm to maintain adequate financial

resources as laid out in the Principles for Businesses in the FSA Handbook.

Relevant rule

2.9 MIPRU 3.2.1R (the "PII Rule") requires that:

"A *firm* must take out and maintain professional indemnity insurance that is at least equal to the requirements of this section [MIPRU 3.2]"

Guidance concerning the relevant threshold condition

2.10 Guidance on Threshold Condition 4 is set out in Chapter 2.4 of the part of the FSA Handbook entitled Threshold Conditions ("COND").

Guidance concerning - Threshold Condition 4: Adequate resources (paragraph 4, Schedule 6 to the Act)

2.11 COND 2.4.1UK(1) reproduces the relevant statutory provision in the Act 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.

2.12 COND 2.4.1UK(2), permits the FSA, when forming its opinion as to whether the resources of an authorised person are adequate in relation to the regulated activities that he carries on, to have regard to the provision he makes in respect of liabilities (including contingent and future liabilities).

2.13 COND 2.4.4G(3), states that the FSA only takes into account relevant matters which are material in relation to the regulated activities for which the authorised person has permission.

Other relevant regulatory provisions

2.14 The FSA's policy in relation to its enforcement powers is set out in the Enforcement Guide ("EG") certain provisions of which are summarised below.

2.15 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.

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

2.16 EG 8.1B provides that the FSA will have regard to its regulatory objectives and the range of regulatory tools that are available to it, when it considers how it should deal with a concern about a firm.

2.17 EG 8.3 provides that the FSA will exercise its formal powers under section 45 of the Act, where the FSA considers it is appropriate to ensure a firm meets its regulatory requirements. EG 8.3(1) specifies that the FSA may consider it appropriate to exercise its powers where it has serious concerns about a firm or about the way its business is being or has been conducted.

- 2.18 EG 8.5 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. EG 8.5(1)(a) specifies that the FSA will consider exercising its own initiative power where a firm's financial resources appear to be inadequate, for example where it has failed to maintain PII.
- 2.19 EG 8.9 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.

Facts and matters relied on

- 2.20 BEIA has been authorised since 19 January 2005 to carry on general insurance mediation business.
- 2.21 BEIA has failed to satisfy the FSA that it maintains current PII, despite having had reasonable opportunities to do so.

Representations and findings

- 2.22 In its written representations dated 2 March 2009, BEIA did not dispute the facts but requested more time in which to complete its accounts and for the FSA to hold off any suspension concerning their business activities. It had on many occasions telephoned the FSA to ask for advice but had not received a satisfactory reply. It was told to put the figure they thought was correct. It had been a few years since it had tried to complete its accounts and for this reason, its RMARs were provisional.
- 2.23 BEIA also gave some background to the business as a whole of which general insurance was only one part. That part had declined drastically over the years leaving it with only handful of building insurance policies.
- 2.24 The FSA considers that the grounds on which the RDC issued the First Supervisory Notice and Warning Notice on 29 January 2009 have not changed. The FSA has no evidence of the 'many occasions' when advice was sought and has not had any financial information regarding BEIA's business for over 12 months. In particular, the representations failed to indicate what steps had been taken to obtain PII insurance, or even address that issue at all.

Conclusions

- 2.25 Taking into account all of the above, the FSA has decided not to rescind its decision in the First Supervisory Notice to remove all regulated activities from your permission, as set out in more detail in paragraph 1.1.
- 2.26 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:
- (1) by failing to satisfy the FSA that BEIA has effected compliant PII or otherwise satisfy the FSA that it has adequate resources, BEIA is failing to make adequate provision in respect of the its liabilities, including contingent and future liabilities, in breach of FSA Principle 4. That failing is material in relation to the regulated

activities for which BEIA has permission and it therefore fails to satisfy Threshold Condition 4: Adequate resources;

- (2) the risk of loss or other adverse effect on consumers by BEIA's failing, which is a material breach of a requirement imposed upon BEIA by the FSA's rules, causes the FSA to have very serious concerns about BEIA such that the exercise of the FSA's own-initiative power to vary BEIA's Part IV permission with immediate effect is an appropriate response to those concerns; and
- (3) specifically, the variation of BEIA's Part IV permission should take immediate effect to address the FSA's serious concern that claims for which BEIA is uninsured might arise from new business.

3. DECISION MAKER

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

4. IMPORTANT

- 4.1 This Supervisory Notice is given to you in accordance with section 53(7) 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 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.
- 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 Lehong Mac at the FSA, 25 The North Colonnade, Canary Wharf, London E14 5HS.

Confidentiality and publicity

- 4.4 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

- 4.5 For more information concerning this matter generally, you should contact Lehong Mac at the FSA (direct line: 020 7066 5742/fax: 020 7066 5743).

Tim Herrington
Chairman, Regulatory Decisions Committee