
FIRST SUPERVISORY NOTICE

To: **Bridgewater House (UK) Limited**
1a Sandwich Street
Walkden
Manchester
M28 3XN

Date: 17 March 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 and pursuant to Section 45 and Section 48 of the Financial Services and Markets Act 2000 (“the Act”), the FSA has decided to vary the permission granted to Bridgewater House (UK) Limited (“the Firm”) pursuant to Part IV of the Act (“the Firm’s Permission”) by

- (1) removing all regulated activities with immediate effect. Accordingly, the Firm’s Permission no longer includes the following regulated activities:

Regulated Home Finance

- (a) Agreeing to carry on a regulated activity;
- (b) Advising on regulated mortgage contracts;
- (c) Arranging regulated mortgage contracts;
- (d) Making arrangements with a view to regulated mortgage contracts;

Insurance mediation

- (e) Advising (ex Pension Transfers/Opt Outs);

- (f) Arranging deals in investments;
 - (g) Dealing in investments as agent;
 - (h) Making arrangements with a view to transactions in investments.
- (2) imposing a requirement, pursuant to Section 43 of the Act, such that the Firm's assets (or any assets belonging to your customers but held by the Firm to its order) held by any institution and including but not limited to property at Bridgewater House, 1a Sandwich Street, Walkden, Manchester, M28 3XN, may not, so long as the requirement is in force be released or disposed or dealt with, without written authority from the FSA.

2. REASONS FOR ACTION

2.1. The FSA has serious concerns, on the basis of the facts and matters described below, that:

- (1) the Firm has failed to arrange adequate protection for clients' assets when it was responsible for them in breach of Principle 10 of the FSA's Principles for Businesses. In particular, the Firm has:
 - (a) failed to separate client money from that of its own in breach of FSA Rule 5.5.3R in the Client Assets sourcebook ("CASS") which is part of the FSA Handbook;
 - (b) failed to introduce adequate organisational arrangements to minimise the risk of the loss or diminution of client money.
- (2) the Firm has failed to control and monitor adequately advance payment of client insurance premiums it collected and thereby failed to take reasonable steps to organise and control its affairs responsibly and effectively, with adequate risk management systems, in breach of Principle 3 of the FSA's Principles for Businesses;
- (3) the Firm has failed to maintain adequate financial resources in order to meet its liabilities as they fall due, in breach of Principle 4 of the FSA's Principles for Businesses;
- (4) the above failings demonstrate that the Firm is failing, and will continue to fail, to satisfy the threshold conditions set out in Schedule 6 to the Act ("the Threshold Conditions") in that the FSA is not satisfied that the Firm's resources are adequate to the regulated activities that it seeks to carry on, or carries on (Threshold Condition 4 – Adequate Resources).

2.2. The FSA considers on the basis of these facts and matters, that it is necessary, in support of the FSA's consumer protection objective for the action specified above to take immediate effect.

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS

- 3.1. Annex 1 below sets out the relevant statutory powers, regulatory provisions and policy relied upon.

4. FACTS AND MATTERS RELIED ON

Background

- 4.1. The Firm became authorised on 31 October 2004 in respect of agreeing to carry on a regulated activity. The Firm subsequently became authorised on 9 December 2004 to carry on the following regulated activities:
- (a) Advising on regulated mortgage contracts;
 - (b) Arranging regulated mortgage contracts; and
 - (c) Making arrangements (Regulated Home Finance);

The Firm became authorised on 14 January 2005 to carry on the following regulated activities:

- (a) Advising (ex Pension Transfers/ Opt Outs);
 - (b) Arranging deals in investments;
 - (c) Dealing in investments as agent; and
 - (d) Making arrangements (Insurance Mediation).
- 4.2. On 27 January 2009, following a request from the FSA, the Firm agreed voluntarily to vary the Firm's Permissions to prevent it from advising on or arranging sales of any new regulated insurance contracts. This did not prevent it from assisting in the administration and performance of existing contracts of regulated insurance.
- 4.3. The Firm is a mortgage broker which deals mainly in the sub-prime mortgage market. The Firm is also an insurance broker and deals mainly in life and critical illness insurance. Since authorisation, the Firm has had three approved persons. The first resigned from the Firm in August 2007, the second, recently holding Controlled Function 29 (Significant Management), resigned this function in December 2008. The remaining approved person has held Controlled Functions CF1 (Director), CF8 (Apportionment and Oversight) and has been responsible for Insurance Mediation since 16 March 2006.
- 4.4. In addition to arranging mortgages for its customers, the Firm also arranges life and critical illness insurance in connection with the mortgages. The Firm does this by charging a sum, usually totalling around £2,000, up front to the customer. Included within this sum is an amount to cover the cost of future monthly premiums for two years of the particular insurance the customer has chosen to take. Additionally, the sum includes a fee payable to the Firm in respect of its services to the customer. The

Firm will pay the monthly insurance premium to the insurance provider as it falls due. These sums were paid into one account.

Protection of client money

- 4.5. Where a firm takes in advance a sum of money from a customer, which is to be used in the future for the purpose of paying for a contract of insurance on the customer's behalf, that sum of money is client money and is therefore subject to the relevant FSA rules and standards.
- 4.6. The Firm did not consider that the portion of the sum it charged for its insurance services to cover the cost of customer insurance premiums constituted client money. The Firm said that it only became aware that it held client money in this regard after the commencement of the FSA's investigation.
- 4.7. The Firm is required, pursuant to CASS 1.2.2R and CASS 5.3.2R to hold client money as a trustee. The Firm is further required, pursuant to CASS 5.5.3R and CASS 5.5.5R, to hold client money separate from that of its own in a client bank account.
- 4.8. The Firm further failed to separate the sums of client money it held from its own funds and all receipts from customers were placed into the Firm's main bank account. The FSA considers the Firm has breached the CASS rule Rule 5.5.3R and 5.5.5R by failing to properly hold client money separate from its own, thereby putting client money at risk and causing consumer detriment.

Payment and control of customer insurance premiums

- 4.9. The Firm has arranged insurance contracts for around 1400 customers since it became authorised. This business was placed with two insurance providers. The Firm failed to take reasonable steps to implement effective procedures to maintain properly the monthly insurance premium payments it was responsible for. As a result, customers' policies lapsed due to non-payment of premiums by the Firm.
- 4.10. The Firm failed to take reasonable steps to monitor and control the payment of monthly insurance premiums for those customers for whom it remained responsible. In some cases, the Firm paid in excess of the two year's premiums it was responsible for paying and in some cases the insurance providers did not receive the full two year's premium payments by the Firm. As a result some customers' policies have lapsed. The Firm is causing serious on-going consumer detriment to those customers for whom it has failed to properly maintain payment to the insurer.

Financial resources

- 4.11. The Firm has provided to the FSA a calculation showing that as of 1 April 2009, the total client premiums which the Firm has yet to remit to the insurer will be £84,938.54. The Firm also provided a Statement of Affairs to the FSA which shows that as of 9 February 2009, the Firm had liquid assets of £27,214. The Firm therefore has inadequate financial resources to meet its liabilities as they fall due.
- 4.12. The Firm told the FSA that it would address the balance of client money in order to cover the premiums it was responsible for using profits coming into the business. To

date, the Firm has been unable to make up this shortfall and has now proposed to refinance its business as a solution. The FSA does not consider this proposal to be satisfactory because it fails to reintroduce client monies that have been dissipated by the Firm, it simply improves the Firm's temporary liquidity position. In order to comply with FSA requirements, the sum of the client premiums must be placed immediately into a segregated client money account.

- 4.13. The Firm has insufficient liquid assets to meet this requirement and has therefore failed to maintain adequate financial resources.

5. ANALYSIS OF CONCERNS

- 5.1. The FSA has serious concerns about the Firm, including the way in which its business is being or appears to have been conducted for the reasons set out below, that it poses a serious risk to consumers.
- 5.2. By failing to control and monitor adequately advance payment of client insurance premiums, it appears that the Firm has failed to organise and control its affairs responsibly and effectively in breach of Principle 3 of the FSA's Principles for Businesses.
- 5.3. By failing to ensure client money was held appropriately and properly segregated from the Firm's own, it appears that the Firm failed to arrange adequate protection for clients' assets when it was responsible for them, in breach of Principle 10 of the FSA's Principles for Businesses.
- 5.4. It appears that the Firm has failed to maintain adequate financial resources in order to meet its liabilities as they fall due, in breach of Principle 4 of the FSA's Principles for Businesses.
- 5.5. It appears that the Firm has failed to maintain adequate financial resources in order to meet its liabilities as they fall due, and appears to be in breach of the threshold conditions set out in Schedule 6 to the Act, Threshold Condition 4: Adequate resources.

6. CONCLUSIONS

- 6.1. The facts and matters described above lead the FSA, having regard to its regulatory objectives, which include securing the appropriate degree of protection for consumers, to the following conclusions:
 - (1) the above matters are so serious as to demonstrate that the current restriction on the Firm's activities is no longer sufficient. The Firm appears not to be a fit and proper person to be authorised to conduct any regulated activities, having regard to the need to ensure that the Firm's affairs are conducted soundly and prudently;
 - (2) It appears that the Firm fails to satisfy Threshold Condition 4 (Adequate resources), and the FSA is therefore entitled to vary the Firm's Permission to remove all regulated activities and to include the requirements set out at paragraph 1.1; and

- (3) that the variation of the Firm's Permission should take immediate effect to address the FSA's serious concern about the risk of customer detriment.

7. DECISION MAKER

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

8. IMPORTANT

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

The Tribunal

- 8.2. 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.
- 8.3. 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 Catherine Harris at the FSA, 4th Floor, 25 The North Colonnade, Canary Wharf, London E14 5HS.

Representations

- 8.4. 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 20 April 2009 or such later date as may be permitted by the FSA. Written representations should be made to the Regulatory Decisions Committee and sent to Jackie Noonan, 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 Jackie Noonan not less than 5 business days before 30 March 2009.

Access to evidence

- 8.5. Section 394 of the Act does not apply to this Supervisory Notice.

Confidentiality and publicity

- 8.6. 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

- 8.7. If you have any questions regarding the procedures of the Regulatory Decisions Committee, you should contact Jackie Noonan of RDC Professional Support Services (direct line: 020 70663074/fax: 020 70661015).
- 8.8. For more information concerning this matter generally, you should contact Catherine Harris of the FSA (direct line: 020 7066 4872).

.....

Tim Herrington

Chairman

Regulatory Decisions Committee

ANNEX 1

Statutory Provisions

- 8.9. The FSA's regulatory objectives, established in section 2(2) of the Act, include securing the appropriate degree of protection for consumers.
- 8.10. By section 45 of the Act, the FSA is authorised:
- (1) *to vary an authorised person's permission, where it appears to the FSA that it is desirable to vary the permission in order to protect the interests of consumers or potential consumers (section 45(1)(c));*
 - (2) *vary such permission by removing one or more regulated activities from those for which the permission was given.*
- 8.11. By section 48(1)(b) of the Act, the FSA can vary an authorised person's permission so as to alter an assets requirement imposed on him or impose such a requirement on him. "Assets requirement" means a requirement under section 43 of the Act including a requirement prohibiting the disposal of, or other dealing with any of a party's assets, (whether in the United Kingdom or elsewhere) or restricting such disposals or dealings.
- 8.12. Section 53(3) of the Act allows such a variation including the imposition of a requirement to take effect immediately if the FSA reasonably considers that it is necessary for the variation to take effect immediately.

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

- 8.13. In exercising its power to vary a Part IV permission, the FSA must have regard to the Enforcement Guide ("EG"). The main considerations in relation to the action specified above are set out below.
- 8.14. Paragraph 8.2 of EG states that, when it considers how it should deal with a concern about a firm, the FSA will proceed on the basis that a firm (together with its directors and senior management) is primarily responsible for ensuring the firm conducts its business in compliance with the Act, the Principles and other rules.
- 8.15. Where the FSA considers that it cannot rely on a firm taking effective action, or if the firm fails to comply with the FSA's reasonable request for it to take remedial steps, paragraph 8.4 of EG provides that the FSA will consider exercising its formal powers under section 45 of the Act to vary a firm's permission.
- 8.16. Paragraph 8.5(1) of EG indicates that the FSA will consider varying a firm's Part IV permission in support of its enforcement function in circumstances where it has serious concerns about a firm, or about the way its business is being or has been conducted, including where it appears that the firm is failing or is likely to fail to satisfy the threshold conditions relating to one or more of its regulated activities because, for example, the firm appears not to be a fit and proper person because it has not conducted its businesses in compliance with high standards.

- 8.17. Paragraph 8.7 of EG indicates that the FSA will consider exercising its own initiative power as a matter of urgency where:
- (1) *the information available to it indicates serious concerns about the firm or its business that need to be addressed immediately; and*
 - (2) *circumstances indicate that it is appropriate to use statutory powers immediately to require and/or prohibit certain actions by the firm in order to ensure the firm addresses these concerns.*
- 8.18. Paragraph 8.8 of EG gives examples of situations that will give rise to the serious concerns mentioned in EG 8.7. These include information indicating significant loss, risk of loss or other adverse effects for consumers, where action is necessary to protect their interests (EG 8.8(1)).
- 8.19. Paragraph 8.9 of EG states that the FSA will consider the full circumstances of each case when it decides whether an urgent variation of Part IV permission is appropriate and provides a list of factors which it may consider, including:
- (1) *the extent of any loss, or risk of loss, or other adverse effect on consumers. The more serious the loss or potential loss or other adverse effect, the more likely it is that the FSA's urgent exercise of own-initiative powers will be appropriate, to protect consumers' interests (EG 8.9(1));*
 - (2) *the extent to which customer's assets appear to be at risk. Urgent exercise of the FSA's own-initiative power may be appropriate where the information available to the FSA suggests that customer assets held by, or to the order of, the firm, may be at risk ((EG 8.9(2)).*
- 8.20. Paragraph 8.10 of EG states that when varying Part IV permission at its own-initiative under its section 45 power the FSA may include in the Part IV permission as varied any limitation or restriction which it could have imposed if a fresh permission were being given in response to an application under section 40 of the Act.
- 8.21. Paragraph 8.12 of EG provides examples of requirements that the FSA may consider including in a firm's Part IV permission when exercising its own-initiative power in support of its enforcement function, including a requirement that prohibits the disposal of, or other dealing with, any of the firm's assets (whether in the United Kingdom or elsewhere) or restrict those disposals or dealings.

Relevant Principles

- 8.22. Principle 3 of the Principles states that a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
- 8.23. Principle 4 of the Principles states that a firm must maintain adequate financial resources.
- 8.24. Principle 10 of the Principles states that a firm must arrange adequate protection for clients' assets when it is responsible for them.

Relevant rules from Client Assets Sourcebook

- 8.25. CASS 1.2.2 states that CASS applies to every firm, except as provided for in CASS 1.2.3 R, with respect to the carrying on of:
- (1) *all regulated activities except to the extent that a provision of CASS provides for a narrower application; and*
 - (2) *unregulated activities to the extent specified in any provision of CASS.*
- 8.26. CASS 5.3.2R states that a firm (other than a firm acting in accordance with CASS 5.4) receives and holds client money as trustee (or in Scotland as agent) on the following terms:
- (1) *for the purposes of and on the terms of CASS 5.3, CASS 5.5 and the client money (insurance) distribution rules;*
 - (2) *subject to (4), for the clients (other than clients which are insurance undertakings when acting as such) for whom that money is held, according to their respective interests in it;*
 - (3) *after all valid claims in (2) have been met, for clients which are insurance undertakings according to their respective interests in it;*
 - (4) *on the failure of the firm, for the payment of the costs properly attributable to the distribution of the client money in accordance with (2) and (3); and*
 - (5) *after all valid claims and costs under (2) to (4) have been met, for the firm itself.*
- 8.27. CASS 5.3.3G states:
- (1) *A firm which holds client money can discharge its obligation to ensure adequate protection for its clients in respect of such money by complying with CASS 5.3 which provides for such money to be held by the firm on the terms of a trust imposed by the rules.*
 - (2) *The trust imposed by CASS 5.3 is limited to a trust in respect of client money which a firm receives and holds. The consequential and supplementary requirements in CASS 5.5 are designed to secure the proper segregation and maintenance of adequate client money balances. In particular, CASS 5.5 does not permit a firm to use client money balances to provide credit for clients (or potential clients) such that, for example, their premium obligations may be met in advance of the premium being remitted to the firm. A firm wishing to provide credit for clients may however do so out of its own funds.*
- 8.28. CASS 5.5.3R requires that a firm must, except to the extent permitted by CASS 5.5, hold client money separate from the firm's money.
- 8.29. CASS 5.2.1G states that if a firm holds money as agent of an insurance undertaking then the firm's clients (who are not insurance undertakings) will be adequately

protected to the extent that the premiums which it receives are treated as being received by the insurance undertaking when they are received by the agent and claims money and premium refunds will only be treated as received by the client when they are actually paid over.

Relevant Threshold Condition

- 8.30. Threshold condition 4: Adequate resources states that the resources of the person concerned must, the opinion of the FSA, be adequate in relation to the regulated activities that he seeks to carry on, or carries on. COND 2.4.2G states 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; for example, capital, provisions against liabilities, holdings of or access to cash and other liquid assets, human resources and effective means by which to manage risks.