
FIRST SUPERVISORY NOTICE

To: Crescent Financial Services
Of: 19 South Primrose Hill
Chelmsford
Essex
CM1 2RF
Dated: 17 October 2002

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

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 Crescent Financial Services (“Crescent”) pursuant to Part IV of the Act (“Crescent’s Part IV permission”) by removing all regulated activities with immediate effect. Accordingly, Crescent’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.

2. EFFECTIVE DATE

The action specified above takes effect immediately.

3. REASONS FOR ACTION

Summary

The FSA has concluded, on the basis of the facts and matters described below, that Crescent is failing to satisfy the threshold conditions set out in Schedule 6 to the Act (“the threshold conditions”) in that

- (i) Crescent is failing to ensure that its business is conducted soundly and prudently; and,
- (ii) in the opinion of the FSA, the resources of Crescent are not adequate in relation to the regulated activities it carries on.

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 the protection of consumers.

Section 41 of the Act and Schedule 6, paragraph 5, to the Act set out the threshold conditions which authorised persons are required to satisfy.

The FSA is authorised by section 45 of the Act to exercise the following powers:

- 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.

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 relevant considerations in relation to the action specified above and its effective date 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 2.5.6(1) permits the FSA, when forming its opinion as to whether an authorised person is conducting its business in compliance with proper standards, to have regard to relevant matters including whether the authorised person has been open and co-operative in all its dealings with the FSA and any other regulatory body and is ready willing and organised to comply with the requirements and standards under the regulatory system.

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.

COND 2.4 - Threshold condition 4: Adequate resources (paragraph 4, Schedule 6 to the Act)

Paragraph 2.4.1(1) says:

“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.”

Paragraph 2.4.1(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).

Paragraph 2.4.4(3) requires the FSA only to take into account relevant matters which are material in relation to the regulated activities for which the authorised person has permission.

ENF 3.5 - The FSA’s policy on 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.

Paragraph 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 him 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 that the firm has taken or is taking to address the issue.

Facts and matters relied on

Crescent is a sole trader, independent financial adviser firm, whose principal is Mr Edward Midson ("Mr Midson").

Failure to co-operate with the FSA

Since 4 January 2002, when Mr Midson advised the FSA by telephone that he had ceased trading as an independent financial adviser and intended to apply to cancel Crescent's Part IV permission, the FSA has had no communication from Crescent. Four letters sent to Crescent at its last known business address over the period January to September 2002 have elicited no response and no application to cancel Crescent's Part IV has been received.

Since it appears that Crescent has moved away without have given the FSA any notice of a change of its principal place of business or any other form of communication, the FSA has no means of effectively monitoring compliance by Crescent with the requirements and standards of the regulatory system.

Crescent's failure to communicate with the FSA also constitutes a breach both of FSA Rule 15.5.4 SUP which requires a firm to give reasonable advance notice of a change in its principal place of business and the date of the change and of Principle 11 of the FSA's Principles for Businesses under which a firm must deal with its regulators in an open and co-operative way.

Failure to maintain PII cover

Crescent's professional indemnity insurance expired on 10 January 2002. Since that date, and despite repeated requests from the FSA, Crescent has failed to demonstrate compliance with FSA Rule 13.1.3 IPRU(INV) which requires that (unless an exception which is not relevant to Crescent applies):

"A firm must effect and maintain at all times adequate professional indemnity insurance cover for all business activities which it carries on, or for which it is responsible."

Conclusions

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:

- Crescent, by failing to communicate with or respond to communications from the FSA, has failed to demonstrate the openness and co-operation with the FSA required of it by, and that it is ready and willing to comply with the requirements and standards under, the regulatory system and is therefore failing to conduct its business in compliance with proper standards. That failure is significant in the context of the suitability of Crescent and Crescent therefore fails to satisfy Threshold Condition 5: Suitability.
- Crescent, by failing to maintain compliant PII cover, is failing to make adequate provision in respect of its liabilities, including contingent and future liabilities. That failure is material in relation to the regulated activities for which Crescent has permission and Crescent therefore fails to satisfy Threshold Condition 4: Adequate resources.
- Crescent's failings constitute material breaches of requirements imposed on Crescent by the Act. The risk of loss or other adverse effect on consumers constituted by those failings causes the FSA to have serious concerns about Crescent such that the exercise of the FSA's own-initiative powers to vary Crescent's Part IV permission with immediate effect is an appropriate response to those concerns.

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.

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 within 28 days of receiving this Supervisory Notice or such longer period as may be permitted by the FSA. Written representations should be made to the Regulatory Decisions Committee and sent to Miss Jane Horncastle, Regulatory Decisions Committee Secretariat. The Regulatory Decisions Committee Secretariat's address is: 25 The North Colonnade, Canary Wharf, London E14 5HS. If you wish to make oral representations, you should inform Miss Horncastle not less than 5 business days before the expiry of the 28 day period.

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 Miss Jane Horncastle (direct line: 020 7676 3200/fax: 020 7676 3201), or Brian Whitbread, Head of Regulatory Decisions Committee Secretariat (direct line: 020 7676 3202/fax: 020 7676 3197).

For more information concerning this matter generally, you should contact Ms Julia Medcalf at the FSA (direct line: 020 7676 5774/fax: 020 7676 5895).

Christopher FitzGerald
Chairman, Regulatory Decisions Committee