
FIRST SUPERVISORY NOTICE

To: **David Viner Element trading as Money Matters**

FSA Reference
Number: **309272**

Of: **25 Bank Plain
Norwich
Norfolk
NR2 4FS**

Dated: **2 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 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, David Viner Element trading as Money Matters, pursuant to Part IV of the Act (“your Part IV permission”) by removing all regulated activities with immediate effect. Accordingly, your Part IV permission no longer includes the following regulated activities:

- (a) advising on investments (except on Pension Transfers and Pension Opt Outs);
- (b) arranging (bringing about) deals in investments;
- (c) making arrangements with a view to transactions in investments;
- (d) advising on regulated mortgage contracts;

- (e) agreeing to carry on a regulated activity;
- (f) arranging (bringing about) regulated mortgage contracts; and
- (g) making arrangements with a view to regulated mortgage contracts.

1.2 The FSA has further decided to vary your Part IV permission by including the following requirements, namely that within 14 days you must:

- (i) advise in writing all clients for your regulated activities that you do not have Professional Indemnity Insurance (“PII”) in place and that you are no longer permitted by the FSA to carry on regulated activities; and
- (ii) provide the FSA with a copy of the written advice sent to all clients for your regulated activities pursuant to (i) above, together with a list of all clients to whom such advice 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, in the opinion of the FSA, your resources are not adequate in relation to the regulated activities you have 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:

- 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; and
- 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 main provisions relevant to the proposed action 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 The Prudential Sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (“MIPRU”) Rule 3.2.1 (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 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) reflects the provisions of section 45 of the Act that the FSA may use its own-initiative power to vary or cancel the permission of an authorised firm 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 inadequate, for example where it has failed to maintain PII.
- 2.19 EG 8.9(1) 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 consumer loss or risk of consumer loss or other adverse effect on consumers.

Facts and matters relied on

- 2.20 You became authorised on 31 October 2004 to carry on regulated home finance business, and from 14 January 2005 you were also permitted to conduct insurance mediation.
- 2.21 You have failed to satisfy the FSA that you maintain current PII, despite having had reasonable opportunity to do so.

Conclusions

- 2.22 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:
- by failing to satisfy the FSA that you have effected compliant PII or otherwise satisfy the FSA that you have adequate resources, you are failing to make adequate provision in respect of your liabilities, including contingent and future liabilities, in breach of FSA Principle 4. That failing is material in

relation to the regulated activities for which you have permission and you therefore fail to satisfy Threshold Condition 4: Adequate Resources;

- the risk of loss to or other adverse effect on, consumers by your failing, which is a material breach of a requirement imposed upon you by the FSA's rules, causes the FSA to have very serious concerns about you such that the exercise of the FSA's own-initiative power to vary your Part IV permission with immediate effect is an appropriate response to those concerns; and
- specifically, the variation of your Part IV permission should take immediate effect to address the FSA's serious concern that claims for which you are 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 Chairman of the Regulatory Decisions Committee.

4. IMPORTANT

- 4.1 This Supervisory Notice is given to you under section 53(4) and in accordance with section 53(5) of the Act, and is being served on you at the address you provided to the FSA for the service of such notices. 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 Isabel Barnes at the FSA, 5th Floor, 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. If you wish to make written representations you must do so by 6 May 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 Melanie Rainbird, Regulatory Decisions Committee Professional Support Services. The address of the Regulatory Decisions Committee Professional Support Services is 25 The North Colonnade, Canary Wharf, London E14 5HS. If you wish to make oral representations, please inform us in writing of your intention to do so by 14 April 2009. If you do not notify us by 14 April 2009,

you will not, other than in exceptional circumstances, be able to make oral representations.

Confidentiality and publicity

- 4.5 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

- 4.6 If you have any questions regarding the procedures of the Regulatory Decisions Committee, you should contact either Melanie Rainbird (direct line: 020 7066 2724/fax: 020 7066 2725) or Jackie Noonan, RDC Professional Support Services (direct line: 020 7066 3074/fax: 020 7066 3075).
- 4.7 For more information concerning this matter generally, you should contact Isabel Barnes at the FSA (direct line: 020 7066 1426 / fax: 020 7066 1427).

Tim Herrington
Chairman, Regulatory Decisions Committee