
FIRST SUPERVISORY NOTICE

To: **Financial Matters**
Of: **26 Cheviot Close**
 Worthing
 West Sussex
 BN13 2LL

Dated: **1 April 2004**

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 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 Financial Matters pursuant to Part IV of the Act (“the Permission”) by removing all regulated activities with immediate effect. Accordingly, the 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 the Permission by including the following requirements, namely that:

- (i) within 14 days Financial Matters must:
 - a) advise in writing all clients for its regulated activities that it is no longer permitted by the FSA to carry on regulated activities;
 - b) provide the FSA with a copy of the written advice sent to all clients for Financial Matters' regulated activities pursuant to (a) above, together with a list of all clients to whom such advice has been sent; and
- (ii) Financial Matters must not, without the prior consent of the FSA, in any way dispose of, deal with or diminish the value of their assets.

2. REASONS FOR ACTION

Summary

The FSA has concluded, on the basis of the facts and matters described below, that Financial Matters is failing to satisfy the threshold conditions set out in Schedule 6 to the Act ("the threshold conditions") in that the FSA is not satisfied that Financial Matters is a fit and proper person having regard to all the circumstances. That is because, in the opinion of the FSA, Financial Matters is failing to conduct its business in compliance with proper standards. Further, Financial Matters has breached the requirements of Principle 11 of the FSA's Principles for Business ("Principle 11") under which firms must co-operate with the FSA.

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

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

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 permission by removing a regulated activity from those for which the permission is given;
- to vary an authorised person's permission, where it is desirable to exercise that power in order to protect the interests of consumers;
- 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.

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.

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 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.

Relevant threshold condition

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 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 is ready and willing to comply with the requirements and standards under the regulatory system.

Relevant Principle

Principle 11 requires that a firm must deal with the FSA in an open and co-operative way.

Facts and matters relied on

Financial Matters is an independent financial adviser; Anthony John Fitt is the only person approved to undertake Controlled Functions for Financial Matters.

Following contact from two clients of Financial Matters, the FSA has appointed investigators under section 168(4) and 168(5) of the Act ("the investigators") because there are circumstances suggesting that by its actions Financial Matters may have breached regulatory requirements and statutory provisions in relation to those clients' affairs.

During a visit by the investigators to Financial Matters on 8 March 2004 Financial Matters failed to comply with statutory notices requiring access to business records and Mr Fitt to attend for interview.

The investigators have since attempted to secure co-operation from Financial Matters, but Financial Matters has failed to do so. Specifically, the investigators wrote to Financial Matters on 23 March 2004, requesting confirmation that the Firm would co-operate with the investigation but Financial Matters has not responded.

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:

- by failing to co-operate in the FSA's investigation by permitting access to business records and answering questions, Financial Matters has demonstrated that it is not ready and willing to comply with the requirements and standards under the regulatory system and has breached Principle 11;
- that failure is material in relation to the regulated activities of Financial Matters and is significant in the context of its suitability;
- Financial Matters therefore fails to satisfy Threshold Condition 5: Suitability; and
- the potential loss to consumers arising from Financial Matters' actions and the risk of further consumer loss cause the FSA to have such serious concerns about Financial Matters such that the exercise of the FSA's own-initiative power to vary the Part IV permission with immediate effect is an appropriate response to those concerns.

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

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. Any copy notice should be sent to Fiona Walker 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 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 Jackie Noonan, 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 Jackie Noonan 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 Jackie Noonan (direct line: 020 7066 3196/fax: 020 7066 3197), or Brian Whitbread, Head of the Regulatory Decisions Committee Secretariat (direct line: 020 7066 3202/fax: 020 7066 3203).

For more information concerning this matter generally, you should contact Fiona Walker at the FSA (direct line: 020 7066 5620/fax: 020 7066 9720).

Christopher FitzGerald
Chairman, Regulatory Decisions Committee