
FIRST SUPERVISORY NOTICE

To: **Kawasaki (Newcastle-upon-Tyne) Limited**

Of: **195-199 Scotswood Road
Newcastle Upon Tyne
NE4 7DD**

Dated: **6 March 2007**

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 Kawasaki (Newcastle-Upon-Tyne) Limited ("Kawasaki"), pursuant to Part IV of the Act ("Kawasaki's permission") by removing all regulated activities with immediate effect. Accordingly, Kawasaki's permission no longer includes the following regulated activities:

- (a) agreeing to carry on a regulated activity;
- (b) arranging (bringing about) deals in investments;
- (c) assisting in administration of insurance.

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

- (i) notify in writing all clients for its regulated activities that it does not have professional indemnity insurance ("PII") in place and that it is no longer permitted by the FSA to carry on regulated activities, and

- (ii) provide the FSA with a copy of the written notice sent in accordance with (i) above, together with a list of all clients to whom the notice 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 Kawasaki is failing to satisfy the threshold conditions set out in Part 1 of Schedule 6 to the Act (the "threshold conditions") in that, in the opinion of the FSA, Kawasaki's resources are not adequate in relation to the regulated activities it has permission to carry on. Specifically, Kawasaki has failed to maintain PII, despite repeated requests for it to do so.
- 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 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 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.
- 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.

Relevant Threshold Condition

- 2.6 Paragraph 4 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 FSA, be adequate in relation to the regulated activities that he seeks to carry on, or carries on.

Relevant Principle

- 2.7 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 guidance

- 2.8 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 a Part IV permission

- 2.9 ENF 3.5.2 requires the FSA to have regard to its regulatory objectives and the range of regulatory tools that are available to it.
- 2.10 ENF 3.5.3 provides that the FSA will take formal action affecting the conduct of a firm's commercial business only if that business is being conducted in such a way that the FSA judges it necessary to act in order to address the consequences of non-compliance with the Act, the Principles for Businesses and the rules.
- 2.11 ENF 3.5.8 provides that the circumstances in which the FSA will consider exercising its power to vary, 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 in individual seriousness.
- 2.12 ENF 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 the authorised person has taken or is taking to address the issue.

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

- 2.13 COND 2.4.1(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.
- 2.14 COND 2.4.1(2) sets out that 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, will have regard to, amongst other things, the provision he makes in respect of liabilities (including contingent and future liabilities).
- 2.15 COND 2.4.4(3) requires the FSA to take into account relevant matters which are material in relation to the regulated activities for which the authorised person has permission.

Facts and matters relied on

- 2.16 Kawasaki has been authorised by the FSA since 14 March 2005 to carry out general insurance business.
- 2.17 As such, Kawasaki is required to comply with FSA Rule 3.2.1R in the Mortgage and home Finance Firms, and Insurance Intermediaries ("MIPRU") section of the FSA Handbook of Rules and Guidance (the "FSA Handbook"), which requires that:

"A firm must take out and maintain professional indemnity insurance that is at least equal to the requirements of MIPRU 3.2.4R."

- 2.18 Kawasaki has failed to maintain PII, despite repeated requests by the FSA that it does so.

Conclusions

- 2.19 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 maintain PII, Kawasaki has breached MIPRU 3.2.1R;
 - this failing is material in relation to the regulated activities for which Kawasaki has permission and Kawasaki therefore fails to satisfy Threshold Condition 4: adequate resources;
 - these failings present a risk to the FSA's consumer protection objective. Appropriate action is necessary to help provide protection to consumers;
 - the risk of adverse effect on consumers arising from Kawasaki's failing, which is a material breach of requirements imposed upon Kawasaki by the FSA's rules, causes the FSA to have very serious concerns about Kawasaki such that the exercise of the FSA's own-initiative power to vary Kawasaki's permission with immediate effect is an appropriate response to those concerns; and
 - specifically, the variation of Kawasaki's permission should take with immediate effect to address the FSA's serious concern that any liabilities incurred by Kawasaki cannot be met.

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 Kawasaki in accordance with section 53(4) 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 Raymond Raffaelli at the FSA, 9th 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 (whether or not you refer this matter to the Tribunal). If you wish to make written representations you must do so by 9 April 2007 or such later date as may be permitted by the FSA. Written representations should be made to the Regulatory Decisions Committee and sent to Vikram Singh, 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 Vikram Singh, not less than 5 business days before 9 April 2007.

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 Vikram Singh (direct line: 020 7066 3198/fax: 020 7066 3199), or Claire Strong, RDC Professional Support Services (direct line: 020 7066 3028/fax: 020 7066 9831).
- 4.7 For more information concerning this matter generally, you should contact Raymond Raffaelli at the FSA (direct line: 020 7066 9530 / fax: 020 7066 9721).

Timothy J Herrington
Chairman, Regulatory Decisions Committee