
FIRST SUPERVISORY NOTICE

To: **Mitchell & Company Limited**

Of: **564 Cranbrook Road
Gants Hill
Ilford
Essex
IG2 6RE**

Dated: **12 November 2007**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (the "FSA") has taken the following action

PROPOSED 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 Mitchell & Company Limited ("MCL"), pursuant to Part IV of the Act ("MCL's permission") by removing all regulated activities with immediate effect. Accordingly, MCL's permission no longer includes the following regulated activities:
- (a) assisting in the administration and performance of a contract of insurance, and
 - (b) agreeing to carry on a regulated activity.
- 1.2 The FSA has further decided to vary MCL's Part IV permission by including the following requirements, namely that within 14 days MCL 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 MCL 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, MCL's resources are not adequate in relation to the regulated activities it has permission to carry on. Specifically, MCL 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 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."
- 2.6 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 Handbook Provisions

- 2.7 In exercising its power to vary a Part IV permission, the FSA must have regard to guidance published in the FSA Handbook of Rules and Guidance (the "FSA Handbook"). The relevant main considerations in relation to the action specified

above 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.

Guidance concerning the relevant threshold condition ("COND")

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

- 2.9 COND 2.4.1(1) D 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.
- 2.10 COND 2.4.1(2) D 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).
- 2.11 COND 2.4.4(3) G 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.

Relevant Regulatory Provisions

- 2.12 In exercising its power to vary a Part IV permission, the FSA must have regard to the relevant regulatory provisions and guidance, particularly the Enforcement Guide ("EG"). The main considerations in relation to the action specified above are set out below.

EG 8 - The FSA's policy for exercising its own-initiative power to vary a Part IV permission

- 2.13 EG 8.1 G 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.
- 2.14 EG 8.2 G 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 and the Principles for Businesses.
- 2.15 EG 8.5 G 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) G specifies that the FSA will consider exercising its own-initiative power where a

firm's financial resources appear inadequate for the scale or type of regulated activity it is carrying on, for example, where it has failed to maintain professional indemnity insurance.

- 2.16 EG 8.9 G 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.

Facts and matters relied on

- 2.17 MCL has been authorised by the FSA since 14 January 2005 to carry on general insurance business.
- 2.18 As such, MCL 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, 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."

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

Conclusions

- 2.20 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 adequate PII, MCL has breached MIPRU 3.2.1R;
 - this failing is material in relation to the regulated activities for which MCL has permission and MCL 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 MCL's failing, which is a material breach of requirements imposed upon MCL by the FSA's rules, causes the FSA to have very serious concerns about MCL such that the exercise of the FSA's own-initiative power to vary MCL's permission with immediate effect is an appropriate response to those concerns; and
 - specifically, the variation of MCL's permission should take with immediate effect to address the FSA's serious concern that any liabilities incurred by MCL cannot be met.

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 MCL 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 Lehong Mac 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 18 December 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 Jane Horncastle, 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 Jane Horncastle, not less than 5 business days before 18 December 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 Jane Horncastle (direct line: 020 7066 3200/fax: 020 7066 3201), or Jackie Noonan, RDC Professional Support Services (direct line: 020 7066 3074/fax: 020 7066 1015).
- 4.7 For more information concerning this matter generally, you should contact Lehong Mac at the FSA (direct line: 020 7066 5472/fax: 020 7066 1459).

Tim Herrington
Chairman, Regulatory Decisions Committee