
FIRST SUPERVISORY NOTICE

To: **Oak Financial Services**

Of: **26 Oak Road
Caterham
Surrey
CR3 5TS**

Dated: **26 March 2003**

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 Oak Financial Services (“OFS”) pursuant to Part IV of the Act (“OFS’ Part IV permission”) by removing all regulated activities with immediate effect. Accordingly, OFS’ Part IV permission no longer includes the following regulated activities:

- (a) advising on investments (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 OFS’ Part IV permission by including the following requirements, namely that OFS must:

- (i) advise in writing, within 14 days, clients for its regulated activities that it has no professional indemnity insurance (“PII”) in place and that it is no longer permitted by the FSA to carry on regulated activities;
- (ii) provide the FSA with a copy of the written advice sent to all clients for its regulated activities pursuant to (i) above.

2. REASONS FOR ACTION

Summary

The FSA has concluded, on the basis of the facts and matters described below, that OFS is 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, the resources of OFS 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 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 a permission by removing a regulated activity from those for which the permission is given;
- 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.

Relevant Threshold Conditions

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, 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 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, and the steps the authorised person has taken or is taking to address the issue.

Facts and matters relied on

OFS is a sole trader, independent financial adviser firm whose principal is - Mr Malcolm Hyland.

OFS has had no PII since 4 October 2002. Since that date and despite repeated requests and warnings from the FSA, OFS has been unwilling or unable to demonstrate compliance with FSA Rule 13.1.3 IPRU(INV) which requires that (unless an exception which is not relevant to OFS 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:

- OFS, by failing to effect compliant PII, 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 OFS has permission and OFS therefore fails to satisfy Threshold Condition 4: Adequate resources.
- The risk of loss or other adverse effect on consumers by OFS' failing, which is a material breach of a requirement imposed upon OFS by the FSA's rules, causes the FSA to have very serious concerns about OFS such that the exercise of the FSA's own-initiative power to vary OFS' Part IV permission with immediate

effect is an appropriate response to those concerns.

- Specifically, the variation of OFS' Part IV permission should take immediate effect to address the FSA's serious concern that claims for which OFS is uninsured might arise from new investment business.

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. Please send a copy to Anne-Marie Gilmurray 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 Jane Horncastle, Regulatory Decisions Committee Secretariat, at the above address. If you wish to make oral representations, you should inform Jane 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 Jane Horncastle (direct line: 020 7676 3200/fax: 020 7676 3201, or Brian Whitbread, Head of the Regulatory Decisions Committee Secretariat (direct line: 020 7676 3202/fax: 020 7676 3203).

For more information concerning this matter generally, you should contact Anne-Marie Gilmurray at the FSA (direct line: 020 7676 1658 /fax: 020 7676 9720).

Christopher FitzGerald
Chairman, Regulatory Decisions Committee