
FIRST SUPERVISORY NOTICE

To: **Oaktree Financial Services Limited**
Of: **Oaktree House**
 2 Phoenix Place
 Nottingham
 NG8 6BA

Dated: **20 February 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 Oaktree Financial Services Limited (“Oaktree”) pursuant to Part IV of the Act by removing all regulated activities with immediate effect. Accordingly, Oaktree’s Part IV permission no longer includes the following regulated activities:

- (a) advising (excluding pension transfers and opt-outs);
- (b) advising on pension transfers and opt-outs;
- (c) agreeing to carry on a regulated activity;
- (d) arranging deals in investments;
- (e) making arrangements.

2. REASONS FOR ACTION

Summary

The FSA has concluded, on the basis of the facts and matters described below, that Oaktree 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 Oaktree is a fit and proper person having regard to all the circumstances. That is because, in the opinion of the FSA, Oaktree has failed to conduct its business with integrity and in compliance with proper standards. Further, Oaktree has breached the requirements of Principle 1 under which firms must conduct their business with integrity.

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.

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 1 of the FSA's Principles for Businesses (“Principle 1”) requires that a firm must conduct its business with integrity.

Facts and matters relied on

Oaktree is an independent financial adviser whose principals are Mr Stephen Higham and Mr Christopher Higham.

In a taped interview conducted on 19 February 2004 Mr Stephen Higham admitted to the FSA that:

- 1) a total of £414,800 had been paid to Oaktree by a client for the purposes of investment;
- 2) the client had been told that the money was invested in Treasury stocks;
- 3) the sums received from the client had not been invested but had been paid into Oaktree's business bank account from which they were used by Oaktree to meet its business expenditure.

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:

- Oaktree, by handling money for investment belonging to a client and causing the money to be paid into Oaktree's business bank account and used for Oaktree's own benefit, has failed to conduct its business with integrity and in compliance with proper standards and has contravened Principle 1;
- that failure is material in relation to the regulated activities of Oaktree and Oaktree therefore fails to satisfy Threshold Condition 5: Suitability;
- the actual loss to consumers arising from Oaktree's actions, and the risk of further consumer loss, causes the FSA to have very serious concerns about Oaktree such that the exercise of the FSA's own-initiative power to vary Oaktree's 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 Matthew Fann 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 by 19 March 2004 or such later date as may be permitted by the FSA. Written representations should be made to the Regulatory Decisions Committee and sent to Mrs 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 Mrs Noonan not less than 5 business days before 19 March 2004.

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 Mrs 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 Matthew Fann at the FSA (direct line: 020 7066 5328/fax: 020 7066 9720).

Sir Anthony Holland
Deputy Chairman, Regulatory Decisions Committee