
SECOND SUPERVISORY NOTICE

To: **Mark Ian Warner trading as Advanced Financial Management**

Of: **Crown Lodge
Crown Lane
Creech Heathfield
Taunton
Somerset
TA3 5EU**

Firm Reference Number: **424392**

Dated: **17 April 2014**

ACTION

1. For the reasons given below, having taken into account the representations made by Mr Warner and pursuant to section 55J of the Act, the Authority has decided not to rescind the variation of the permission granted to Mr Warner pursuant to Part 4A of the Act. By a First Supervisory Notice dated 21 March 2014, the Authority varied Mr Warner's Part 4A permission by removing all regulated activities with immediate effect. Accordingly, Mr Warner's Part 4A permission no longer includes the regulated activities of:
 - (a) advising on investments (except on Pension Transfers and Pension Opt Outs);
 - (b) advising on regulated mortgage contracts;
 - (c) agreeing to carry on a regulated activity;
 - (d) arranging (bringing about) deals in investments;
 - (e) arranging (bringing about) regulated mortgage contracts;
 - (f) making arrangements with a view to regulated mortgage contracts; and
 - (g) making arrangements with a view to transactions in investments.

2. The First Supervisory Notice further varied Mr Warner's Part 4A permission by imposing the following requirements, pursuant to section 55L of the Act, namely that Mr Warner must within 14 days of the date of the First Supervisory Notice:
 - (a) notify in writing all clients for Mr Warner's regulated activities that he is no longer permitted by the Authority to carry on regulated activities; and
 - (b) provide the Authority with a copy of the written notification sent to all clients for his regulated activities pursuant to (a) above, together with a list of all clients to whom such notification has been sent.
3. The Authority has also decided not to rescind the requirements set out in paragraph 2 above.

REASONS FOR ACTION

4. The Authority has concluded, on the facts and matters described below, that Mr Warner has failed to provide information to the Authority, despite repeated requests to do so and has not been open and co-operative in all of his dealings with the Authority, in breach of Principle 11 (Relations with regulators) of the Principles.
5. The information that Mr Warner has failed to provide is required by the Authority to assess the serious issue of whether Mr Warner is a fit and proper person to conduct regulated activities. It therefore appears to the Authority that Mr Warner is failing to meet the Suitability Threshold Condition and Principle 6 (Customers' interests) of the Principles. In particular, Mr Warner repeatedly failed to provide: (i) information regarding a transaction that he carried out in relation to Customer A (to both the FOS and the Authority); (ii) details of his personal financial circumstances and (iii) details in relation to his business' financial position. This failure leads the Authority to consider that Mr Warner presents a serious risk to consumers because the Authority cannot be satisfied that Mr Warner's affairs are being conducted in an appropriate manner, having regard in particular to the interests of consumers. Mr Warner has therefore failed to satisfy the Authority that he is a fit and proper person to conduct regulated activities.

DEFINITIONS

6. The definitions below are used in this Second Supervisory Notice:

the "Act" means the Financial Services and Markets Act 2000;

the "Authority" means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority;

the "FOS" means the Financial Ombudsman Service;

the "Handbook" means the Authority's Handbook of Rules and Guidance;

"Mr Warner" means Mark Ian Warner trading as Advanced Financial Management;

"Mr Warner's Part 4A permission" means Mr Warner's permission granted pursuant to Part 4A of the Act;

the "Principles" means the Authority's Principles for Businesses;

the “Threshold Conditions” means the Threshold Conditions set out in Schedule 6 to the Act; and

the “Tribunal” means the Upper Tribunal (Tax and Chancery Chamber).

FACTS AND MATTERS RELIED ON

7. Mr Warner, a sole trader, was authorised by the Authority on 5 April 2005 to conduct regulated home finance and designated investment business.
8. Since 19 June 2013, the Authority has requested that Mr Warner provide details of his personal financial circumstances including details of any debts and outstanding loans, and of any overdraft facilities and credit arrangements that he may have to service those debts. On 12 September 2013, the Authority wrote to Mr Warner requiring that he provide that information under section 165(1) and section 175(1) of the Act.
9. Since 12 September 2013, the Authority has also requested that Mr Warner provide a full and detailed explanation (including supporting evidence), in relation to a transaction Mr Warner made on behalf of one of his customers (Customer A).
10. Despite numerous further requests by the Authority for the information, Mr Warner has failed without adequate, or any, explanation to provide the information.

REPRESENTATIONS

11. Annex B contains a brief summary of the key representations made by Mr Warner, and how they have been dealt with. In making the decision which gave rise to the obligation to give this Second Supervisory Notice, the Authority has taken into account all of the representations made by Mr Warner, whether or not set out in Annex B.

FAILINGS

12. The regulatory provisions relevant to this Second Supervisory Notice are set out in the Annex A.
13. From the facts and matters described above the Authority, having regard to its operational objectives, has reached the following conclusions:
 - Mr Warner’s unreasonable failure to provide the information requested by the Authority leads the Authority to consider that he is failing to be open and co-operative with the Authority, in breach of the suitability Threshold Condition and Principle 11 (Relations with regulators) of the Principles;
 - Mr Warner’s failure to provide information in relation to the transaction he carried out in relation to Customer A (to both the FOS and the Authority), leads the Authority to conclude that Mr Warner presents a risk to consumers because the Authority cannot be satisfied that Mr Warner’s affairs are being conducted in an appropriate manner, having regard in particular to the interests of consumers. This leads the Authority to be concerned that Mr Warner may not be fit and proper, and that he may also be in breach of the suitability Threshold Condition and Principle 6 (Customers’ interests) of the Principles;

- the risk of loss or other adverse effect on consumers by Mr Warner's failings, which are material breaches of requirements imposed on him by the Authority, causes the Authority to have very serious concerns about Mr Warner such that the exercise of the Authority's own-initiative power to vary Mr Warner's Part 4A permission with immediate effect is an appropriate response to those concerns; and
- it is desirable to maintain the variation of Mr Warner's Part 4A permission to meet its operational objectives, and specifically in relation to Mr Warner, the objective of the protection of consumers.

PROCEDURAL MATTERS

Decision Maker

14. The decision which gave rise to the obligation to give this Second Supervisory Notice was made by the Regulatory Decisions Committee.
15. This Second Supervisory Notice is given to Mr Warner under section 55Y(7) and in accordance with section 55Y(5) of the Act, and is being served on Mr Warner at his place of business as last notified to the Authority. The following statutory rights are important.

The Tribunal

16. Mr Warner has the right to refer the matter to which this Second Supervisory Notice relates to the Tribunal. The Tax and Chancery Chamber is the part of the Tribunal which, amongst other things, hears references arising from decisions of the Authority. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, Mr Warner has 28 days from the date on which this Second Supervisory Notice is given to him to refer the matter to the Tribunal.
17. A reference to the Tribunal can be made by way of a reference notice (Form FTC3) signed by Mr Warner and filed with a copy of this Second Supervisory Notice. The Tribunal's contact details are: The Upper Tribunal, Tax and Chancery Chamber, 45 Bedford Square, London WC1B 3DN (telephone: 020 7612 9700; email: financeandtaxappeals@tribunals.gsi.gov.uk).
18. Further details are contained in "Notes for applicants Form FTC3" which is available from the Tribunal website:

<http://www.justice.gov.uk/forms/hmcts/tax-and-chancery-upper-tribunal>
19. Mr Warner should note that a copy of the reference notice (Form FTC3) must also be sent to the Authority at the same time as filing a reference with the Tribunal. A copy of the reference notice should be sent to Stephanie Prowse at the Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS.

Publicity

20. Mr Warner should note that section 391 of the Act requires the Authority when the Second Supervisory Notice takes effect (and this Second Supervisory Notice takes immediate effect), to publish such information about the matter as it considers appropriate.

Contacts

21. For more information concerning this matter generally, Mr Warner should contact Stephanie Prowse at the Authority (direct line: 020 7066 9404).

Peter Hinchliffe
Deputy Chairman, Regulatory Decisions Committee

ANNEX A

RELEVANT STATUTORY PROVISIONS

1. The Authority's operational objectives established in section 1(B) of the Act include the protection of consumers.
2. The Authority is authorised by section 55J of the Act to exercise the following powers:
 - to vary an authorised person's permission where it appears to the Authority that such person is failing to satisfy the Threshold Conditions (section 55J(1)(a));
 - to vary an authorised person's permission where it is desirable to do so to advance any of its operational objectives (section 55J(1)(c)(i));
 - to vary such a permission by removing a regulated activity from those for which the permission is given (section 55J(2)(a)(ii)); and
 - 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 55A of the Act (section 55J(10)).
3. Section 55Y(3) of the Act allows such a variation to take effect immediately (or on a specified date) only if the Authority having regard to the ground on which it is exercising its own-initiative power, reasonably considers that it is necessary for the variation to take effect immediately (or on that date).
4. Section 391 of the Act provides that:

“[...]

 - (5) When a supervisory notice takes effect, the [Authority] must publish such information about the matter to which the notice relates as it considers appropriate.
 - (6) The [Authority] may not publish information under this section if, in its opinion, publication of the information would be
 - (a) unfair to the person with respect to whom the action was taken,
 - (b) prejudicial to the interests of consumers...
 - (7) Information is to be published under this section in such manner as the [Authority] considers appropriate.”
5. Paragraph 2D to Schedule 6 of the Act states that:

“The resources of A must be appropriate in relation to the regulated activities that A carries on or seeks to carry on.”

6. Paragraph 2E to Schedule 6 to the Act states that:

“A must be a fit and proper person having regard to all the circumstances, including-

[...]

(c) the need to ensure that A’s affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers and the integrity of the UK financial system;

(d) whether A has complied and is complying with ... requests made by the [Authority], relating to the provision of information to the [Authority] ...”

RELEVANT HANDBOOK PROVISIONS

7. In exercising its power to vary a Part 4A permission, the Authority must have regard to guidance published in the Handbook. The relevant main considerations in relation to the action specified above are set out below.

Relevant Principles

8. Principle 6 (Customers’ interests) of the Principles, states that a firm must pay due regard to the interests of its customers and treat them fairly.

9. Principle 11 (Relations with regulators) of the Principles, states that a firm must deal with its regulators in an open and cooperative way.

Guidance concerning the relevant Threshold Condition

10. Guidance on the Threshold Conditions is set out in the part of the Handbook entitled Threshold Conditions (“COND”).

COND 2.5 – Suitability: Paragraph 2E of Schedule 6 to the Act

11. COND 2.5.1AUK(1) reproduces the relevant statutory provision that the person concerned must satisfy the Authority that he is a fit and proper person having regard to all the circumstances, including amongst other things, whether he has complied and is complying with requests made by the Authority, relating to the provision of information to the Authority and the need to ensure that his affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers (COND 2.5.1AUK(1)(c) and (d)).

12. COND 2.5.4G(2) states that examples of the considerations to which the Authority may have regard when assessing whether a firm will satisfy and continue to satisfy the Threshold Conditions include whether the firm conducts its business in compliance with proper standards (COND 2.5.4G(2)(c)).

13. COND 2.5.6G states that examples of considerations to which the Authority may have regard when assessing whether a firm will satisfy, and continue to satisfy the suitability Threshold Condition include whether the firm has been open and co-operative in all its dealings with the Authority (COND 2.5.6G(1)).

OTHER RELEVANT REGULATORY PROVISIONS

14. The Authority's policy in relation to its enforcement powers is set out in the Enforcement Guide (EG), certain provisions of which are summarised below.

15. EG 8.1 reflects the provisions of section 55J of the Act that the Authority may use its own-initiative power to vary or cancel the permission of an authorised firm where a firm is failing or is likely to fail to satisfy the Threshold Conditions (EG 8.1(1)); or where it is desirable to exercise the power in order to advance one or more of its operational objectives (EG 8.1(2)).

Varying a firm's Part 4A permission on the Authority's own initiative

16. EG 8.1B provides that the Authority will have regard to its statutory 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.
17. EG 8.3 provides that the Authority will exercise its formal powers under section 55J or 55L of the Act, where the Authority considers it is appropriate to ensure a firm meets its regulatory requirements. EG 8.3(1) specifies that the Authority may consider it appropriate to exercise its powers where it has serious concerns about a firm or the way its business is being or has been conducted.
18. EG 8.5(1)(a) specifies that the Authority will consider exercising its own-initiative power under section 55J(1)(a) or 55L(2)(a) of the Act, where the firm appears to be failing, or appears likely to fail, to satisfy the Threshold Conditions relating to one or more, or all, of its regulated activities.
19. EG 8.5(1)(b) specifies that the Authority will consider exercising its own-initiative power under section 55J(1)(a) or 55L(2)(a) of the Act, where the firm appears not to be a fit and proper person to carry on a regulated activity because it 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)(b)(iii)).

Use of the own-initiative powers in urgent cases

20. EG 8.6 states that the Authority may impose a variation of permission so that it takes effect immediately or on a specified date if it reasonably considers it necessary for the variation to take effect immediately (or on the date specified), having regard to the ground on which it is exercising its own-initiative powers.
21. EG 8.7 provides the circumstances in which the Authority will consider exercising its own initiative power as a matter of urgency, include where the information available to it indicates serious concerns about the firm or its business that need to be addressed immediately (EG 8.7(1)).
22. EG 8.8 sets out a non-exhaustive list of factors the FSA will consider in exercising its own-initiative power as a matter of urgency. EG 8.8(1) specifies that the FSA will consider urgent own-initiative action if there is information indicating a significant loss, risk of loss or other adverse effects for consumers, where action is necessary to protect their interests.
23. EG 8.9 sets out the factors which will determine whether the urgent exercise of the FSA's own-initiative power is an appropriate response to serious concerns, including: the extent of any consumer loss or risk of consumer loss or other adverse effect on consumers (EG 8.9(1)) and the extent to which customer assets appear to be at risk (EG 8.9(2)).

ANNEX B

REPRESENTATIONS

Mr Warner's failure to provide information to the Authority

1. Mr Warner made representations that his capital adequacy requirements "are being fully met and indeed exceeded". Mr Warner stated that his outstanding Retail Mediation Activities Return for the period ending 30 November 2013 (which was due to be submitted by 15 January 2014) would confirm his assertion that his capital adequacy requirements were being met.
2. The Authority notes that Mr Warner has still not submitted the Retail Mediation Activities Return for the period ended 30 November 2013 (which was due to be submitted by 15 January 2014) which Mr Warner stated would confirm his assertion that his capital adequacy requirements were being met. The bare assertion by Mr Warner that his capital adequacy requirements are being fully met is not an adequate response to the Authority's requests (including pursuant to the statutory requirements under section 165(1) and section 175(1) of the Act) that Mr Warner provide a full detailed account of his financial circumstances. The Authority also notes that Mr Warner has failed to provide an explanation as to why the information has not been provided. For completeness, the Authority also notes that Mr Warner has also failed to provide information regarding the transaction that he carried out in relation to Customer A (to the Authority). Accordingly, the Authority has concluded that it has still not been provided with the information required by the Authority to assess the serious issue of whether Mr Warner is a fit and proper person to conduct regulated activities.
3. Mr Warner also made representations that he has access to additional funds through arrangements with a third party in further support of his assertion that his capital adequacy requirements are being met.
4. The Authority has considered Mr Warner's representations that he has access to additional funds through arrangements with a third party and is unable to attach any weight to them because those representations are confused and unsubstantiated. Without further information as to the nature of Mr Warner's arrangements with the third party as well as evidence of those arrangements (if any), the Authority has concluded that Mr Warner's assertions are not an adequate response to the Authority's requests (including pursuant to the statutory requirements under section 165(1) and section 175(1) of the Act) that Mr Warner provide a full detailed account of his financial circumstances.

Mr Warner's request for more time to wind up his business activities professionally and effectively

5. Mr Warner made representations that as he had staff whose livelihoods depend on the business remaining operational and in excess of 2000 clients who would need to be notified of the Authority's action, he would like a period of three months to provide continuity of advice to his clients and to wind up his business professionally and effectively.
6. The Authority notes that Mr Warner was made aware that if he wanted to have the effect of the First Supervisory Notice varied in any way, he would need to address the Authority's concerns as set out in the First Supervisory Notice. However (and as already noted above), Mr Warner has failed to provide the Authority with any of the information required by the Authority to assess the serious issue of whether Mr Warner is a fit and proper person to conduct regulated activities. He has therefore failed to address the Authority's concerns as set out in the First Supervisory Notice – in particular the

Authority's concern that immediate action was required in order to protect the interests of consumers. Further (and for completeness), the Authority does not consider that the effect of the First Supervisory Notice and this Second Supervisory Notice would prevent Mr Warner from winding down his business in an orderly way. The effect of the First Supervisory Notice does not have to be varied in any way in order for Mr Warner to either introduce his clients to another advisory form or for Mr Warner to sell his book of business.