
FIRST SUPERVISORY NOTICE

To: **Synergys Ethical Limited**

Of: **960 Capability Green
Luton
LU1 3PE**

FSA Ref No: **313521**

Dated: **1 October 2008**

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 you, Synergys Ethical Limited ("Synergys"), pursuant to Part IV of the Act ("Synergys' Part IV permission") by removing all regulated activities with immediate effect. Accordingly, Synergys' Part IV permission no longer includes the following regulated activities with regard to insurance mediation:

- (a) advising (excluding Pension Transfers and Opt Outs);
- (b) agreeing to carry on a regulated activity;
- (c) arranging deals in investments;
- (d) assisting in the administration of insurance;
- (e) dealing in investments as agent, and
- (f) making arrangements.

1.2 The FSA has further decided to vary Synergys' Part IV permission by including the following requirements, namely that within 14 days after the date of this Notice Synergys must:

- (i) notify in writing all clients for its regulated activities that it is no longer permitted by the FSA to carry on any 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 Synergys 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, its resources are not adequate in relation to the regulated activities it has permission to carry on and it has failed to pay due regard to the interests of a customer and treat it fairly.
- 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 The FSA is authorised by section 45 of the Act to exercise the following powers:
- 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, 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 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 variations to take effect immediately if the FSA reasonably considers that it is necessary for the variations to take effect immediately.
- 2.6 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."

- 2.7 Paragraph 5 of Schedule 6 to the Act sets out Threshold Condition 5, which states that:

"The person concerned must satisfy the Authority that he is a fit and proper

person having regard to all the circumstances, including-

...

- (c) The need to ensure that his affairs are conducted soundly and prudently.”

Relevant Handbook Provisions

- 2.8 In exercising its power to vary a Part IV permission, the FSA must have regard to relevant provisions 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 Principles

- 2.9 Principle 4 (Financial prudence) requires a firm to maintain adequate financial resources as laid out in the Principles for Businesses in the FSA Handbook.
- 2.10 Principle 6 (Customers’ interests) requires a firm to pay due regard to the interests of its customers and treat them fairly.

Relevant Rule

- 2.11 FSA Rule 3.2.1R (the "PII Rule") in the Mortgage and Home Finance Firms, and Insurance Intermediaries ("MIPRU") section of the FSA Handbook of Rules and Guidance (the "FSA Handbook"), 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]..."

Guidance concerning the Threshold Conditions (“COND”)

- 2.12 Guidance on the Threshold Conditions is set out in Chapter 2 of the part of the FSA Handbook entitled Threshold Conditions ("COND").

COND 2.4 – 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 may, 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, have regard to the provision he makes in respect of liabilities (including contingent and future liabilities).
- 2.15 COND 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.

COND 2.5 - Threshold Condition 5: Suitability (paragraph 5, Schedule 6 to the Act)

- 2.16 COND 2.5.1 reproduces the relevant statutory provision that the person concerned must satisfy the FSA that he is a fit and proper person having regard to all the circumstances, including, among other things, the need to ensure that his affairs are conducted soundly and prudently.
- 2.17 COND 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.
- 2.18 COND 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.
- 2.19 COND 2.5.6 permits the FSA, when forming its opinion as to whether an authorised person is conducting its business with integrity and in compliance with proper standards, to have regard to relevant matters, including whether:
- the firm has been open and co-operative in all its dealings with the FSA and is ready and willing to comply with the requirements and standards under the regulatory system;
 - the firm has contravened, among other things, the requirements of the regulatory system, which includes the threshold conditions and the FSA Principles and other rules.

Relevant Regulatory Provisions

- 2.20 The FSA's policy in relation to the use of its enforcement powers is set out in the Enforcement Guide ("EG").

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

- 2.21 EG 8.1 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.
- 2.22 EG 8.2 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.
- 2.23 EG 8.5 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.

- 2.24 EG 8.5(1)(a) specifies that the FSA will consider exercising its own-initiative power where a firm's financial resources appear to be inadequate, for example where it has failed to maintain PII.
- 2.25 EG 8.5(2) specifies that Enforcement will consider exercising its own-initiative power where it appears that the interests of consumers are at risk because the firm appears to have breached Principle 6 to such an extent that it is desirable that restrictions are placed on the firm's regulated activity.
- 2.26 EG 8.9 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

- 2.27 Synergys became authorised by the FSA on 14 January 2005 to carry on insurance mediation business.
- 2.28 Synergys has failed to satisfy the FSA that it has maintained compliant PII since its previous policy expired on 17 November 2007.
- 2.29 In addition, in August 2005 Synergys received £3,642 from a customer for the purpose of renewing a Locum Insurance policy. However, Synergys failed to:
- ensure that insurance was put in place, despite receiving a premium for that purpose;
 - provide a full and valid explanation of why no policy was put in place, despite providing confirmation to the customer that such insurance was in place and that payment would be made on a claim which the client had entered against the policy;
 - respond promptly and substantively to the client's repeated requests for information as to the progress of its claim, and
 - repay promptly the premium to the client following an offer to do so.

Conclusions

- 2.30 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 satisfy the FSA that it has maintained compliant PII, Synergys is

failing to make adequate provision in respect of its liabilities, including contingent and future liabilities, in breach of FSA Principle 4. That failing is material in relation to the regulated activities for which it has permission and it therefore fails to satisfy Threshold Condition 4: Adequate resources;

- by its actions, Synergys has unreasonably caused financial loss to a customer, which is a material breach of FSA Principle 6 in that Synergys has failed to have due regard to the interests of its customer and to treat it fairly;
- by virtue of its breach of Principle 6, Synergys has failed to satisfy the FSA that it is conducting its business soundly and prudently and in compliance with proper standards or that it will do so in future. Synergys has also demonstrated that it is not ready, willing and organised to comply with the requirements and standards under the regulatory system. Synergys is therefore failing to satisfy Threshold Condition 5: Suitability, and
- the risk of loss or other adverse effect on consumers by Synergys' failings, which are material breaches of requirements imposed upon it by the FSA's rules, causes the FSA to have very serious concerns about Synergys such that the exercise of the FSA's own-initiative power to vary Synergys' Part IV permission with immediate effect is an appropriate response to those concerns.

3. DECISION MAKER

- 3.1 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 you 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 Martin Badcock at the FSA, 4th 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 4 November 2008 or such later date as may be permitted by the FSA. Written representations should be made to the Regulatory Decisions Committee and sent to Melanie Rainbird, 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, please inform us in writing of your intention to do so by 13 October 2008. If you do not notify us by 13 October 2008, you will not, other than in exceptional circumstances, be able to make oral representations.

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 Melanie Rainbird (direct line: 020 7066 2724 / fax: 020 7066 2725), or Jackie Noonan, RDC Professional Support Services (direct line: 020 7066 3074/fax: 020 7066 3075).
- 4.7 For more information concerning this matter generally, you should contact Martin Badcock at the FSA (direct line: 020 7066 1560 / fax: 020 7066 1561).

Tim Herrington
Chairman, Regulatory Decisions Committee