
FIRST SUPERVISORY NOTICE

To: **Tudor House Financial Services**
Of: **34 Chester Street**
 Wrexham
 Clywd
 LL13 8AH

Dated: **1 November 2002**

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

- (a) advising (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 Tudor House's Part IV permission by including the following requirements, namely that Tudor House must:

- (i) immediately advise in writing all clients for its regulated activities that it is no longer permitted by the FSA to carry on regulated activities;
- (ii) within 14 days provide the FSA with a copy of the written advice sent to all clients for its regulated activities pursuant to (i) above.

2. EFFECTIVE DATE

The action specified above takes effect immediately.

3. REASONS FOR ACTION

Summary

The FSA has concluded, on the basis of the facts and matters described below, that Tudor House is failing to satisfy the threshold conditions set out in Schedule 6 to the Act ("the threshold conditions") in that Tudor House is failing to ensure that its business is conducted soundly and prudently.

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 effect immediately.

Relevant Statutory Provisions

The FSA's regulatory objectives, established in section 2(2) of the Act, include market confidence and the protection of consumers.

Section 41 of the Act with Schedule 6, paragraph 5, to the Act sets out the threshold conditions which authorised persons must satisfy and continue to satisfy.

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 2.5 - 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(4) 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 authorised person has contravened any provisions of the Act, the regulatory system, or the rules of other regulatory authorities, including the FSA’s predecessors.

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.

Paragraphs 3.5.6 and 3.5.8 say the FSA will consider varying a Part IV permission in circumstances including:

- (i) where an authorised person fails to comply with the FSA’s reasonable request to take remedial steps and the consequences of the authorised person’s unwillingness or inability to take adequate and timely steps to address the FSA’s concerns may be serious;

- (ii) 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.

Relevant Rules

FSA Rule 3.9.14(1) in the part of the FSA Handbook entitled *Dispute Resolution: Complaints* ("DISP") requires a firm to comply promptly with any money award or direction made against it by the Financial Ombudsman Service ("the FOS").

FSA Rule 1.6.1 in DISP requires a firm to co-operate fully with the FOS in the handling of complaints against it.

Principle 6 of the FSA's Principles for Businesses ("FSA Principle 6") requires a firm to pay due regard to the interests of its customers and treat them fairly.

Facts and matters relied on

Tudor House is a partnership of independent financial advisers with three approved persons, the partners: Mr Leslie Smith, Mr Martin Chidley and Mr David Williams.

Failure to comply with five Ombudsman Awards

Awards against Tudor House by the PIAO ("the PIA Awards") were made on 17 September 2001, 18 September 2001 and 30 November 2001.

Awards against Tudor House by the FOS ("the FOS Awards") were made on 3 February 2002 and 15 August 2002.

An award made by the PIA Ombudsman ("the PIAO") or the FOS can be challenged:

- (i) by judicial review, the application for which, under Rule 54.5(1) of the Civil Procedures Rules 1998, must be made promptly and in any event not later than three months after the grounds to make the claim first arose;
- (ii) by submission of new evidence, where that evidence could not reasonably have been produced at the time of the original consideration of the complaint;
or
- (iii) where there has been an error by the PIAO or the FOS and both parties agree that the case should be reopened.

Applications by Tudor House for judicial review of all three of the PIAO Awards were refused by the High Court on various dates in March and April 2002 and no application has been made by Tudor House for judicial review of either of the FOS Awards. No relevant new evidence has been submitted to the FOS (which has taken over the handling of complaints to the PIAO) and there has been no agreement that any of the five cases should be re-opened.

Notwithstanding that the PIAO Awards have been without successful challenge for up to 13 months and the FOS Awards for up to eight months, Tudor House has failed to comply with any of them.

Failure to co-operate with the Financial Ombudsman Service

A complaint made to Tudor House by Mr & Mrs A P (“the AP complaint”) was referred to the FOS in September 2001. Requests for the information it needed to carry out an investigation and make a determination were made by the FOS to Tudor House on 19 October 2001, on 12 November 2001 and again on 28 November 2001. No response was made by Tudor House to any of these requests until Tudor House wrote to the FOS on 10 May 2002 asserting that the AP complaint was time barred. That assertion was refuted by the FOS on 24 May 2002 and again on 11 September 2002. No further communication has been received by the FOS from Tudor House.

Tudor House’s failure, despite repeated requests and warnings, to comply with the PIAO Awards and the FOS Awards and its failure to co-operate with the FOS in relation to the Powell complaint constitute breaches of FSA Rule 3.9.14(1) in DISP and FSA Rule 1.6.1 in DISP respectively. These failures also constitute breaches of FSA Principle 6.

Conclusions

The facts and matters described above lead the FSA, having regard to its regulatory objectives, to the following conclusions:

- Tudor House, by having failed to comply with the PIAO Awards and the FOS Awards, and by continuing to do so, and having failed to co-operate with the FOS in relation to the AP complaint, and by continuing to do so, has contravened and continues to contravene the regulatory system and the Principles and rules of the FSA.
- Tudor House has therefore failed and continues to fail to conduct its business in compliance with proper standards. That failure is significant in the context of the suitability of Tudor House and Tudor House therefore fails to satisfy Threshold Condition 5: Suitability.
- The risk of loss or other adverse effect on consumers by Tudor House’s failings causes the FSA to have very serious concerns about Tudor House and is such that the exercise of the FSA’s own-initiative powers

to vary Tudor House's Part IV permission is an appropriate response to those concerns. In particular it is necessary that the variation of Tudor House's Part IV permission should take immediate effect:

- to help maintain consumer confidence in the FOS and
- to address the FSA's serious concern that, if complaints in respect of new business transacted by Tudor House were to arise, Tudor House would again fail to co-operate with the FOS or comply with any FOS Awards.

4. DECISION MAKER

The decision which gave rise to the obligation to give this Supervisory Notice was made by the Regulatory Decisions Committee.

5. 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.

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 Mrs Jackie Noonan, Regulatory Decisions Committee Secretariat, at the above address. If you wish to make oral representations, you should inform Mrs Noonan 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 Jackie Noonan (direct line: 020 7676 3196/fax: 020 7676 3197), or Brian Whitbread, Head of the Regulatory Decisions Committee Secretariat (direct line: 020 7676 3202/fax: 020 7676 3197).

For more information concerning this matter generally, you should contact Chris Walmsley at the FSA (direct line: 020 7676 5894/fax: 020 7676 5895).

Christopher FitzGerald
Chairman, Regulatory Decisions Committee