
FINAL NOTICE

To: **Flett Sinclair Insurance Brokers Limited (FSIB)** of
20 Woodford Avenue, Ilford, Essex IG2 6XG

Dated: **17 December 2007**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") gives you final notice about the cancellation of permission granted to you, Flett Sinclair Insurance Brokers, pursuant to Part IV of the Act:

1. THE ACTION

- 1.1. The FSA gave you, FSIB, a Decision Notice on 11 December 2007 which notified you that pursuant to section 45 of the Financial Services and Markets Act 2000 (the Act), the FSA had decided to cancel the permission granted to you, FSIB, pursuant to Part IV of the Act (your Part IV permission).
- 1.2. You confirmed on 8 November 2007 that you will not be referring the matter to the Financial Services and Markets Tribunal. Accordingly, for the reasons set out below and having agreed with you the facts and matters relied on, the FSA cancels your Part IV permission.

2. REASONS FOR THE ACTION

- 2.1. The FSA has concluded, on the basis of the facts and matters described below, that you are failing and will continue to fail to satisfy the threshold conditions set out in Schedule 6 to the Act (the Threshold Conditions) in that the FSA is not satisfied that you are a fit and proper person having regard to all the circumstances.
- 2.2. In the opinion of the FSA, you have failed, and are likely to continue to fail, to satisfy the FSA that you have adequate resources in relation to the specific regulated activities which you carry on (Threshold Condition 4 - Adequate resources). Specifically, the FSA considers that the human resources of FSIB are inadequate in terms of quantity, quality and availability and that you do not have any effective means by which to manage risks.
- 2.3. The reason for these failings is the lack of fitness and propriety of the sole controller, director and approved person of FSIB, Mr David Holland. Mr Holland was prohibited on 17 December 2007 for breaches of Principles 1 (Integrity) and 2 (Due skill, care and diligence) of the FSA's Statements of Principle and Code of Conduct for Approved Persons (APER). Mr Holland was prohibited from performing any functions in relation to any regulated activities carried on by an authorised person, an exempt person or an exempt professional firm.

3. RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND GUIDANCE

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

Relevant Statutory Provisions

- 3.2. The FSA is authorised by section 45 of the Act to cancel your Part IV permission, where it appears to the FSA that you are failing to satisfy the Threshold Conditions.
- 3.3. Pursuant to section 49 of the Act, in reaching its decision to cancel your Part IV permission, the FSA has had regard to any person appearing to it to be in a relationship with FSIB.

Relevant Handbook Provisions

- 3.4. In exercising its power to cancel your Part IV permission, the FSA has had regard to relevant provisions in the FSA Handbook and the Regulatory Guides. The main provisions relevant to the proposed action are set out below.
- 3.5. The FSA Handbook entitled "Threshold Conditions" (COND) gives guidance on the threshold conditions which are set out in or under Schedule 6 to the Act (Threshold conditions). The threshold conditions represent the minimum conditions which a firm is required to satisfy, and continue to satisfy, in order to be given and to retain Part IV permission. Guidance on Threshold Condition 4 (Adequate resources) is found in COND 2.4.

- 3.6. COND 2.4.2 G(1) explains that threshold condition 4 requires the FSA to ensure that a firm has adequate resources in relation to the specific regulated activity or regulated activities which it seeks to carry on, or carries on. COND 2.4.2G(2) states that, in this context, the FSA will interpret the term 'adequate' as meaning sufficient in terms of quantity, quality and availability, and 'resources' as including all financial resources, non-financial resources and means of managing its resources; for example, capital, provisions against liabilities, holdings of or access to cash and other liquid assets, human resources and effective means by which to manage risks.
- 3.7. COND 2.4.3G(1) states that, when assessing threshold condition 4, the FSA may have regard to any person appearing to it to be, or likely to be, in a relevant relationship with the firm, in accordance with section 49 of the Act (Persons connected with an applicant). This will include, for example, a firm's controllers and its directors.

Enforcement Guidance

- 3.8. Guidance on the FSA's policy on exercising its power to cancel Part IV permission on its own initiative is found in Chapter 8 of the Enforcement Guide (EG).
- 3.9. EG 8.5 provides examples of the circumstances in which the FSA will consider cancelling a Part IV permission, including where it appears to the FSA that the authorised person is failing, or is likely to fail, to satisfy the Threshold Conditions in relation to one or more, or all, of the regulated activities for which the authorised person has Part IV permission.

4. FACTS AND MATTERS RELIED ON

- 4.1. On 17 December the FSA issued a prohibition order to Mr Holland concerning his conduct from September 2005 until May 2007 (the relevant period), while acting as the sole director of FSIB and the sole director of Petsure Limited (Petsure), FSIB's Appointed Representative.
- 4.2. During the relevant period Mr Holland was an FSA approved person performing Controlled Functions 1 (Director) and 8 (Apportionment and Oversight) at FSIB and in performing these functions he was the sole individual with significant influence over all the affairs at FSIB. Further, he performed Controlled Function 1 (Director) at Petsure and was directly engaged in selling pet insurance policies to retail customers in his role as a broker. No other individual at FSIB or Petsure performed controlled functions and Mr Holland had sole responsibility for ensuring that FISB complied with the FSA's rules and principles.
- 4.3. FSIB sold a pet insurance scheme, through Petsure, to retail customers. The scheme was provided by FSIB under an agency agreement between FSIB and the underwriter's intermediary.
- 4.4. Mr Holland, in his capacity as the sole director of FSIB, marketed and sold Petsure pet insurance policies during the relevant period but failed to comply with the agreement in place between FISB and the underwriter's intermediary. In particular, the FSA is concerned that Mr Holland:

- (1) directed those premiums paid by customers by direct debit to his personal bank account and used this money for personal expenditure;
 - (2) failed to hold those premiums paid by customers by direct debit in trust for the underwriter's intermediary in a designated account for client premiums; and
 - (3) failed to prepare and submit a bordereau to the underwriter's intermediary each month together with payment of premiums received from customers, less the agreed commission.
- 4.5. The FSA considers that Mr Holland failed to act with integrity and breached Principle 1 of APER in performing his controlled functions at FSIB and Petsure. This is particularly demonstrated by his behaviour in paying those premiums paid by customers by direct debit into his own personal bank account rather than into the Petsure designated account for client premiums. Mr Holland retained 100% of these premiums received during the relevant period resulting in the sum of not less than £162,000 being owed by him to the underwriter's intermediary by March 2007.
- 4.6. Further, the FSA considers that Mr Holland failed to act with due skill, care and diligence and breached Principle 2 of APER in that he failed to provide adequate control over customers' assets by breaching the terms of the agreement between FSIB and the underwriter's intermediary and failed to take prompt action to stop the collection of premiums paid by customers by direct debit when the agreement with the intermediary was terminated.

Conclusions

- 4.7. The facts and matters described above lead the FSA, having regard to its regulatory objectives, to the following conclusions:
- (1) Mr Holland had sole responsibility for the conduct and management of FSIB and there are no other individuals at the firm sufficiently competent and capable to perform controlled functions;
 - (2) the FSA has determined that Mr Holland is not fit and proper and has issued a prohibition order to him;
 - (3) you have no other resources available to ensure that you comply with your statutory and regulatory obligations as an authorised person in relation to the regulated activities for which you currently have permission; and
 - (4) you are therefore failing to satisfy Threshold Condition 4 in relation to the regulated activities for which you have Part IV permission.

5. DECISION MAKER

- 5.1. The decision which gave rise to the obligation to give this Final Notice was made by the Settlement Decision Makers on behalf of the FSA.

6. IMPORTANT

6.1. This Final Notice is given to you in accordance with section 390 of the Act.

7. Publicity

7.1. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the FSA must publish such information about the matter to which this notice relates as the FSA considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to you or prejudicial to the interests of consumers.

7.2. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

7.3. For more information concerning this matter generally, you should contact Bill Sillett at the FSA (direct line: 020 7066 5880)

SIGNED

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WILLIAM AMOS
FSA Enforcement Division