
FINAL NOTICE

To: **G & W 5 Limited**

Of: **The Old Custom House
Penzance
Cornwall
TR18 4AF**

FSA
Reference
Number: **415030**

Dated: **1 March 2010**

TAKE NOTICE: The Financial Services Authority (the "FSA") of 25 The North Colonnade, Canary Wharf, London E14 5HS gives you, G & W 5 Limited final notice about a decision to cancel the permission granted to you to carry on regulated activities

1. ACTION

- 1.1 The FSA gave G & W 5 Limited ("G & W 5") a Decision Notice on 27 January 2010 (the "Decision Notice") which notified G & W 5 that, for the reasons given below and pursuant to Section 45 of the Financial Services and Markets Act 2000 (the "Act"), the FSA had decided to cancel the permission granted to G & W 5 pursuant to Part IV of the Act ("G & W 5's Part IV permission").
- 1.2 G & W 5 was informed of its statutory right to make a reference to the Financial Services and Markets Tribunal, but it has not referred the Decision Notice to the Tribunal within 28 days of the date on which the Decision Notice was given to G & W 5. Accordingly, the FSA has today cancelled G & W 5's Part IV permission.

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2. REASONS FOR ACTION

- 2.1 On the basis of the facts and matters and conclusions described in its Warning Notice dated 23 December 2009 (the "Warning Notice") (an extract from which is attached to

and forms part of this Final Notice), and in the Decision Notice, the FSA concluded that G & W 5 is failing to satisfy the threshold conditions set out in Schedule 6 of the Act (the "Threshold Conditions").

2.2 Specifically, G & W 5 has failed to:

- comply with an Award made by the Financial Ombudsman Service ("FOS") on 15 December 2008 in favour of a complainant, despite repeated requests by the FOS and the FSA that it do so. G & W 5 therefore did not pay due regard to the interests of its customer or treat him fairly, in breach of Principle 6 (Customers' interests) of the FSA's Principles for Businesses (the "Principles");
- ensure it had an approved person controlling its affairs, in breach of Principle 3 (Management and control); and
- respond adequately to the FSA's requests for information regarding its governing body and has failed to notify the FSA of any alternative arrangements despite requests that it do so, in breach of Principle 11 (Relations with regulators).

2.3 These failures, which are significant in the context of G & W 5's suitability, lead the FSA to conclude that G & W 5 is not conducting its business soundly and prudently, and in compliance with proper standards, that it is not a fit and proper person, and that it is therefore failing to satisfy the Threshold Conditions in relation to the regulated activities for which it has a Part IV permission.

3. **DECISION MAKER**

3.1 The decision which gave rise to the obligation to issue this Final Notice was taken by the Regulatory Decisions Committee.

4. **IMPORTANT**

4.1 This Final Notice is given to you in accordance with section 390(1) of the Act.

Publicity

4.2 Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Final Notice relates. Under those provisions, the FSA must publish such information about the matter to which this Final Notice relates as

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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.

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

FSA Contact

- 4.4 For more information concerning this matter generally, you should contact Clare Harries at the FSA (direct line: 020 7066 6170/fax: 020 7066 6171).

John Kirby
FSA Enforcement and Financial Crime Division

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“2. REASONS FOR PROPOSED ACTION

Facts and matters relied on

2.22 G & W 5 became authorised by the FSA on 20 January 2005 to carry on designated investment business and mortgage intermediary business.

Failure to comply with an Award

2.23 The FOS made an award on 15 December 2008, under which G & W 5 was required to pay redress to the complainant. The complainant accepted the Award, at which time it became binding upon G & W 5 and the complainant.

2.24 Despite requests from the FOS and the FSA that it do so, G & W 5 has not complied with that Award. G & W 5 did not take court proceedings seeking to overturn the Award, which therefore remains an award binding on G & W 5 under section 228(5) of the Act.

No approved persons

2.25 On 29 May 2009, G & W 5 notified the FSA that all approved persons at G & W 5, including its three CF1 Directors, had ceased performing their Controlled Functions. This has left G & W 5 without any FSA approved persons controlling its affairs and since that date no other approved persons have been appointed.

Failure to respond adequately to the FSA's requests for information

2.26 Between June and November 2009, the FSA corresponded with G & W 5 on a number of occasions regarding the lack of approved persons controlling its affairs. G & W 5 has failed to notify the FSA of any alternative arrangements made despite repeated requests for it to do so.

Conclusions

2.27 The facts and matters described above lead the FSA, having regard to its regulatory objectives which include market confidence and the protection of consumers, to the following conclusions:

- G & W 5 has breached DISP 3.7.12R(1), a requirement imposed by the FSA, and has failed to remedy the breach notwithstanding the FSA's reasonable requests for it to do so;
- by failing to comply with the Award, G & W 5 has not paid due regard to the interests of a customer or treated him fairly. This failure presents a risk to the FSA's consumer protection statutory objective. Appropriate action is necessary to help provide protection to consumers and to help maintain consumer confidence in the FOS;
- G & W 5 has failed to ensure that its affairs are controlled responsibly and effectively as it does not currently have any directors who are approved persons;

- G & W 5 has failed to respond adequately to the FSA's concerns regarding the lack of approved persons in the director role and has not taken any remedial steps to regularise the position, and
- by these failures, G & W 5 is failing to conduct its business soundly and prudently and in compliance with proper standards and therefore fails to satisfy Threshold Condition 5 (Suitability)."

END OF EXTRACT