



Financial Services Authority

FINAL NOTICE

To: **P3 Wealth Management Limited**
FRN: **400498**
Address: **Rooms 9-11 Elizabeth House,
Royal Elizabeth Yard
Kirkliston
West Lothian
EH29 9EN**

Date: **24 April 2012**

TAKE NOTICE: the FSA of 25 The North Colonnade, Canary Wharf, London E14 5HS has taken the following action.

1. ACTION

- 1.1. For the reasons listed below, and pursuant to section 45 of the Act, the FSA has cancelled P3's Part IV permission to carry on regulated activities.
- 1.2. On 25 February 2012, P3 exercised its right to make a reference to the Tribunal about the matters contained in the Decision Notice. On 16 March 2012, P3 withdrew that reference and the Tribunal consented to the withdrawal on 11 April 2012. Accordingly, this order takes effect from 24 April 2012.

2. REASONS FOR THE ACTION

- 2.1. The FSA has concluded, on the basis of the facts and matters set out in paragraph 5 below, that P3 failed, or was likely to fail, to satisfy the Threshold Conditions.

3. DEFINITIONS

- 3.1. The definitions below are used in this Decision Notice.

- (1) “the Act” means the Financial Services and Markets Act 2000
- (2) “the FSA” means the Financial Services Authority
- (3) “Mr O’Donnell” means Patrick Francis O’Donnell
- (4) “P3” means P3 Wealth Management Limited
- (5) “P3’s Part IV permission” means P3’s permission granted pursuant to Part IV of the Act
- (6) “Threshold Conditions” means the threshold conditions set out in Schedule 6 to the Act
- (7) “The Tribunal” means the Upper Tribunal (Tax and Chancery Chamber).

4. RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND GUIDANCE

- 4.1. The statutory provisions, regulatory requirements and guidance relevant to this Notice are set out in Annex A.

5. FACTS AND MATTERS RELIED ON

- 5.1. By a Final Notice dated 24 April 2012 issued to Mr O’Donnell, the sole approved person at P3, the FSA has:
- (1) imposed a financial penalty of £60,000 pursuant to section 66 of the Act in respect of Mr O’Donnell’s contravention of Principles 2 and 7 of the FSA’s Statements of Principle and Code of Practice for Approved Persons;

- (2) withdrawn Mr O'Donnell's approval to perform controlled functions in relation to P3 pursuant to section 63 of the Act; and
- (3) made an order, pursuant to section 56 of the Act, prohibiting Mr O'Donnell from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm because he is not a fit and proper person in that he lacks the necessary competence and capability to continue as an approved person. This order takes effect on 24 April 2012.

6. REPRESENTATIONS, FINDINGS AND CONCLUSIONS

Representations

- 6.1. Mr O'Donnell made representations on his own behalf and so far as relevant, on behalf of P3. No independent representations were made by P3. The lack of separate representations from P3 reflects the fact that the FSA's decision to cancel P3 was dependant upon the FSA's decision in relation to Mr O'Donnell (as the sole approved person at P3).

Findings

- 6.2. As a consequence of the Final Notice given to Mr O'Donnell the FSA has decided that P3 does not have adequate human resources in relation to the regulated activities it seeks to carry on.
- 6.3. Having regard to all the circumstances, including P3's connection with Mr O'Donnell and the overall need to ensure that its affairs are conducted soundly and prudently, the FSA considers that P3 does not have competent and prudent management and cannot demonstrate that it conducts or will conduct its affairs with the exercise of due skill, care and diligence in compliance with proper standards. It is therefore unable to meet Threshold Condition 5.
- 6.4. Further, as the FSA has concluded that Mr O'Donnell is not fit and proper, P3 failed, or was likely to fail, to satisfy Threshold Condition 4, in that, in the opinion of the FSA, the firm does not have adequate resources in relation to the regulated activities

it seeks to carry on or carries on. Specifically, P3 does not have adequate human resources.

Conclusion(s)

- 6.5. In the light of the foregoing the FSA has concluded that P3 failed to meet Threshold Conditions 4 (Adequate Resources) and 5 (Suitability) and that it will continue to fail to meet these conditions.

7. SANCTION

- 7.1. As P3 failed and was likely to continue to fail to satisfy Threshold Conditions 4 and 5, the FSA has decided to cancel its Part IV permission.

8. PROCEDURAL MATTERS

Decision maker

- 8.1. The decision which gave rise to the obligation to give this Notice was made by the Regulatory Decisions Committee.
- 8.2. This Final Notice is given to P3 in accordance with section 390 of the Act.

Publicity

- 8.3. 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.
- 8.4. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

- 8.5. For more information concerning this matter generally, contact Rachel West (direct line: 020 7066 0142 /fax: 020 7066 0143) of the Enforcement and Financial Crime Division of the FSA.

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Tom Spender
FSA Enforcement and Financial Crime Division

1. RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND GUIDANCE

- 1.1. Section 41 and Schedule 6 to the Act set out the Threshold Conditions which are conditions that the FSA must ensure a firm will satisfy, and continue to satisfy, in relation to regulated activities for which it has permission.
- 1.2. Paragraph 4 of Schedule 6 to the Act states 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 (Threshold Condition 4: Adequate Resources).
- 1.3. Paragraph 5 of Schedule 6 to the Act states that the person concerned must satisfy the FSA that he is a fit and proper person having regard to all the circumstances including (a) his connection with any person; (b) the nature of any regulated activity that he carries on or seeks to carry on; and (c) the need to ensure that his affairs are conducted soundly and prudently (Threshold Condition 5: Suitability).
- 1.4. The FSA is authorised, pursuant to section 45(2) of the Act, to cancel an authorised person's Part IV permission where it appears that an authorised person is failing, or likely to fail, to satisfy the Threshold Conditions.

2. FSA's policy on exercising its power to cancel a Part IV permission

- 2.1. The FSA's policy on exercising its power to cancel a Part IV permission is set out in Chapter 8 of the Enforcement Guide ("EG").
- 2.2. EG 8.13(1) states that the FSA will consider cancelling a firm's Part IV permission in circumstances including where the FSA has very serious concerns about a firm, or the way its business is or has been conducted.
- 2.3. EG 8.14 sets out general grounds for the exercise of the section 45 power to cancel a Part IV permission. It states that the grounds on which the FSA may exercise its power to cancel an authorised person's permission under section 45 of the Act are set out in section 45(1) (which includes, 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).

3. Guidance on Threshold Condition 4: Adequate resources (Paragraph 4, Schedule 6 to the Act) – COND 2.4

- 3.1. COND gives guidance on the Threshold Conditions set out in Schedule 6 to the Act (COND 1.2.1G).
- 3.2. COND 2.4.1UK states 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.
- 3.3. COND 2.4.2G(2) provides that 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 such as, for example, human resources and effective means by which to manage risks.
- 3.4. COND 2.4.3G(1) provides that when assessing this Threshold Condition, 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); for example, a firm's controllers, its directors or partners, other persons with close links to the firm, and other persons that exert influence over the firm which might pose a risk to the firm's satisfaction of the Threshold Conditions and would, therefore, be in a relevant relationship with the firm.
- 3.5. COND 2.4.4G(1) states that the FSA will have regard to all relevant matters which includes at (d) whether the firm has taken reasonable steps to identify and measure any risks of regulatory concern that it may encounter in conducting its business and has installed appropriate systems and controls and appointed appropriate human resources to measure them prudently at all times.
- 3.6. COND 2.4.5G states that in complying with SYSC 5 (Systems and controls), a firm should plan its business appropriately so that it is able to identify, measure and manage the likely risks of regulatory concern it will face.

4. Guidance concerning Threshold Condition 5: Suitability (paragraph 5, Schedule 6 to the Act) – COND 2.5

- 4.1. COND 2.5.1UK states that the person concerned must satisfy the FSA that he is a fit and proper person having regard to all the circumstances including (a) his connection with any person; (b) the nature of any regulated activity that he carries on or seeks to carry on; and (c) the need to ensure that his affairs are conducted soundly and prudently.
- 4.2. COND 2.5.2G(1) provides that Threshold Condition 5 requires the firm to satisfy the FSA that it is 'fit and proper' to have Part IV permission having regard to all the circumstances, including its connection with other persons, the range of its regulated activities and the overall need to be satisfied that its affairs are and will be conducted soundly and prudently.
- 4.3. COND 2.5.3G(1) further provides that the emphasis of the Threshold Conditions is on the suitability of the firm itself (the suitability of each person who performs a controlled function will be assessed by the FSA under the approved persons regime). However, COND 2.5.3G(2) permits the FSA, when assessing this Threshold Condition in relation to a firm, to have regard to any person appearing to it to be, or likely to be, in a relevant relationship with the firm, as permitted by section 49 of the Act (Persons connected with the applicant). The guidance in COND 2.5.3G(2) also refers to COND 2.4.3G, which sets out examples of persons in a relevant relationship with the firm, including a firm's controllers, its directors or partners, other persons with close links to the firm and other persons that exert influence on the firm which might pose a risk to the firm's satisfaction of the Threshold Conditions and would, therefore, be in a relevant relationship with the firm.
- 4.4. COND 2.5.4G provides that in determining whether the firm will satisfy and continue to satisfy Threshold Condition 5, the FSA will have regard to all relevant matters arising including whether a firm has or will have a competent and prudent management (COND 2.5.4G(2)(b)) and whether it can demonstrate that it conducts,

or will conduct, its business with integrity, with due skill, care and diligence and in compliance with proper standards (COND 2.5.4G(2)(a) and (c)).

4.5. COND 2.5.6G, in giving guidance on the interpretation of whether a firm will satisfy and continue to satisfy Threshold Condition 5 in respect of conducting its business with integrity and in compliance with proper standards, gives examples of relevant matters which include:

- (1) whether the firm has been open and co-operative in all its dealings with the FSA, and is ready willing and organised to comply with the requirements under the regulatory system (COND 2.5.6G(1));
- (2) whether the firm has contravened, or is connected with any person who has contravened any provisions of the Act or the regulatory system (COND 2.5.6G(4)); and
- (3) whether the firm has taken reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system applicable to it (COND 2.5.6G(6)).

4.6. COND 2.5.7G provides guidance on the matters that are relevant to determining a firm satisfying and continuing to satisfy Threshold Condition 5 in respect of it having competent and prudent management and exercising due skill, care and diligence. Such matters include whether the firm has conducted enquiries that are sufficient to give it reasonable assurance that it will not be posing unacceptable risks to consumers or the financial system (COND 2.5.7G(9)).