
FINAL NOTICE

To: Penn Financial Services Unlimited

Address: 111-113 High Street
Evesham
Worcestershire
WR11 4XP

FSA reference number: 447431

Dated: 6 April 2009

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

1. THE ACTION

- 1.1 The FSA gave Penn a Decision Notice on 11 March 2009 which notified Penn 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 Penn pursuant to Part IV of the Act ("Penn's Part IV permission").
- 1.2 Penn agreed that it would not be referring the matter to the Financial Services and Markets Tribunal.
- 1.3 Accordingly, for the reasons set out below and having agreed with Penn the facts and matters relied on, the FSA has cancelled Penn's Part IV permission.

2 REASONS FOR THE ACTION

Summary

- 2.1 On the basis of the facts and matters and conclusions described below, Penn is failing to satisfy the threshold conditions set out in Part 1 of Schedule 6 to the Act (“the Threshold Conditions”).
- 2.2 By a Final Notice dated 6 April 2009, having concluded that Norman Mark McCance (“Mr McCance”) is not a fit and proper person, pursuant to sections 63 and 56 of the Act, the FSA withdrew Mr McCance’s individual approval and made an order prohibiting him from performing any controlled functions in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm.
- 2.3 As a consequence of the action taken by the FSA to withdraw Mr McCance’s individual approval and to prohibit him, Penn does not have any approved persons to carry out controlled functions. In these circumstances, Penn is failing to satisfy Threshold Condition 4 (adequate resources) in that it has inadequate human resources in relation to the regulated activities that it has permission to carry on. Also, Penn has a director who the FSA considers to be an unfit controller of an authorised person. In these circumstances, Penn is failing to satisfy Threshold Condition 5 (suitability) in that it does not have a competent and prudent management by virtue of its connection with Mr McCance.
- 2.4 Additionally, the FSA is not satisfied that Penn is fit and proper to conduct regulated activities, having regard to all the circumstances, including the need to ensure that its affairs are conducted soundly and prudently. Specifically, Penn failed to comply with the FSA’s Principles for Businesses and requirements in connection with its investment business in the period April 2006 to November 2007 (“the relevant period”). In particular, Penn breached:
 - (1) Principle 3 (management and control) by failing to take reasonable steps to establish and implement adequate and appropriate compliance arrangements and risk management systems over its business;
 - (2) Principle 7 (communications with clients) by failing to communicate information about its recommendations and services in an appropriate manner;
 - (3) Principle 9 (customers: relationships of trust) by failing to take reasonable steps to ensure that recommendations relating to re-mortgages to raise funds to invest in investment bonds were suitable for its customers; and
 - (4) Section 20(1)(a) of the Act by conducting three pension transfers outside the scope of its Part IV permission.
- 2.5 These failures are significant in the context of Penn’s suitability. By failing to comply with requirements and standards under the regulatory system, Penn is not conducting its affairs soundly and prudently and in compliance with proper standards. In these circumstances, Penn is failing to satisfy Threshold

Condition 5 (suitability) in that it is not a fit and proper person in relation to the regulated activities that it has permission to carry on.

3. RELEVANT STATUTORY PROVISIONS

- 3.1 The relevant statutory provisions and regulatory requirements are attached at Annex A.

4. FACTS AND MATTERS RELIED ON

- 4.1 Penn is a small independent financial advisory firm; its main business being investment bonds. With effect from 10 April 2006, Penn became authorised and regulated by the FSA to carry on the following regulated activities:

- (1) advising on investments (except on pension transfers and pension opt outs);
- (2) advising on regulated mortgage contracts;
- (3) agreeing to carry on a regulated activity;
- (4) arranging (bringing about) deals in investments;
- (5) arranging (bringing about) regulated mortgage contracts;
- (6) making arrangements with a view to regulated mortgage contracts;
- (7) making arrangements with a view to transactions in investments; and
- (8) providing basic advice on stakeholder products.

- 4.2 Mr McCance was approved by the FSA on 10 April 2006 to perform the controlled functions of CF1 (Director), CF8 (Apportionment and Oversight), CF10 (Compliance Oversight), CF11 (Money Laundering Reporting), CF21 (Investment Adviser) and he was also responsible for insurance mediation. From 1 November 2007, Mr McCance was also approved to perform controlled function CF30 (Customer Function). Mr McCance was the only person approved to perform controlled functions in relation to the regulated activities for which Penn has permission.

Mr McCance: withdrawal of individual approval and prohibition

- 4.3 The FSA has conducted an investigation into Penn, referred to below in paragraphs 4.5 to 4.13 and as a result identified serious concerns relating to Mr McCance's fitness and propriety. Specifically, Mr McCance failed to demonstrate the competence and capability required of an approved person whilst performing controlled functions as a senior manager and adviser in relation to Penn's regulated activities during the relevant period.

- 4.4 The FSA's concerns are set out more fully in a Final Notice dated 6 April 2009, in which it withdrew Mr McCance's individual approval and made an order prohibiting him from performing any controlled functions in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm.

Penn: failing to conduct its affairs soundly and prudently

- 4.5 The FSA has conducted an investigation into Penn to review its compliance with relevant regulatory requirements and standards in connection with its investment business during the relevant period. The FSA found deficiencies in Penn's sales process relating to re-mortgages to provide funds for investing in investment bonds, as well as systems and controls failings over its business. During the relevant period, Penn advised 22 customers to re-mortgage on an interest only basis to raise funds to invest in investment bonds.

Systems and controls

- 4.6 Penn did not have adequate and appropriate compliance arrangements and risk management systems over its business. In particular, the following deficiencies were identified:
- (1) Penn did not have any written sales, compliance or training procedures to follow to ensure that its affairs were conducted in compliance with proper standards;
 - (2) Penn did not carry out any compliance checks over its business. Additionally, although Penn retained the services of an external compliance consultant for compliance support, it did not engage its external compliance consultant to conduct any compliance visits or review of its business during the relevant period;
 - (3) Penn did not make use of any management information to monitor business written or to assess the risks or trends within its business; and
 - (4) owing to the absence of any compliance monitoring over its sales process, Penn conducted three pension transfers outside the scope of its permitted activities in breach of section 20(1)(a) of the Act.
- 4.7 By failing to take reasonable steps to establish and implement effective procedures and processes over its business, Penn failed to control its business with adequate and appropriate compliance arrangements and risk management systems, in breach of Principle 3 (management and control).

Communication with customers

- 4.8 Penn did not provide customers with adequate information in suitability reports for making informed decisions before making an investment in investment bonds. Specifically, suitability reports produced by Penn:

- (1) did not explain how and why the product recommended matched the customers' risk profiles and objectives, but instead included standard generic phrases rather than being tailored specifically for each customer;
 - (2) contained insufficient risk warnings. Where customers' re-mortgaged their properties to raise funds for investing in investment bonds, the suitability reports made no reference to any property risks. This was concerning given that customers could withdraw income from the investment bonds and this could reduce the investment bond's growth value, thereby producing insufficient capital for repayment of the customers' mortgages; and
 - (3) provided inadequate information relating to alternative products. The suitability reports for different customers listed the same alternative products and the reasons for discounting them were identical. In relation to the investment bond, only one provider was considered and recommended.
- 4.9 Additionally, Penn provided customers with inaccurate disclosure information about its services. Penn used a combined initial disclosure document for its investment, mortgage and insurance businesses. However, this document failed to set out clearly Penn's commission and fee structure and the level of service offered in relation to its investment, mortgage and insurance services.
- 4.10 By providing inadequate suitability reports, and together with its failure to provide customers with accurate disclosure information, Penn has failed to communicate with its customers in a clear, fair and not misleading way, in breach of Principle 7 (communications with clients).

Ensuring suitability of recommendations

- 4.11 Penn could not demonstrate that reasonable steps had been taken to ensure that suitable advice was given to customers. In particular, Penn did not record sufficient and accurate information on customer files. Specifically:
- (1) Penn failed to record sufficient information about its customers' personal and financial circumstances for assessing the suitability of recommendations, even when such information was required in its "fact find" template;
 - (2) where customer information was recorded, this was not accurately reflected on the fact finds as standard generic phrases were used, particularly to describe the customers' needs and preferences and risk profiles, which failed to clarify adequately the customers' position and requirements;
 - (3) fact finds did not refer to re-mortgages that had been arranged to raise funds for investing in investment bonds, even though they formed part of the investment strategy (and customers were relying on the growth

of the investment bonds to repay their mortgages). Penn could not demonstrate that it had considered the impact of the overall transaction when making its recommendations;

- (4) Penn did not make adequate records explaining why its recommendations were suitable. In particular, details of product research, considerations relating to re-mortgaging to raise funds for investment, advice given to customers and reasons for its recommendations were not evident from customer files; and
- (5) Penn did not sample or review any customer files or monitor the suitability of its advice during the relevant period.

4.12 By failing to record sufficient and accurate information about customers, Penn could not demonstrate that its recommendations were made on the basis of an adequate assessment of customers' needs and circumstances. Penn has therefore failed to ensure the suitability of its advice, in breach of Principle 9 (customers: relationships of trust).

Conclusions

4.13 The facts and matters described above lead the FSA, having regard to its regulatory objectives which include the protection of consumers and market confidence, to conclude that Penn is failing, and is likely to continue to fail, to satisfy:

- Threshold Condition 4 (adequate resources) as it does not have adequate human resources as a consequence of the FSA's withdrawal of Mr McCance's individual approval and prohibition order against him; and
- Threshold Condition 5 (Suitability) as it no longer satisfies the FSA that it is a fit and proper person having regard to all the circumstances, including its connection with Mr McCance and the need to ensure that its affairs are conducted soundly and prudently.

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 Penn in accordance with section 390 of the Act.

Publicity

6.2 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 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 Penn or prejudicial to the interests of consumers.

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

FSA contacts

- 6.4 For more information concerning this matter generally, you should contact John Tutt of the Enforcement Division at the FSA (direct line: 020 7066 1240).

Jonathan Phelan
Head of Department
FSA Enforcement Division

**RELEVANT STATUTORY PROVISIONS, REGULATORY
REQUIREMENTS AND GUIDANCE**

STATUTORY PROVISIONS

- 1.1 The FSA's regulatory objectives are set out in section 2(2) of the Act and include market confidence, public awareness, the protection of consumers and the reduction of financial crime.
- 1.2 Section 20 of the Act relates to authorised persons acting without permission. Section 20(1) states that:

“If an authorised person carries on a regulated activity in the United Kingdom, or purports to do so, otherwise than in accordance with permission

(a) given to him by the Authority under Part IV; or

(b) resulting from any other provision of this Act

he is to be taken to have contravened a requirement imposed on him by the Authority under this Act”.

- 1.3 Section 41 and Schedule 6 of 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.
- 1.4 The FSA is authorised by sections 45(1) and 45(2) of the Act to cancel an authorised person's Part IV permission where it appears to the FSA that such a person is failing, or is likely to fail, to satisfy the Threshold Conditions.
- 1.5 Paragraph 4 of Schedule 6 to the Act sets out Threshold Condition 4 (adequate resources) which provides 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.
- 1.6 Paragraph 5 of Schedule 6 to the Act sets out Threshold Condition 5 (suitability) which provides 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.

RELEVANT HANDBOOK PROVISIONS

- 2.1 In exercising its power to cancel a Part IV permission, the FSA must have regard to relevant provisions in the FSA Handbook of rules and guidance (“the FSA Handbook”). The main provisions relevant to the action specified above are set out below.

Principles for Businesses

- 2.2 Under the FSA’s rule making powers, the FSA has published in the FSA Handbook the Principles for Businesses which apply either in whole or in part to all authorised persons. These Principles are a general statement of the fundamental obligations of firms under the regulatory system and reflect the FSA’s regulatory objectives. Breaching a Principle may call into question whether a firm with a Part IV permission is still fit and proper.
- 2.3 The Principles relevant to this matter are:
- (1) Principle 3 (management and control) which requires that a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems;
 - (2) Principle 7 (communications with clients) which requires that a firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading; and
 - (3) Principle 9 (customers: relationships of trust) which requires that a firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment.

Threshold Conditions

- 2.4 Guidance on the Threshold Conditions is set out in the Threshold Conditions manual (“COND”) of the FSA Handbook.

Threshold Condition 4: Adequate resources (paragraph 4, Schedule 6 to the Act) – COND 2.4

- 2.5 COND 2.4.1UK(1) 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.
- 2.6 COND 2.4.2G(1) provides 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.
- 2.7 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.

- 2.8 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 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.

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

- 2.9 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.
- 2.10 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 connections with other persons, the range and nature of its regulated activities and the overall need to be satisfied that its affairs are and will be conducted soundly and prudently.
- 2.11 COND 2.5.3G(1) provides that the emphasis of this Threshold Condition 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. In certain circumstances, however, the FSA may consider that the firm is not suitable because of doubts over the individual or collective suitability of persons connected with the firm.
- 2.12 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.
- 2.13 COND 2.5.4G(1) and (2) provide that when determining whether the firm will satisfy and continue to satisfy Threshold Condition 5, the FSA will have regard to all relevant matters including whether a firm: (a) conducts, or will conduct, its business with integrity and in compliance with proper standards; or (b) has or will have a competent and prudent management.
- 2.14 COND 2.5.6G provides that in determining 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, relevant matters may include whether:

- (1) the firm has contravened, or is connected with a person who has contravened, any provisions of the Act, the regulatory system or the rules, statements of principles or codes of practice COND 2.5.6G(4); and
- (2) the firm has taken reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory systems that apply to the firm and the regulated activities for which it has permission COND 2.5.6G(6).

2.15 COND 2.5.7G provides that in determining whether a firm will satisfy, and continue to satisfy, Threshold Condition 5 in respect of having competent and prudent management, relevant matters may include whether:

- (1) the governing body of the firm is made up of individuals with an appropriate range of skills and experience to understand, operate and manage the firm's regulated activities COND 2.5.7G(1); and
- (2) the firm has made arrangements to put in place an adequate system of internal control to comply with the requirements and standards under the regulatory system COND 2.5.7G(5).

OTHER RELEVANT REGULATORY PROVISIONS

3.1 In exercising its power to cancel a Part IV permission, the FSA must also have regard to relevant regulatory provisions and guidance.

Enforcement Guide

3.2 The FSA's policy on exercising its enforcement power is set out in Chapter 8 of the Enforcement Guide ("EG").

Exercising the power to cancel a Part IV permission on its own initiative under section 45 of the Act – EG 8

3.3 EG 8.13(1) provides that the FSA will consider cancelling a firm's Part IV permission using its own-initiative powers contained in section 45 of the Act where the FSA has very serious concerns about a firm, or the way its business is or has been conducted.

3.4 EG 8.14 provides 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). These include where it appears to the FSA that the firm is failing, or is likely to fail, to satisfy the Threshold Conditions.