
FINAL NOTICE

To: **Stone Financial Management Limited**

Of: **Lanson House
Formby
Liverpool
L37 4AT**

Date: **26 January 2009**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives Stone Financial Management Limited (“SFML”) final notice of the cancellation of its Part IV permission:

1. ACTION

- 1.1 The FSA gave SFML a Decision Notice on 16 January 2009 (“the Decision Notice”), which notified you that, for the reasons listed below, and pursuant to section 45 of the Financial Services and Markets Act 2000 (“the Act”), the FSA has decided to cancel the permission granted to SFML, pursuant to Part IV of the Act (“SFML’s Part IV permission”).

1.2 SFML has confirmed that it will 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 SFML the facts and matters relied on, the FSA has cancelled SFML's Part IV permission.

2 REASON FOR THE ACTION

2.1 The current director ("the Second Replacement Director") and only approved person within SFML, has agreed to withdraw their individual approvals to perform controlled functions at SFML due to a lack of the requisite level of competence to fulfil the regulatory obligations inherent to the functions held.

2.2 Following the withdrawal of the Second Replacement Director's individual approvals there will be no one at SFML to carry out controlled functions. In these circumstances, SFML will be failing to satisfy the threshold conditions set out in Schedule 6 to the Act, in that in the opinion of the FSA SFML will not have adequate human resources (Threshold Condition 4).

2.3 Furthermore by a Final Notice dated 26 January 2009 the FSA concluded that Mr John David Cook ("John Cook"), SFML's sole shareholder and senior mortgage adviser, is not a fit and proper person.

2.4 By the same Final Notice dated 26 January 2009 the FSA proposes to make an order prohibiting John Cook from performing any functions with regards to any regulated activity.

2.5 As a result of the above SFML is failing and will continue to fail to satisfy the FSA that it is fit and proper having regard to all the circumstances, including its connection with John Cook, the need to conduct its business with the appropriate level of fitness and propriety in compliance with proper standards, and the overall need to ensure that its affairs are conducted soundly and prudently (Threshold Condition 5).

3 RELEVANT STATUTORY AND REGULATORY PROVISIONS

3.1 The FSA's regulatory objectives are set out in section 2(2) of the Act and include the protection of consumers, market confidence and reduction of financial crime.

- 3.2 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.
- 3.3 Paragraph 4 of Schedule 6 to the Act sets out Threshold Condition 4 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 (Threshold Condition 4: Adequate Resources).
- 3.4 Paragraph 5 of Schedule 6 to the Act sets out Threshold Condition 5 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 (Threshold Condition 5: Suitability).
- 3.5 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 that an authorised person is failing, or likely to fail, to satisfy the Threshold Conditions.

Relevant handbook provisions

- 3.6 In exercising its power to cancel a firm's Part IV permission, the FSA must have regard to relevant provisions in the FSA Handbook. The main provisions relevant to the action specified above are set out below.

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

- 3.7 COND 2.4.1 (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.
- 3.8 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.
- 3.9 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.

- 3.10 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

- 3.11 COND 2.5.1 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.
- 3.12 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.
- 3.13 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.
- 3.14 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.

- 3.15 COND 2.5.4G(1) & (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.
- 3.16 COND 2.5.6G(4) 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 the firm is connected with a person who has contravened any provisions of the Act or the regulatory system.
- 3.17 COND 2.5.7G(1) 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 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.

Other relevant regulatory provisions

- 3.18 In exercising its power to cancel a Part IV permission, the FSA must also have regard to relevant regulatory provisions and guidance, particularly in the Enforcement Guide.

The Enforcement Guide ("EG")

- 3.19 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.
- 3.20 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.

4 FACTS AND MATTERS RELIED ON

SFML

- 4.1 SFML is a small firm providing advice on regulated home finance and conducting insurance mediation business. With effect from 31 October 2004, SFML became

authorised and regulated by the FSA to carry on the following regulated activities in relation to regulated mortgage contracts (those marked with an asterisk were limited to non-investment insurance contracts):

- (1) agreeing to carry on a regulated activity;
- (2) advising on investments (except on Pension Transfers and Pension Opt Outs)*;
- (3) advising on regulated mortgage contracts;
- (4) arranging (bringing about) deals in investments*;
- (5) arranging (bringing about) regulated mortgage contracts;
- (6) making arrangements with a view to regulated mortgage contracts; and
- (7) making arrangements with a view to transactions in investments*.

4.2 In October 2004, John Cook obtained approval to hold controlled functions CF1 (Director), CF8 (Apportionment and Oversight) and CF11 (Money Laundering Reporting). In November 2006, the FSA wrote to inform John Cook that it was minded to recommend that his approval be withdrawn, due to the non-disclosure of material facts relevant to an assessment of his fitness and propriety. In January 2007, John Cook voluntarily withdrew all his approvals as a result of the FSA's concerns.

4.3 Following withdrawal of John Cook's individual approval, another individual ("the First Replacement Director") was granted FSA approval to hold controlled functions CF10 (Compliance Oversight) and CF21 (Investment Adviser) in February 2006 and later, in November 2006, obtained additional approvals to carry out controlled functions CF1 (Director), CF8 (Apportionment and Oversight), CF11 (Money Laundering). In October 2007, the First Replacement Director resigned from SFML and SFML withdrew all his controlled functions.

4.4 With effect from October 2007, SFML's Second Replacement Director obtained approval to carry out controlled functions CF1 (Director), CF8 (Apportionment and Oversight), CF10 (Compliance Oversight), CF11 (Money Laundering Reporting) and responsibility for insurance mediation.

4.5 Due to a lack of the requisite level of competence to fulfil the regulatory obligations inherent to the functions held, the Second Replacement Director and the only

approved person within SFML, has agreed to voluntarily withdraw their individual approvals to perform controlled functions held at SFML.

Background to the FSA's action

4.6 The FSA conducted an investigation into SFML and, as a result, identified serious concerns about Mr Cook's fitness and propriety.

4.7 The FSA's concerns about the conduct of Mr Cook are set out more fully in the Final Notice dated 26 January 2009 given to Mr Cook relating to the FSA's proposal to make an order against him prohibiting him from performing any functions with regards to any regulated activity.

5 CONCLUSIONS

5.1 The facts and matters described above lead the FSA, having regard to its regulatory objectives which include maintaining confidence in the financial system, to conclude that SFML fails, and is likely to continue to fail, to satisfy Threshold Condition 4 (Adequate resource) and Threshold Condition 5 (Suitability).

6 DECISION MAKER

6.1 The decision which gave rise to the obligation to give this notice was made by the Settlement Decision Makers on behalf of the FSA.

7 IMPORTANT

7.1 This Final Notice is given to SFML in accordance with section 390 of the Act.

Publicity

7.2 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.

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

FSA contacts

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

**Jonathan Phelan
Head of Department
FSA Enforcement Division**