
FIRST SUPERVISORY NOTICE

To: **Commercial Insurance Services (M/CR) Limited**

Of: **22 Landsdowne Road
Manchester
Lancashire
M8 5SH**

FSA Reference
Number: **305239**

Dated: **27 July 2011**

ACTION

1. 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 vary the permission granted to Commercial Insurance Services (M/CR) Limited (“CIS”) pursuant to Part IV of the Act (“CIS’s Part IV permission”), by removing its only regulated activity with immediate effect. Accordingly, CIS’s Part IV permission no longer includes the regulated activity of ‘Assisting in the administration and performance of a contract of insurance’.
2. The FSA has further decided to vary CIS’s Part IV permission by imposing the following requirements, pursuant to section 43 of the Act, namely that CIS:
 - (a) may not hold or control client money;
 - (b) must within 14 days notify in writing all clients for its regulated activities that it is no longer permitted by the FSA to carry on regulated activities; and
 - (c) must within 14 days provide the FSA with a copy of the written notification sent to all clients for its regulated activities pursuant to (b) above, together with a list of all clients to whom such notification has been sent.

REASONS FOR ACTION

3. On the basis of the facts and matters described below, CIS is failing to satisfy the threshold conditions set out in Schedule 6 to the Act (the "Threshold Conditions"). In the opinion of the FSA, CIS has failed to:
 - (a) ensure that it has competent and prudent management in that CIS has no individual who is approved by the FSA to perform the controlled function of director;
 - (b) conduct its business with integrity and in compliance with proper standards in that CIS's sole controller is a person who has been prohibited by the FSA under section 56 of the Act to perform any function in relation to any regulated activity carried on by any authorised person, exempt person, or exempt professional firm, in relation to any regulated activity (the "Order"), and is therefore unfit to be CIS's controller; and
 - (c) deal with the FSA in an open and co-operative way, in unreasonably failing to provide information to the FSA despite being requested to do so on several occasions, and to respond substantively to communications from the FSA.
4. The FSA also considers, on the basis of those facts and matters, that it is necessary, in order to protect the interests of consumers, for the action specified above to take immediate effect.
5. By these failings, CIS is failing to satisfy Threshold Condition 5 (Suitability) with respect to conducting its business soundly and prudently and in compliance with proper standards.
6. CIS has also not been open and co-operative in all its dealings with the FSA, in breach of Principle 11 (Relations with regulators) of the FSA's Principles for Businesses (the "Principles") under which firms must co-operate with the FSA.

FACTS AND MATTERS RELIED ON

7. CIS has been authorised by the FSA since 14 January 2005 to carry on insurance mediation business.
8. CIS has no individual who is approved by the FSA to perform the controlled function of director. CIS withdrew the approval of the then sole director (Arthur John Kirk ("Mr Kirk")) on 27 August 2009. Companies House records show that Christopher Alan John Leavy ("Mr Leavy") is the sole director of CIS. An application by CIS seeking FSA approval for Mr Leavy to perform controlled functions was withdrawn on 27 November 2009, before any decision had been made by the FSA on the application.
9. CIS's sole controller is Mr Kirk, who was prohibited by the FSA on 15 September 2009 from performing any function in relation to any regulated activity carried on by any authorised person, exempt person, or exempt professional firm, in relation to any regulated activity.

10. CIS has provided information to the FSA indicating that it may have conducted regulated business outside the scope of its permission. CIS failed to co-operate with the FSA in that it failed to respond adequately, or at all, to repeated requests from the FSA to provide information to the FSA on its trading activities to enable the FSA to review its business.

FAILINGS

11. The regulatory provisions relevant to this First Supervisory Notice are set out in the Annex.
12. From the facts and matters described above the FSA, having regard to its regulatory objectives, has identified that CIS:
 - has no individual who is approved by the FSA to perform the controlled function of director;
 - has an unfit controller;
 - has not been open and co-operative in all its dealings with the FSA, namely by failing to respond appropriately, or at all, to the FSA's repeated requests that it provide details of trading activities;
 - is failing to comply with Principle 11 and has failed to satisfy the FSA that it is ready, willing and organised to comply with the requirements and standards under the regulatory system;
 - has therefore failed to satisfy the FSA that it is conducting its business soundly and prudently and in compliance with proper standards or that it is a fit and proper person having regard to all the circumstances (and that failure is significant in the context of its suitability to remain authorised); and
 - is therefore failing to satisfy the Threshold Conditions in relation to its permitted regulated activities, and its Part IV permission should be varied to remove its only regulated activity with immediate effect and to add a requirement that CIS may not hold or control client money and the requirements referred to at paragraph 2 of this First Supervisory Notice.

PROCEDURAL MATTERS

Decision Maker

13. The decision which gave rise to the obligation to give this First Supervisory Notice was made by the Deputy Chairman of the Regulatory Decisions Committee.
14. This First Supervisory Notice is given to CIS under section 53(4) and in accordance with section 53(5) of the Act, and is being served on CIS at its principal place of business last notified to the FSA. The following statutory rights are important.

The Tribunal

15. CIS has the right to refer the matter to which this First Supervisory Notice relates to the Upper Tribunal (the “Tribunal”). The Tax and Chancery Chamber is the part of the Upper Tribunal which, amongst other things, hears references arising from decisions of the FSA. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, CIS has 28 days from the date on which this First Supervisory Notice is given to CIS to refer the matter to the Tribunal.
16. A reference to the Tribunal can be made by way of a reference notice (Form FTC3) signed by CIS and filed with a copy of this First Supervisory Notice. The Tribunal’s contact details are:

The Upper Tribunal, Tax and Chancery Chamber, 45 Bedford Square, London WC1B 3DN (telephone: 020 7612 9700; email: financeandtaxappeals@tribunals.gsi.gov.uk).

17. Further details are contained in “Making a Reference to the UPPER TRIBUNAL (Tax and Chancery Chamber)” which is available from the Tribunal website:

<http://www.tribunals.gov.uk/financeandtax/FormsGuidance.htm>

18. CIS should note that a copy of the reference notice (Form FTC3) must also be sent to the FSA at the same time as filing a reference with the Tribunal. A copy of the reference notice should be sent to Sarah Le Meur at the FSA, 25 The North Colonnade, Canary Wharf, London E14 5HS.

Representations

19. CIS has the right to make written and oral representations to the FSA (whether or not it refers this matter to the Tribunal). If CIS wishes to make written representations it must do so by 30 August 2011 or such later date as may be permitted by the FSA. Written representations should be made to the Regulatory Decisions Committee and sent to Jane Hendley, Regulatory Decisions Committee Professional Support Services. The Regulatory Decisions Committee Professional Support Services' address is: 25 The North Colonnade, Canary Wharf, London E14 5HS. If CIS wishes to make oral representations, it should inform the FSA of its intention to do so by 8 August 2011. If CIS does not notify the FSA by 8 August 2011, it will not, other than in exceptional circumstances, be able to make oral representations.

Confidentiality and publicity

20. CIS should note that this First Supervisory Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining advice on its contents). CIS should also note that section 391 of the Act requires the FSA when the First Supervisory Notice takes effect (and this First Supervisory Notice takes immediate effect), to publish such information about the matter as it considers appropriate.

FSA contacts

21. For more information concerning this matter generally, CIS should contact Sarah Le Meur at the FSA (direct line: 020 7066 0956 / fax: 020 7066 0957).
22. If CIS has any questions regarding the procedures of the Regulatory Decisions Committee, it should contact Jane Hendley (direct line: 020 7066 3200).

Andrew Long

Deputy Chairman, Regulatory Decisions Committee

ANNEX TO THE FIRST SUPERVISORY NOTICE ISSUED BY THE FINANCIAL SERVICES AUTHORITY TO COMMERCIAL INSURANCE SERVICES (M/CR) LIMITED ON 27 JULY 2011

RELEVANT STATUTORY PROVISIONS

1. The FSA's regulatory objectives established in section 2(2) of the Act include the protection of consumers.
2. The FSA is authorised by section 45 of the Act to exercise the following powers:
 - to vary an authorised person's permission where it appears to the FSA that such person is failing to satisfy the Threshold Conditions;
 - to vary an authorised person's permission where it is desirable to do so to protect the interests of consumers;
 - to vary such a permission by removing a regulated activity from those for which the permission is given; and
 - to include any provision in the permission as varied that could be included if a fresh permission were being given in response to an application under section 40 of the Act, including the imposition pursuant to section 43 of the Act of such requirements as the FSA considers appropriate.
3. Section 53(3) of the Act allows such a variation to take effect immediately if the FSA reasonably considers that it is necessary for the variation to take effect immediately.
4. Paragraph 5 of Schedule 6 to the Act sets out Threshold Condition 5 which provides that:

“The person concerned must satisfy the Authority that he is a fit and proper person having regard to all the circumstances, including-

[...]

(c) the need to ensure that his affairs are conducted soundly and prudently.”

RELEVANT HANDBOOK PROVISIONS

5. In exercising its power to vary a Part IV permission, the FSA must have regard to relevant provisions in the FSA Handbook of Rules and Guidance (the "Handbook"). The main provisions relevant to the action specified above are set out below.

Relevant Principle
6. Principle 11 (Relations with regulators) requires a firm to deal with its regulator in an open and co-operative way, and to disclose to the FSA appropriately anything relating to the firm of which the FSA would reasonably expect notice.

Relevant Rules and Guidance

7. The guidance at SUP 10.6.1G in the Supervision Manual (“SUP”) section of the Handbook, states that every firm will have one or more persons responsible for directing its affairs and these persons will be performing the governing functions and will be required to be approved persons.
8. The Glossary in the Handbook defines “governing function” as any of the controlled functions 1 to 6 in the table of controlled functions at SUP 10.4.5R, which includes the director function (CF 1).
9. The guidance at FIT 2.1.3G(3) in the Fit and Proper test for Approved Persons section (“FIT”) of the Handbook provides that the relevant matters to which the FSA will have regard in determining a person’s honesty, integrity and reputation. One such relevant matter is whether the person, has been the subject of any existing or previous investigation or disciplinary proceedings by the FSA.

Guidance concerning the relevant Threshold Condition

10. Guidance on Threshold Condition 5 is set out in Chapter 2.5 of the Part of the Handbook entitled Threshold Conditions (“COND”).

Guidance concerning - Threshold Condition 5: Suitability (paragraph 5, Schedule 6 to the Act)

11. COND 2.5.1UK reproduces the relevant statutory provision that the person concerned must satisfy the FSA that he is a fit and proper person having regard to all the circumstances, including, among other things, the need to ensure that his affairs are conducted soundly and prudently.
12. COND 2.5.4G(2)(a) states that the FSA, when forming its opinion as to whether a firm is conducting its affairs soundly and prudently, will have regard to relevant matters, including whether it conducts its business with integrity and in compliance with proper standards.
13. COND 2.5.4G(3) states that the FSA will take into account relevant matters only to the extent that they are significant in the context of the suitability of the firm.
14. COND 2.5.6G permits the FSA, when forming its opinion as to whether a firm is conducting its business with integrity and in compliance with proper standards, to have regard to relevant matters, including whether:
 - the firm has been open and co-operative in all its dealings with the FSA and is ready and willing to comply with the requirements and standards under the regulatory system and other legal obligations;
 - the firm has contravened, among other things, the requirements of the regulatory system, which include the Threshold Conditions, the FSA Principles and other rules; and

- the firm has contravened, or is connected with a person who has contravened, any provisions of the Act or any preceding financial services legislation, the regulatory system or the rules, regulations, statements of principles or codes of practice.
15. COND 2.5.7G permits the FSA, when determining whether a firm has competent and prudent management, to have regard to relevant matters, including 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

16. The FSA's policy in relation to its enforcement powers is set out in the Enforcement Guide (EG), certain provisions of which are summarised below.
17. EG 8.1(1) reflects the provisions of section 45 of the Act that the FSA may use its own-initiative power to vary or cancel the permission of an authorised firm where a firm is failing or is likely to fail to satisfy the Threshold Conditions.

Varying a firm's Part IV permission on the FSA's own-initiative

18. EG 8.1B provides that the FSA will have regard to its regulatory objectives and the range of regulatory tools that are available to it, when it considers how it should deal with a concern about a firm.
19. EG 8.3 provides that the FSA will exercise its formal powers under section 45 of the Act, where the FSA considers it is appropriate to ensure a firm meets its regulatory requirements. EG 8.3(1) specifies that the FSA may consider it appropriate to exercise its powers where it has serious concerns about a firm or the way its business is being or has been conducted.
20. EG 8.5 provides examples of the circumstances in which the FSA will consider exercising its power, including where the firm appears to be failing, or appears to be likely to fail, to satisfy the threshold conditions because, for instance, the firm appears not to be a fit and proper person to carry on a regulated activity.
21. Examples are given at EG 8.5(1)(b) of circumstances where a firm appears not to be fit and proper to carry on a regulated activity, which includes where:
- 1) a firm has not been managed competently and prudently and has not exercised due skill, care, and diligence in carrying on one or more, or all, of its regulated activities (EG 8.5(1)(b)(ii)); and
 - 2) where it has breached requirements imposed on it by or under the Act (including the Principles and the rules) and the breaches are material in number or in individual seriousness (EG 8.5(1)(b)(iii)).

Use of the own-initiative power in urgent cases

22. EG 8.7 provides the circumstances in which the FSA will consider exercising its own initiative power as a matter of urgency, including where the information available to it indicates serious concerns about the firm or its business that need to be addressed immediately (EG 8.7(1)).
23. EG 8.8 provides a list of situations which will give rise to such serious concerns. Specifically, EG 8.8(1) includes where information indicates significant loss, risk of loss or other adverse effects for consumers, where action is necessary to protect their interests. EG 8.8(4) includes where circumstances suggest a serious problem within a firm or with a firm's controllers that calls into question the firm's ability to continue to meet the threshold conditions.
24. EG 8.9 sets out the factors which will determine whether the urgent exercise of the FSA's own-initiative power is an appropriate response to serious concerns, including the extent of any risk of consumer loss or other adverse effect on consumers (EG 8.9(1)).