
FIRST SUPERVISORY NOTICE

To: **Darley Independent Financial Advisers Limited**

Of: **2 Friars Close
Darley Abbey
Derby
DE22 1FD**

FSA Reference
Number: **471722**

Dated: **25 May 2012**

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 Darley Independent Financial Advisers Limited (“Darley”) pursuant to Part IV of the Act (“Darley’s Part IV permission”), by removing all of its regulated activities with immediate effect. Accordingly, Darley’s Part IV permission no longer includes the regulated activities of:
 - (a) Advising on investments (except on Pension Transfers and Pension Opt Outs);
 - (b) Advising on regulated mortgage contracts;
 - (c) Agreeing to carry on a regulated activity;
 - (d) Arranging (bringing about) deals in investments;
 - (e) Arranging (bringing about) regulated mortgage contracts;
 - (f) Making arrangements with a view to regulated mortgage contracts;
 - (g) Making arrangements with a view to transactions in investments; and

- (h) Providing basic advice on stakeholder products.
- 2. The FSA has further decided to vary Darley's Part IV permission by imposing the following requirements, pursuant to section 43 of the Act, namely that Darley must:
 - (a) 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
 - (b) within 14 days provide the FSA with a copy of the written notification sent to all clients for its regulated activities pursuant to (a) above, together with a list of all clients to whom such notification has been sent.

REASONS FOR ACTION

- 3. By Warning Notice dated 25 May 2012, the FSA proposed to withdraw the approval of Leanne Marie Nicholson ("Mrs Nicholson") as an approved person in relation to Darley.
- 4. As a consequence of the action proposed by the FSA to withdraw the approval of Mrs Nicholson, Darley will not have any approved persons in relation to the regulated activities for which it has permission.
- 5. The FSA has concluded, on the facts and matters described below, that Darley is failing to satisfy the threshold conditions set out in Part 1 of Schedule 6 to the Act (the "Threshold Conditions"). In the opinion of the FSA, Darley's resources are not adequate in relation to the regulated activities it has permission to carry on and Darley can no longer satisfy the FSA that it is fit and proper to conduct regulated activities as it does not have a competent and prudent management.

FACTS AND MATTERS RELIED ON

- 6. Darley was granted authorisation by the FSA on 25 October 2007 to conduct investment business, and on 3 June 2008 was also permitted to act as mortgage intermediary.
- 7. On 20 March 2012, Mrs Nicholson was adjudged bankrupt in the Derby County Court, following a petition lodged by a customer of Darley from whom she had obtained a substantial personal loan which had not been repaid.

FAILINGS

- 8. The regulatory provisions relevant to this First Supervisory Notice are set out in the Annex.
- 9. From the facts and matters described above the FSA, having regard to its regulatory objectives, has reached the following conclusions:
 - Mrs Nicholson, the sole director, controller and only approved person of Darley, has been adjudged bankrupt. Darley therefore no longer satisfies the FSA that it has adequate human resources, which is a failing that is material in relation to the

regulated activities for which it has had permission. Darley is therefore in breach of Threshold Condition 4 (Adequate resources);

- Darley also no longer has a competent and prudent management and can therefore no longer satisfy the FSA that it is fit and proper to conduct regulated activities as required by Threshold Condition 5 (Suitability);
- the risk of loss or other adverse effect on consumers by Darley's failings, which are material breaches of requirements imposed on it by the FSA's rules, causes the FSA to have very serious concerns about Darley such that the exercise of the FSA's own-initiative power to vary Darley's Part IV permission with immediate effect is an appropriate and reasonable response to those concerns;
- it is desirable to exercise the FSA's own initiative power to vary Darley's Part IV permission with immediate effect to meet its regulatory objectives, and specifically in relation to Darley, the objective of the protection of consumers; and
- specifically, the variation of Darley's Part IV permission should take immediate effect to address the FSA's serious concern that Darley does not have adequate human resources nor a competent and prudent management.

PROCEDURAL MATTERS

Decision Maker

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

The Tribunal

12. Darley 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 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, Darley has 28 days from the date on which this First Supervisory Notice is given to Darley to refer the matter to the Tribunal.
13. A reference to the Tribunal can be made by way of a reference notice (Form FTC3) signed by Darley 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).
14. 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>

15. Darley 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 Stephanie Prowse at the FSA, 25 The North Colonnade, Canary Wharf, London E14 5HS.

Representations

16. Darley has the right to make written and oral representations to the FSA (whether or not it refers this matter to the Tribunal). If Darley wishes to make written representations it must do so by 22 June 2012 or such later date as may be permitted by the FSA. Written representations should be made to the Regulatory Decisions Committee and sent to Lee Turner, 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 Darley wishes to make oral representations, it should inform the FSA of its intention to do so by 22 June 2012. If Darley does not notify the FSA by 22 June 2012, it will not, other than in exceptional circumstances, be able to make oral representations.

Publicity

17. Darley should 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

18. For more information concerning this matter generally, Darley should contact Stephanie Prowse at the FSA (direct line: 020 7066 9404 / fax: 020 7066 9405).
19. If Darley has any questions regarding the procedures of the Regulatory Decisions Committee, it should contact Lee Turner (direct line: 020 7066 2810/ fax: 020 7066 2811).

Andrew Long
Acting Chairman, Regulatory Decisions Committee

ANNEX TO THE FIRST SUPERVISORY NOTICE ISSUED BY THE FINANCIAL SERVICES AUTHORITY TO DARLEY INDEPENDENT FINANCIAL ADVISERS LIMITED ON 25 MAY 2012

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 meet any of its regulatory objectives;
 - 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 4 of Schedule 6 to the Act sets out Threshold Condition 4 which provides that:

“(1) The resources of the person concerned must, in the opinion of the Authority, be adequate in relation to the regulated activities that he seeks to carry on, or carries on.”
5. 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-

 - (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

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

Guidance concerning the relevant Threshold Conditions

7. Guidance on the Threshold Conditions is set out in the part of the Handbook entitled Threshold Conditions (“COND”).

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

8. COND 2.4.1UK reproduces the relevant statutory provisions 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.
9. COND 2.4.2.G(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.
10. 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 human resources.
11. 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.

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

12. 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 amongst other things, the need to ensure that his affairs are conducted soundly and prudently.
13. 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 proposed (or current) regulated activities and the overall need to be satisfied that its affairs are and will be conducted soundly and prudently.

14. 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.
15. 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 an 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.
16. COND 2.5.4G(2)(b) states that when determining whether a firm will satisfy and continue to satisfy threshold condition 5, the FSA will have regard to all relevant matters, including whether he has, or will have, a competent and prudent management.
17. COND 2.5.4G(3) states that the FSA will take into account relevant matters only to the extent that they are significant. In determining whether relevant matters are significant to the firm, the FSA will consider significance in the context of the suitability of the firm, having regards to the regulatory objectives in section 2 of the Act (The FSA's general duties); a series of matters may be significant when taken together, even if each of them in isolation may not be significant.

OTHER RELEVANT REGULATORY PROVISIONS

18. 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.
19. 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

20. 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.
21. 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.
22. EG 8.5(1)(a) and (b) specify that the FSA will consider exercising its own-initiative power where a firm's material resources appear inadequate and where the firm appears not to be a fit and proper person to carry on a regulated activity.

Use of the own-initiative power in urgent cases

23. EG 8.6 states that the FSA may impose a variation of permission so that it takes effect immediately or on a specified date if it reasonably considers it necessary for the variation to take effect immediately (or on the date specified), having regard to the ground on which it is exercising its own-initiative power.
24. 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)).
25. EG 8.8 provides a list of situations which will give rise to such serious concerns. Specifically, EG 8.8(4) includes where circumstances suggest a serious problem within a firm or with a firm's controllers that call into question the firm's ability to continue to meet the threshold conditions.
26. 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)).