
FIRST SUPERVISORY NOTICE

To: **Gale, David Robert Charles (trading as Gale Financial)**

Of: **Queens Wharf
Queen Caroline Street
London
W6 9RJ**

Dated: **7 October 2005**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (the "FSA") has taken the following action:

1. ACTION

1.1. 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 you, David Robert Charles Gale, trading as Gale Financial, pursuant to Part IV of the Act ("your Permission") by removing all regulated activities with immediate effect. Accordingly, your Permission no longer includes the following regulated activities:

- (a) advising on investments (excluding pension transfers and opt-outs);
- (b) arranging (bringing about) deals in investments;
- (c) making arrangements with a view to transactions in investments;
- (d) advising on regulated mortgage contracts;
- (e) agreeing to carry on a regulated activity.

2. REASONS FOR ACTION

Summary

- 2.1. The FSA has concluded, on the basis of the facts and matters described below, that you are failing to satisfy the threshold conditions set out in Schedule 6 of the Act ("the threshold conditions") in that the FSA is not satisfied that you are a fit and proper person having regard to all the circumstances. That is because, in the opinion of the FSA, you have failed to satisfy the FSA that you have conducted your affairs soundly and prudently, and therefore that you are not meeting Threshold Condition 5 (Suitability). The reason for this is that you failed to disclose material information to the FSA in your application for authorisation. It also appears to the FSA that you have failed to meet the requirements of Principle 1, to conduct your business with integrity and Principle 11 under which firms must co-operate with the FSA.
- 2.2. 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.

Relevant Principles

- 2.3. Principle 1 of the FSA's Principles for Businesses requires that a firm must conduct its business with integrity.
- 2.4. Principle 11 requires a firm to deal with its regulator in an open and cooperative way, and to disclose to the FSA appropriately anything relating to the firm of which the FSA would reasonably expect notice.

Relevant statutory provisions

- 2.5. The FSA's regulatory objectives, established in section 2(2) of the Act, include the protection of consumers.
- 2.6. By section 45 of the Act, the FSA is authorised:
- 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 such permission by removing a regulated activity from those for which the permission is given;
 - to vary an authorised person's permission, where it is desirable to exercise that power in order to protect the interests of consumers;
 - 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.
- 2.7. 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.

Relevant guidance

- 2.8. In exercising its power to vary a Part IV permission, the FSA must have regard to guidance published in the FSA Handbook. The main considerations in relation to the action specified above are set out below.

ENF 3.5 - The FSA's policy for exercising its own-initiative power to vary a Part IV permission

- 2.9. ENF 3.5.2 requires the FSA to have regard to its regulatory objectives and the range of regulatory tools that are available to it.
- 2.10. ENF 3.5.3 provides that the FSA will take formal action affecting the conduct of a firm's commercial business only if that business is being conducted in such a way that the FSA judges it necessary to act in order to address the consequences of non-compliance with the Act and the Principles for Businesses.
- 2.11. ENF 3.5.8 provides that the circumstances in which the FSA will consider exercising its power include where the FSA has serious concerns that the authorised person has breached requirements imposed on it by or under the Act (including Principles and rules) and the breaches are material in number or individual seriousness.
- 2.12. ENF 3.5.13 includes, among the factors which will determine whether the urgent exercise of the FSA's own-initiative power is an appropriate response to serious concerns, the extent of any loss or risk of loss or other adverse effect on consumers.

Guidance concerning the relevant threshold condition

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

- 2.13. COND 2.5.1 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.
- 2.14. COND 2.5.4(2)(a) requires the FSA, when forming its opinion as to whether an authorised person is conducting its affairs soundly and prudently, to have regard to relevant matters, including whether it conducts its business with integrity and in compliance with proper standards.
- 2.15. COND 2.5.4(3) requires the FSA only to take into account relevant matters which are significant in the context of the suitability of the firm.
- 2.16. COND 2.5.6 permits the FSA, when forming its opinion as to whether an authorised person is conducting its business with integrity and in compliance with proper standards, to have regard to relevant matters, including whether:
- (a) 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
 - (b) the firm has contravened, among other things, the requirements of the regulatory system, which includes the threshold conditions and the FSA Principles and other rules.

Facts and matters relied on

- 2.17. Gale Financial is a sole trader mortgage and general insurance intermediary, of which you are the principal and only approved person.
- 2.18. You have been authorised by the FSA since 31 October 2004, following the consideration of your application for authorisation which disclosed no adverse information. You failed to disclose to the FSA material information in your application for authorisation, specifically:
- (a) you completed an Individual Voluntary Arrangement on 20 March 1998;
 - (b) you were issued with a final written warning by Sun Life Assurance Company of Canada for forgery on 28 January 2000;
 - (c) you were dismissed by J Rothschild Assurance Plc on 30 June 2000 for inadequate disclosure of your employment history;
 - (d) you had been refused individual registration by the Personal Investment Authority ("PIA") on 22 February 2001; and
 - (e) your full employment history.
- 2.19. At the time of the proposed refusal of your application for registration by the PIA, you told the PIA Membership Committee on 19 January 2001, that you accepted that you should have given the relevant documentation more attention and that you would not make the same mistake again.

Conclusions

- 2.20. The facts and matters described above lead the FSA, having regard to its regulatory objectives, to the following conclusions:
- (a) by failing to disclose material information to the FSA, you prevented the FSA from making a fully informed assessment of your fitness to be authorised to conduct regulated activities and you have breached Principles 1 and 11;
 - (b) you have therefore failed to satisfy the FSA that you are conducting your business soundly and prudently, with integrity and in compliance with proper standards, or that you are a fit and proper person having regard to all the circumstances. That failure is significant in the context of your suitability; and
 - (c) these matters are material in relation to your permitted regulated activities and you therefore fail to satisfy Threshold Condition 5: Suitability

3. DECISION MAKER

- 3.1 The decision which gave rise to the obligation to give this Supervisory Notice was made by the Regulatory Decisions Committee.

4. IMPORTANT

- 4.1 This Supervisory Notice is given to you in accordance with section 53(4) of the Act. The following statutory rights are important.

The Tribunal

- 4.2 You may refer this matter to the Financial Services and Markets Tribunal ("the Tribunal"). Under section 133 of the Act, you have 28 days from the date you were sent this Supervisory Notice to refer the matter to the Tribunal or such other period as specified in the Tribunal Rules or as the Tribunal may allow. A reference to the Tribunal is made by way of a written notice signed by you and filed with a copy of this Notice. The Tribunal's address is: 15-19 Bedford Avenue, London WC1B 3AS (telephone 020 7612 9700). The detailed procedures for making a reference to the Tribunal are contained in section 133 of the Act and the Tribunal Rules.
- 4.3 You should note that the Tribunal Rules provide that at the same time as filing a reference notice with the Tribunal, you must send a copy of the notice to the FSA. Any copy notice should be sent to Lehong Mac at the FSA, 9th Floor, 25 The North Colonnade, Canary Wharf, London E14 5HS.

Representations

- 4.4 You have the right to make written and oral representations to the FSA (whether or not you refer this matter to the Tribunal). If you wish to make written representations you must do so by 7 November 2005. Written representations should be made to the Regulatory Decisions Committee and sent to Lynn Richardson, RDC Professional Support Services, at the above address. If you wish to make oral representations, you should inform Miss Richardson not less than 5 business days before the expiry of the 28 day period.

Confidentiality and publicity

- 4.5 You should note that this 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). You should also note that section 391 of the Act requires the FSA when the Supervisory Notice takes effect, to publish such information about the matter as it considers appropriate.

FSA contacts

- 4.6 If you have any questions regarding the procedures of the Regulatory Decisions Committee, you should contact either Lynn Richardson (direct line: 020 7066 3192/ fax: 020 7066 3193), or Brian Whitbread, Head of the RDC Professional Support Services (direct line: 020 7066 3202 / fax: 020 7066 3203).
- 4.7 For more information concerning this matter generally, you should contact Lehong Mac at the FSA (direct line: 020 7066 5742 / fax: 020 7066 9721).

His Honour Dr Colin Kolbert
Deputy Chairman, Regulatory Decisions Committee