
FIRST SUPERVISORY NOTICE

To: Hemdale Financial Management Limited

**FSA Reference
Number: 121626**

**Of: Jubilee Mill
Suite 9
Bradford
BD1 4EW**

Dated: 29 September 2010

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 Hemdale Financial Management Limited ("Hemdale"), pursuant to Part IV of the Act ("Hemdale's Part IV permission"), by removing all regulated activities with immediate effect. Accordingly, Hemdale's Part IV permission no longer includes the following regulated activities:

- (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 transactions in investments; and
- (g) making arrangements with a view to regulated mortgage contracts.

1.2 The FSA has further decided to vary Hemdale's Part IV permission by including the following requirements, namely that within 14 days of the date of this Notice Hemdale must:

- (i) notify in writing all clients for its regulated activities, that Hemdale is no longer permitted by the FSA to carry on any regulated activities; and
- (ii) provide the FSA with a copy of the written notice sent in accordance with (i) above, together with a list of all clients to whom the notice has been sent.

2. REASONS FOR ACTION

Summary

- 2.1 The FSA has concluded, on the basis of the facts and matters described below, that Hemdale is failing to satisfy the Threshold Conditions set out in Schedule 6 to the Act (the "Threshold Conditions") in that, in the opinion of the FSA, Hemdale's resources are not adequate in relation to the regulated activities it has permission to carry on.
- 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 statutory provisions

- 2.3 The FSA's regulatory objectives established in section 2(2) of the Act include the protection of consumers.
- 2.4 By section 45 of the Act, the FSA is authorised:
- to vary an authorised person's permission, where it is desirable to exercise that power in order to protect the interests of consumers; 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.
- 2.5 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.
- 2.6 Paragraph 4 of Schedule 6 to the Act sets out Threshold Condition 4, which states:

"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."

Relevant Handbook provisions

- 2.7 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 "FSA Handbook"). The main provisions relevant to the action taken are set out below.

Relevant Principle

- 2.8 Principle 4 (Financial prudence) requires a firm to maintain adequate financial resources as laid out in the Principles for Businesses in the FSA Handbook.

Relevant Rule

- 2.9 FSA Rule MIPRU 4.2.1 in the Prudential Sourcebook for Mortgage and Home Finance Firms, and General Insurance Intermediaries ("MIPRU") which forms part of the FSA Handbook, requires that:

"A *firm* must at all times ensure that it is able to meet its liabilities as they fall due."

Guidance concerning the relevant Threshold Condition

- 2.10 Guidance on Threshold Condition 4 is set out in Chapter 2.4 of the Part of the FSA Handbook entitled Threshold Conditions ("COND").

Guidance concerning - Threshold Condition 4: Adequate resources (paragraph 4, Schedule 6 to the Act)

- 2.11 COND 2.4.1UK(1) reproduces the relevant statutory provision 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.
- 2.12 COND 2.4.1UK(2) permits the FSA, when forming its opinion as to whether the resources of an authorised person are adequate in relation to the regulated activities that he carries on, to have regard to the provision he makes in respect of liabilities (including contingent and future liabilities).
- 2.13 COND 2.4.4G(3) states that the FSA only takes into account relevant matters which are material in relation to the regulated activities for which the authorised person has permission.

Relevant regulatory provisions

- 2.14 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.
- 2.15 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

- 2.16 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.
- 2.17 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 about the way its business is being or has been conducted.
- 2.18 EG 8.5 provides examples of the circumstances in which the FSA will consider exercising its power, including where the firm appears not to be a fit and proper person to carry on a regulated activity because it 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. EG 8.5(1)(a) also specifies that the FSA will consider exercising its own-initiative power where a firm's financial resources appear inadequate for the scale or type of regulated activity it is carrying on, for example where it is unable to meet its liabilities as they have fallen due.
- 2.19 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 financial resources of the firm (EG 8.9 (5)).

Facts and matters relied on

- 2.20 Hemdale is a limited company and became authorised by the FSA on 1 December 2001 to carry on designated investment business. Hemdale has also been permitted since 15 September 2005 to carry on regulated mortgage mediation business and since 30 September 2005 to carry on insurance mediation business. Hemdale varied its permission on 30 September 2005 to cease to be authorised to conduct designated investment activities.
- 2.21 Hemdale has failed to meet its liabilities as they have fallen due. Specifically, Hemdale has failed to pay amounts owed to four product providers (the "providers") in the form of reclaimed commission payments, interest and legal costs. Information provided to the FSA by the providers shows that the total amount owed to the providers was at least £110,552.33 as at 18 August 2010. More than £6,000 of that amount has been outstanding for more than two and a half years.

- 2.22 In addition, on 22 September 2010, a credit search revealed the existence of four County Court Judgments (“CCJ”) issued against Hemdale between 11 July 2006 and 7 June 2010 totalling £35,141. Those CCJs remain unsatisfied.
- 2.23 The FSA has not been provided with any evidence that Hemdale’s liabilities will be met in the near future.

Conclusions

- 2.24 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 the following conclusions:
- by failing to meet its liabilities as they have fallen due, Hemdale has breached the requirement in MIPRU 4.2.1R that it must at all times be able to meet such liabilities as they fall due;
 - by failing to maintain adequate resources, Hemdale has failed to make adequate provision in respect of its liabilities, including contingent and future liabilities, in breach of FSA Principle 4. That failing is material in relation to the regulated activities for which Hemdale has permission and Hemdale is therefore failing to satisfy Threshold Condition 4 (Adequate Resources);
 - the risk of loss or other adverse effect on consumers, and to confidence in the market, by Hemdale’s failing, which is a material breach of a requirement imposed upon it by the FSA’s rules, causes the FSA to have very serious concerns about Hemdale such that the exercise of the FSA’s own-initiative power to vary its Part IV permission with immediate effect is an appropriate response to those concerns; and
 - specifically, the variation of Hemdale’s Part IV permission should take immediate effect to address the FSA’s serious concern that any further liabilities Hemdale incurs will not be met.

3. DECISION MAKER

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

4. IMPORTANT

- 4.1 This Supervisory Notice is given to Hemdale under section 53(4) and in accordance with section 53(5) of the Act, and is being served on Hemdale at the address last notified to the FSA as the current correspondence address for Hemdale (and which is its Registered Office). The following statutory rights are important.

The Tribunal

4.2 Hemdale has the right to refer the matter to which this 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, Hemdale has 28 days from the date on which this Supervisory Notice is given to it to refer the matter to the Tribunal.

4.3 A reference to the Tribunal is made by way of a reference notice (Form FTC3) signed on behalf of Hemdale and filed with a copy of this 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).

4.4 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>

4.5 Hemdale 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 Martin Badcock at the FSA, 25 The North Colonnade, Canary Wharf, London E14 5HS.

Representations

4.6 Hemdale has the right to make written and oral representations to the FSA, whether or not it refers this matter to the Tribunal. If Hemdale wishes to make written representations, it must do so by 3 November 2010 or such later date as may be permitted by the FSA. Written representations should be made to the Regulatory Decisions Committee and sent to Adrian Crick, 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 Hemdale wishes to make oral representations, it should inform Adrian Crick in writing of its intention to do so by 12 October 2010. If Hemdale does not inform the FSA by 12 October 2010, it will not, other than in exceptional circumstances, be able to make oral representations.

Confidentiality and publicity

4.7 Hemdale 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 (and this Supervisory notice takes immediate effect), to publish such information about the matter as it considers appropriate.

FSA contacts

- 4.8 If Hemdale has any questions regarding the procedures of the Regulatory Decisions Committee, it should contact Adrian Crick, RDC Professional Support Services (direct line: 020 7066 4228).
- 4.9 For more information concerning this matter generally, Hemdale should contact Martin Badcock at the FSA (direct line: 020 7066 1560).

Tim Herrington
Chairman, Regulatory Decisions Committee