
FIRST SUPERVISORY NOTICE

To: **ifaeye Limited**

Of: **21-23 Hill Street
Edinburgh
EH2 3JP**

FSA Reference
Number: **499581**

Dated: **10 October 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 ifaeye Limited ("ifaeye") pursuant to Part IV of the Act ("ifaeye's Part IV permission"), to impose requirements on ifaeye's Part IV permission, pursuant to section 43 of the Act, namely that ifaeye must, by 1 December 2012:
 - (1) engage an independent accountant (to be agreed with the FSA) to:
 - (a) investigate ifaeye's accounts for the year ended 31 March 2012 in order to verify and report on whether ifaeye was meeting its regulatory capital requirement at that date; or
 - (b) (if in the accountant's opinion the accounting records of ifaeye are not adequate to carry out such an investigation) produce a balance sheet and regulatory capital calculation in the same format as Sections A and D1 of the Retail Mediation Activities Return as at 30 September 2012, in order to verify whether ifaeye was meeting its regulatory capital requirement at that date; and
 - (2) provide the FSA with a copy of the report or balance sheet and regulatory capital calculation as appropriate.

REASONS FOR ACTION

2. ifaeye has provided inaccurate financial information to the FSA, and so has failed to satisfy the FSA that it is meeting, and has been meeting, its regulatory capital requirements.
3. The FSA has concluded, on the facts and matters described below, that ifaeye may be 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, ifaeye’s resources may not be adequate in relation to the regulated activities it has permission to carry on, and so ifaeye may be failing to meet Threshold Condition 4 (Adequate resources) and Principle 4 (Financial prudence), and as such poses a risk to consumers.

FACTS AND MATTERS RELIED ON

4. ifaeye was granted authorisation by the FSA on 20 May 2009 to conduct designated investment business and regulated home finance business.
5. On 15 February 2012, ifaeye provided to the FSA its management accounts to 10 February 2012, the balance sheet in which included items which ifaeye could not subsequently verify, and which should not have been included in its balance sheet. These items amount to £22,000 of ifaeye’s reported regulatory capital, which was £53,091 in the Retail Mediation Activities Return for the period ended 30 September 2011. As such, ifaeye has previously materially overstated, and may still be overstating, its regulatory capital position.
6. The FSA has asked ifaeye to vary its Part IV permission to add a requirement that it have an independent audit conducted to establish whether, in the period 1 April 2011 to 31 March 2012, ifaeye was meeting its regulatory capital requirement. ifaeye has declined to apply for such a variation of its Part IV Permission.

FAILINGS

7. The regulatory provisions relevant to this First Supervisory Notice are set out in the Annex.
8. From the facts and matters described above the FSA, having regard to its regulatory objectives, has reached the following conclusions:
 - ifaeye has provided inaccurate financial information to the FSA, and so has breached SUP 15.6.1R. ifaeye has therefore also breached Principle 11 (Relations with regulators);
 - in providing inaccurate financial information to the FSA, ifaeye has failed to satisfy the FSA that it is meeting, and has been meeting, its regulatory capital requirements as required by IPRU(INV) 13.9.1R(1). ifaeye therefore may not

have adequate resources, a failing that is material in relation to the regulated activities for which it has permission. ifaeye therefore may be in breach of Threshold Condition 4 (Adequate resources) and Principle 4 (Financial prudence);

- the risk of loss or other adverse effect on consumers by ifaeye'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 ifaeye such that the exercise of the FSA's own-initiative power to vary ifaeye'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 ifaeye's Part IV permission with immediate effect to meet its regulatory objectives, and specifically in relation to ifaeye, the objective of the protection of consumers; and
- the variation of ifaeye's Part IV permission should take immediate effect to address the FSA's serious concern that ifaeye may not have adequate financial resources.

PROCEDURAL MATTERS

Decision Maker

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

The Tribunal

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

14. ifaeye 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 Kathryn Willis at the FSA, 25 The North Colonnade, Canary Wharf, London E14 5HS.

Representations

15. ifaeye has the right to make written and oral representations to the FSA (whether or not it refers this matter to the Tribunal). If ifaeye wishes to make written representations it must do so by 13 November 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 Emma Wotton, 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 ifaeye wishes to make oral representations, it should inform the FSA of its intention to do so by 22 October 2012. If ifaeye does not notify the FSA by 22 October 2012, it will not, other than in exceptional circumstances, be able to make oral representations.

Publicity

16. ifaeye 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

17. For more information concerning this matter generally, ifaeye should contact Kathryn Willis at the FSA (direct line: 020 7066 2098 / fax: 020 7066 2099).
18. If ifaeye has any questions regarding the procedures of the Regulatory Decisions Committee, it should contact Emma Wotton (direct line: 020 7066 7684).

Andrew Long

Acting Chairman, Regulatory Decisions Committee

ANNEX TO THE FIRST SUPERVISORY NOTICE ISSUED BY THE FINANCIAL SERVICES AUTHORITY TO IFAEYE LIMITED ON 10 OCTOBER 2012

RELEVANT STATUTORY PROVISIONS

1. The FSA's regulatory objectives established in section 2(2) of the Act include the protection of consumers.
2. Section 43(1) of the Act provides that a Part IV permission may include such requirements as the FSA considers appropriate. Section 43(2)(a) provides that a requirement can require a firm to take a specified action.
3. 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.
4. 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.
5. 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.”

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.

Relevant rules

7. Principle 4 (Financial prudence) requires a firm to maintain adequate financial resources.
8. Principle 11 (Relations with regulators) requires a firm to be open and co-operative with the FSA, and to disclose to the FSA appropriately anything relating to the firm of which the FSA would reasonably expect notice.
9. Rule 15.6.1R in the Supervision Manual (“SUP”), which forms part of the FSA’s Handbook of Rules and Guidance (the “Handbook”), requires a firm to take reasonable steps to ensure that all information given to the FSA is in accordance with any rule in the Handbook, including Principle 11, and is factually accurate.
10. Rule 13.9.1R(1) in the Interim Prudential Sourcebook for Investment Businesses (“IPRU(INV)”) in the Handbook, requires a Category B firm to meet the Financial Resources Test 1 (Own funds Test) as calculated in IPRU(INV) 13.10.1R.
11. Rule 13.10.1R in IPRU(INV) in the Handbook requires that a Category B firm’s own funds be £10,000 at all times.

Guidance concerning the relevant Threshold Condition

12. Guidance on the Threshold Conditions is set out in the part of the Handbook entitled Threshold Conditions (“COND”).
13. 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.
14. 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.
15. The guidance at COND 2.4.2G(2) provides that in determining whether a firm has adequate resources, the FSA will interpret the term ‘adequate’ to include meaning sufficient in terms of quantity, quality and availability, and ‘resources’ as including all financial resources; for example, capital, provisions against liabilities, holdings of or access to cash and other liquid assets.
16. The guidance at COND 2.4.4G(3) provides that in the context of Threshold Condition 4 (Adequate resources), the FSA will only take into account relevant matters which are material, and the FSA will consider the materiality of each relevant matter in relation to the regulated activities for which the firm has, or will have, permission, having regard to the regulatory objectives in section 2 of the Act.

OTHER RELEVANT REGULATORY PROVISIONS

17. 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.
18. 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 to meet any of its regulatory objectives.

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

19. 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.
20. 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(2) specifies that the FSA may consider it appropriate to exercise its powers where it is concerned that the consequences of a firm not taking the desired steps is serious, and EG 8.3(3) specifies that the FSA may consider it appropriate to exercise its powers where the imposition of a formal statutory requirement reflects the importance the FSA attaches to the firm addressing its concerns.
21. EG 8.5(1)(a) specifies that one circumstance where the FSA will consider using its power to vary a permission is where a firm's material resources appear inadequate.

Use of the own-initiative power in urgent cases

22. 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.
23. The FSA's policy for its use of the own-initiative power in urgent cases is set out at EG 8.7(1) and (2) which specify the circumstances in which the FSA will consider exercising its own-initiative power as a matter of urgency. One such circumstance is where the circumstances indicate it is appropriate to use statutory powers immediately to require certain actions by a firm to address serious FSA concerns.
24. EG 8.8 provides a list of situations which will give rise to such serious concerns. Specifically, EG 8.8(1) includes circumstances suggesting a risk of loss or other adverse effect for consumers, where action is necessary to protect their interests.
25. EG 8.9 sets out the factors the FSA may consider in addition to the full circumstances of each case when it decides whether an urgent variation of Part IV permission is appropriate. In particular, EG 8.9(1) states a factor is the extent of any loss, or risk of loss, or other adverse effect on consumers.