
FIRST SUPERVISORY NOTICE

To: **Joseph Anthony Masi trading as Select Mortgage Services**

Of: **Knightsbridge House
7 Little London Court
Albert Street
Swindon
SN1 3HY**

FSA

Reference

Number: **304238**

Dated: **16 March 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 you, Joseph Anthony Masi trading as Select Mortgage Services, 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 pension opt outs);
- (b) advising on regulated mortgage contracts;
- (c) arranging deals in investments;
- (d) arranging regulated mortgage contracts;

- (e) making arrangements with a view to transactions in investments, and
- (f) agreeing to carry on a regulated activity.

1.2 The FSA has further decided to vary your permission by including the following requirements, namely that within 14 days you must:

- (i) advise in writing all clients for your regulated activities that you are no longer permitted by the FSA to carry on regulated activities; and
- (ii) provide the FSA with a copy of the written advice sent to all clients for your regulated activities pursuant to (i) above, together with a list of all clients to whom such advice has been sent.

2. REASONS FOR ACTION

Summary

- 2.1 The FSA has serious concerns, on the basis of the facts and matters described below, that you have failed to conduct your business with integrity and that you are failing to satisfy the threshold conditions set out in Part 1 of Schedule 6 to the Act (the "threshold conditions") in that you have failed to satisfy the FSA that you are fit and proper having regard to all the circumstances, including the need to ensure that your affairs are conducted soundly and prudently and in compliance with proper standards.
- 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 The FSA is authorised by section 45 of the Act to vary an authorised person's Part IV permission, by removing a regulated activity:
 - where it appears to the FSA that such person is failing to satisfy the threshold conditions; or
 - where it is desirable to exercise that power in order to protect the interests of consumers; and
- 2.5 The FSA's power to vary a Part IV permission under this section extends to including 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 including the imposition pursuant to section 43 of the Act of such requirements as the FSA considers appropriate
- 2.6 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 Handbook provisions

- 2.7 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 Principle

- 2.8 Principle 1 (Integrity) of the FSA’s Principles for Businesses (the “Principles”) requires a firm to conduct its business with integrity.

Guidance concerning the relevant Threshold Condition

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

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

- 2.10 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.
- 2.11 COND 2.5.4G(2)(a) states that the FSA, when forming its opinion as to whether an authorised person is conducting his affairs soundly and prudently, will have regard to relevant matters, including whether he conducts his business with integrity and in compliance with proper standards.
- 2.12 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 authorised person.
- 2.13 COND 2.5.6G permits the FSA, when forming its opinion as to whether an authorised person is conducting his business with integrity and in compliance with proper standards, to have regard to relevant matters, including whether:
- the person concerned has been open and co-operative in all his dealings with the FSA and is ready and willing to comply with the requirements and standards under the regulatory system and other legal obligations; and
 - the person concerned has contravened, among other things, the requirements of the regulatory system, which include the Threshold Conditions, the Principles and other rules.

Other 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 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, and where it is desirable to do so in order to protect the interests of consumers or potential consumers.

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 an authorised person.
- 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 an authorised person meets their regulatory requirements. EG 8.3(1) specifies that the FSA may consider it appropriate to exercise its powers where it has serious concerns about an authorised person or about the way their 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 an authorised person appears not to be a fit and proper person to be permitted to carry on a regulated activity because they have breached requirements imposed on them by or under the Act (including the Principles and the rules) and the breaches are material in number or individual seriousness (EG 8.5(1)(b)(iii)).
- 2.19 EG 8.8 sets out a non-exhaustive list of factors the FSA will consider in exercising its own-initiative power as a matter of urgency. EG 8.8(3) specifies that the FSA will consider urgent own-initiative action if there is evidence that an authorised person has submitted to the FSA inaccurate or misleading information so that the FSA becomes seriously concerned about an authorised person's ability to meet their regulatory obligations.
- 2.20 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 consumer loss or risk of consumer loss or other adverse effect on consumers (EG 8.9(1)) and the nature and extent of any false or inaccurate information provided by the authorised person (EG 8.9(3)). Specifically, the FSA will consider the impact of the false or inaccurate information on the FSA's view of the authorised person's compliance with the regulatory requirements to which they are subject and the authorised person's suitability to conduct regulated activities (EG 8.9(3)(a)), and whether the information appears to have been provided in an attempt knowingly to mislead the FSA (EG 8.9(3)(b)).

Facts and matters relied on

- 2.21 You became authorised by the FSA on 31 October 2004 to carry on mortgage mediation business, and have been permitted from 14 January 2005 also to carry on insurance mediation business.
- 2.22 On 3 August 2007, you signed a settlement agreement (the "Agreement") with the FSA in conclusion of an FSA investigation into your firm. By signing the Agreement,

you undertook, amongst other things, to obtain sign-off from an external compliance consultant for all mortgage sales for a period of six months.

- 2.23 On 3 September 2007, the FSA issued a Final Notice to you confirming that you had agreed to the sign-off of all regulated mortgage sales by an external compliance consultant for a period of six months from the date of the Final Notice, that is 3 September 2007 to 2 March 2008 (the “relevant period”).
- 2.24 It appears from subsequent correspondence between you and the FSA that your interpretation of that requirement was that you should obtain sign-off from an external compliance consultant after a regulated mortgage transaction had completed. The FSA does not agree with this interpretation.
- 2.25 Following a visit to your firm in March 2009 as part of the FSA’s Treating Customers Fairly (TCF) initiative, the FSA requested documentary evidence that you had obtained sign-off from an external compliance consultant for all regulated mortgage sales during the relevant period. You provided the FSA with new business registers covering the relevant period, and informed the FSA that only one regulated mortgage application submitted by your firm had completed during the relevant period. You told the FSA you had not obtained external compliance consultant sign-off for that mortgage transaction due to an oversight.
- 2.26 Information obtained by the FSA from mortgage lenders shows that, in fact, 18 regulated mortgage applications submitted by your firm completed during the relevant period. The information obtained by the FSA shows that overall, at least 48 regulated mortgage applications were submitted by your firm during the relevant period, although a large number did not proceed to completion.
- 2.27 The information which you provided in response to the FSA’s requests failed to identify all but one of the regulated mortgage applications which completed during the relevant period, and you have provided no evidence to the FSA that any regulated mortgage sales during the relevant period were signed off by an external compliance consultant.

Conclusions

- 2.28 The facts and matters described above lead the FSA, having regard to its regulatory objectives which include the protection of consumers, to the following conclusions:
- you have failed to obtain sign-off for regulated mortgage sales during the relevant period;
 - by virtue of that failing, you have breached the Agreement;
 - you have provided the FSA with false and misleading information in an attempt to mislead the FSA into believing that you had not breached the Agreement;
 - by providing false and misleading information to the FSA you have failed to act with integrity in conducting your business, in breach of Principle 1 (Integrity);

- these failings are material in relation to the regulated activities for which you have permission and you are therefore failing to satisfy Threshold Condition 5 (Suitability);
- the above failings present a risk to the FSA's consumer protection objective. Appropriate action is necessary to help provide protection to consumers;
- the risk of adverse effect on consumers arising from your failings, which are material breaches of requirements imposed upon you by the FSA, causes the FSA to have very serious concerns about you such that the exercise of the FSA's own-initiative power to vary your permission with immediate effect is an appropriate response to those concerns; and
- specifically, the variation of your permission is desirable in order to protect the interests of consumers or potential consumers.

3. DECISION MAKER

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 you under section 53(4) and in accordance with section 53(5) of the Act, and is being served on you at your principal place of business last notified to the FSA. 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 Martin Badcock at the FSA, 4th 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. If you wish to make written representations you must do by 19 April 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 Michelle Broadhurst, Regulatory Decisions Committee Professional Support Services. The address of the Regulatory Decisions Committee Professional Support Services is 25 The North Colonnade, Canary Wharf, London E14 5HS. If you wish to make oral representations, please inform us in writing of your intention to do so by 29 March 2010. If you do not notify us by 29 March 2010, you will not, other than in exceptional circumstances, be able to make oral representations.

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 Michelle Broadhurst (direct line: 020 7066 2724), RDC Professional Support Services.
- 4.7 For more information concerning this matter generally, you should contact Martin Badcock at the FSA (direct line: 020 7066 1560).

Tim Herrington
Chairman, Regulatory Decisions Committee