

APPENDIX 1

FIRST SUPERVISORY NOTICE

To: **KMR Financial Management LLP**

Of: **3-5 Duke Street
London
W1U 3ED**

FSA Reference
Number: **409086**

Dated: **6 October 2011**

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 KMR Financial Management LLP (“KMR”) pursuant to Part IV of the Act (“KMR’s Part IV permission”), by removing all of its regulated activities with immediate effect. Accordingly, KMR’s Part IV permission no longer includes the regulated activities of:
 - (a) Advising (excluding 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; and
 - (g) Making arrangements with a view to transactions in investments.
2. The FSA has further decided to vary KMR's Part IV permission by imposing the following requirements, pursuant to section 43 of the Act, namely that KMR must:
- (a) within 14 days notify in writing all clients for its regulated activities that it does not have Professional Indemnity Insurance ("PII") and 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. The FSA has concluded, on the basis of the facts and matters described below, that KMR is failing to satisfy the threshold conditions set out in Schedule 6 to the Act (the "Threshold Conditions"). In the opinion of the FSA, KMR's resources are not adequate in relation to the regulated activities it has had permission to carry on.
4. 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.

FACTS AND MATTERS RELIED ON

5. KMR has been authorised by the FSA since 17 December 2004 to carry on mortgage mediation and investment business.
6. KMR has failed to maintain PII, despite having had a reasonable opportunity to do so.

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:
- by failing to satisfy the FSA that it has effected compliant PII, KMR is failing to make adequate provision in respect of its liabilities, including contingent and future liabilities, in breach of Principle 4 of the Principles for Businesses. That failing is material in relation to the regulated activities for which it has had permission and KMR is therefore failing to satisfy Threshold Condition 4 (Adequate resources);
 - the risk of loss or other adverse effect on consumers by KMR's failing, which is a material breach of a requirement imposed on it by the FSA's rules, causes the FSA to have very serious concern about it such that the exercise of the FSA's

own-initiative power to vary KMR'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 KMR's Part IV permission with immediate effect to meet any of its regulatory objectives, and specifically in relation to KMR, the objective of the protection of consumers; and
- specifically, the variation of KMR's Part IV permission should take immediate effect to address the FSA's serious concern that claims for which KMR is uninsured might arise from new business.

PROCEDURAL MATTERS

Decision Maker

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

The Tribunal

11. KMR 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 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, KMR has 28 days from the date on which this First Supervisory Notice is given to KMR 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 KMR 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. KMR 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. KMR has the right to make written and oral representations to the FSA (whether or not it refers this matter to the Tribunal). If KMR wishes to make written representations it must do so by 10 November 2011 or such later date as may be permitted by the FSA. Written representations should be made to the Regulatory Decisions Committee and sent to Adam Taylor, 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 KMR wishes to make oral representations, it should inform the FSA of its intention to do so by 17 October 2011. If KMR does not notify the FSA by 17 October 2011, it will not, other than in exceptional circumstances, be able to make oral representations.

Publicity

16. KMR 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, KMR should contact Kathryn Willis at the FSA (direct line: 020 7066 2098 / fax: 020 7066 2099).
18. If KMR has any questions regarding the procedures of the Regulatory Decisions Committee, it should contact Adam Taylor (direct line: 020 7066 2546).

Andrew Long

Deputy Chairman, Regulatory Decisions Committee

ANNEX TO THE FIRST SUPERVISORY NOTICE ISSUED BY THE FINANCIAL SERVICES AUTHORITY TO KMR FINANCIAL MANAGEMENT LLP ON 6 OCTOBER 2011

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(1) of Schedule 6 to the Act sets out Threshold Condition 4 which states that:

“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

5. 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 "Handbook"). The main provisions relevant to the action specified above are set out below.

Relevant Principle

6. Principle 4 (Financial prudence) of the FSA's Principles for Businesses (the "Principles") requires a firm to maintain adequate financial resources.

Relevant Rule

7. The rule at 13.1.5R of the Interim Prudential Sourcebook: Investment Businesses ("IPRU-INV") section of the Handbook, states:

“A *firm* must take out and maintain at all times professional indemnity insurance that is at least equal to the requirements in this section from:

(1) an *insurance undertaking* which is authorised to transact professional indemnity insurance in the *EEA*; or

(2) a *person* of equivalent status in:

(a) a Zone A country;

(b) the Channel Islands, Gibraltar, Bermuda or the Isle of Man.

Guidance concerning the relevant Threshold Condition

8. Guidance on Threshold Condition 4 is set out in Chapter 2.4 of the Part of the Handbook entitled Threshold Conditions (“COND”).

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

9. COND 2.4.1UK(1) reproduces the relevant statutory provision that the resources of the person must, in the opinion of the FSA, be adequate in relation to the regulated activities that he seeks to carry on, or carries on.
10. COND 2.4.1UK(2)(b)(i) 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).
11. 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.

OTHER RELEVANT REGULATORY PROVISIONS

12. 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.
13. 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

14. 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.
15. 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.

16. EG 8.5(1)(a) specifies that the FSA will consider exercising its own-initiative power where a firm's financial resources appear inadequate, for example, where it has failed to maintain PII.

Use of the own-initiative power in urgent cases

17. 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)).
18. EG 8.8 provides a list of situations which will give rise to such serious concerns. Specifically, EG 8.8(1) includes where information indicates significant loss, risk of loss or other adverse effects for consumers, where action is necessary to protect their interests.
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 extent of any risk of consumer loss or other adverse effect on consumers (EG 8.9(1)).