
FIRST SUPERVISORY NOTICE

To: Midgley's Insurance Mortgage & Pensions
Of: The Studio
20 Stony Lane
Eccleshill
Bradford
BD2 2HN

Dated: 12 September 2002

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

1. ACTION

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 Midgley's Insurance Mortgage & Pensions ("MIMP") pursuant to Part IV of the Act ("MIMP's Part IV permission") by removing all regulated activities with immediate effect. Accordingly, MIMP's Part IV permission no longer includes the following regulated activities:

- (a) advising (excluding Pension Transfers and Opt-Outs);
- (b) agreeing to carry on a regulated activity;
- (c) arranging deals in investments;
- (d) making arrangements.

The FSA has further decided to vary MIMP's Part IV permission by including the following requirements, namely that MIMP must:

- (i) immediately advise in writing all clients for its regulated activities that it is no longer permitted by the FSA to carry on regulated activities;
- (ii) within 14 days provide the FSA with a copy of the written advice sent to all clients for its regulated activities pursuant to (i) above.

2. EFFECTIVE DATE

The action specified above takes effect immediately.

3. REASONS FOR ACTION

Summary

The FSA has concluded, on the basis of the facts and matters described below, that MIMP 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, MIMP is failing to ensure that its business is being conducted soundly and prudently.

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 effect immediately pursuant to section 53(3) of the Act.

Relevant Statutory Provisions

The FSA’s regulatory objectives, established in section 2(2) of the Act, include the protection of consumers.

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 such a permission by removing a regulated activity from those for which the permission is given;
- 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.

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

In exercising its power to vary a Part IV permission, the FSA must have regard to guidance published in the FSA Handbook. The relevant considerations in relation to the action specified above and its effective date include:

COND 2.5 (Threshold condition 5: Suitability) which

- at paragraph 2.5.1 and 2.5.2(1), requires the firm to satisfy the FSA that it is “fit and proper” to have Part IV permission having regard to all the circumstances, including the overall need to be satisfied that its affairs are and will be conducted soundly and prudently;
- at paragraph 2.5.4(1) and (2), permits the FSA, when forming its opinion as to whether the firm is conducting its affairs soundly and prudently, to have regard to all relevant matters, including whether it conducts, or will conduct, its business with integrity and in compliance with proper standards;
- at paragraph 2.5.6(4) permits the FSA, when determining whether the firm is conducting its business in compliance with proper standards, to have regard to relevant matters, including whether it has contravened any provisions of the Act, the regulatory system or the rules of other regulatory authorities, including the FSA’s predecessors.

ENF 3.5 (The FSA’s policy on exercising its own-initiative power to vary Part IV permission) which

- at paragraph 3.5.2 requires the FSA to have regard to its regulatory objectives and the range of regulatory tools that are available to it;
- paragraphs 3.5.6 and 3.5.8 provide that the FSA will consider exercising its powers where:
 - (i) the FSA considers that it cannot rely on a firm taking effective action, or if the firm fails to comply with the FSA’s reasonable request to take remedial steps. This may include instances where the FSA is concerned that the consequences of the firm not taking the desired steps may be serious and the firm appears unwilling or unable to take adequate and timely steps to address the FSA’s concerns;
 - (ii) the FSA has serious concerns about a firm, or about the way its business is being or has been conducted; and
 - (iii) the firm has breached requirements imposed on it by or under the Act (including Principles and rules) and the breaches are material in number or in individual seriousness. The firm appears to be failing the threshold conditions because, for instance, it has not managed competently and prudently and has not exercised due skill, care and diligence in carrying on one or more, or all, of its regulated activities.
- at paragraph 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.

Facts and matters relied on

MIMP is a sole trader small Independent Financial Adviser firm.

MIMP has failed to comply with a PIA Ombudsman Award made on 30 August 2000.

Despite repeated requests and warnings from the PIA Ombudsman Bureau and the FSA, MIMP has been unwilling or unable to comply with PIA Rule 8.6 which required it to comply promptly with any award made against it. MMIP's failure so to comply also constitutes a breach of Principle 6 of the FSA's Principles of Business ("Principle 6") which requires an authorised person to pay due regard to the interests of its customers and treat them fairly.

Conclusions

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;

- by failing to comply with a PIA Ombudsman Award and thereby contravening the regulatory system and the rules of the PIA, one of the FSA's predecessors, MMIP has failed, and continues to fail, to conduct its business with integrity and in compliance with proper standards, and therefore fails to satisfy Threshold Condition 5: Suitability;
- the persistent nature of MMIP's failings gives rise to serious concerns about the way the business of MMIP has been, and continues to be, conducted;
- the risk of loss of confidence in the Financial Ombudsman Service constituted by MIMP's failings is such that the urgent exercise of the FSA's own-initiative power to vary a Part IV permission is an appropriate response to the FSA's serious concerns.

4. DECISION MAKER

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

5. IMPORTANT

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

The Tribunal

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 7631 4242). The detailed procedures for making a reference to the Tribunal are contained in section 133 of the Act and the Tribunal Rules.

Representations

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 within 28 days of receiving this Supervisory Notice or such longer period as may be permitted by the FSA. Written representations should be made to the Regulatory Decisions Committee and sent to Mrs Liane Silvester, Regulatory Decisions Committee Secretariat, at the above address. If you wish to make oral representations, you should inform Mrs Silvester not less than 5 business days before the expiry of the 28 day period.

Confidentiality and publicity

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

If you have any questions regarding the procedures of the Regulatory Decisions Committee, you should contact either Mrs Liane Silvester (direct line: 020 7676 3196/fax: 020 7676 3197), or Brian Whitbread, Head of the Regulatory Decisions Committee Secretariat (direct line: 020 7676 3202/fax: 020 7676 3197).

For more information concerning this matter generally, you should contact Sarah Jones at the FSA (direct line: 020 7676 1494/fax: 020 7676 1495).

Christopher FitzGerald
Chairman, Regulatory Decisions Committee