
SECOND SUPERVISORY NOTICE

To: **Network Data Limited**

FSA Reference
Number: **300391**

Of: **Botleys Mansion
Stonehill Road
Ottershaw
Chertsey
KT16 0AP**

Dated: **24 April 2009**

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 not to rescind the variation of the permission granted to you, Network Data Limited ("NDL"), pursuant to Part IV of the Act ("NDL's Part IV permission") effected by the First Supervisory Notice dated 17 April 2009. This removed all your regulated activities with immediate effect. Accordingly, NDL'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 a home reversion plan;
- (c) advising on regulated mortgage contracts;
- (d) agreeing to carry on a regulated activity;
- (e) arranging (bringing about) a home reversion plan;
- (f) arranging (bringing about) deals in investments;
- (g) arranging (bringing about) regulated mortgage contracts;
- (h) making arrangements with a view to transactions in investments;
- (i) making arrangements with a view to regulated mortgage contracts; and
- (j) making arrangements for a home reversion plan.

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- 1.2 The FSA has further decided not to rescind the variation of NDL's Part IV permission to require NDL to:
- (i) within one day of the date of the First Supervisory Notice, notify its ARs in writing, in terms that are acceptable to the FSA, that it is no longer permitted by the FSA to carry on regulated activities;
 - (ii) provide the FSA with a copy of such written advice sent to all its ARs under (i) above, together with a list of all ARs; and
 - (iii) ensure that, within three days of the date of the First Supervisory Notice, all of NDL's ARs have notified their customers for regulated business that they are no longer permitted to conduct regulated business on behalf of NDL.

2. REASONS FOR ACTION

Summary

- 2.1 The FSA has concluded, on the basis of the facts and matters described below, that NDL 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, NDL'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 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; 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 Threshold Condition 4 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

- 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 proposed action 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 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 of Rules and Guidance, 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.

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(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 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 Having considered the written and oral representations, the facts and matters relied on in the Warning Notice have been updated to accurately reflect the basis on which this decision is made. The facts and matters relevant for the purposes of this Decision Notice are as set out below.
- 2.21 NDL became authorised by the FSA on 31 October 2004 to carry on regulated mortgage mediation business and has been permitted since 14 January 2005 to carry on insurance mediation business. Since 12 February 2008 NDL has been permitted to conduct regulated business in relation to home reversion plans.
- 2.22 NDL has failed to meet its liabilities as they have fallen due. Specifically, NDL has failed to pay amounts owed to Appointed Representatives ("ARs") for its regulated business. Information provided to the FSA by NDL shows that the total amount owed to ARs as at 6 April 2009 was £2,075,000, and that £967,245.83 was more than three months overdue.

- 2.23 NDL received professional advice confirming that it would be difficult to challenge the FSA's assertion that NDL was insolvent and advising it to consider options other than continuing to trade.
- 2.24 NDL has for some time been seeking to secure a sale of NDL's business and/or of a property owned by its parent undertaking. The FSA has not been provided with evidence that any sale will be concluded imminently, such that NDL's liabilities will be met.

Representations

- 2.25 NDL's written representations were substantially different from its oral representations in that the written representations sought to argue that the FSA's Statutory Notices were invalid whereas the oral representations presented the background to its current circumstances and its proposed solutions.
- 2.26 In particular, the written representations challenged the basis on which the FSA brought the action to vary NDL's permission, arguing that the figures presented by the FSA were incorrect, in that NDL did not owe £2,075,000 to its ARs of which £967,245.83 was more than 3 months overdue. NDL stated that the actual figure was £1,343,162 of which £561,093 was more than 3 months overdue.
- 2.27 Consequently, the written representations argued that the action proposed by the FSA with the attendant impact on the status of the firm was invalid.
- 2.28 By the oral representations, NDL stated that although it continued to dispute the FSA's figures as referred to in paragraph 2.22 above, it accepted the FSA's statements on NDL's solvency. Accordingly, it acknowledged that NDL was trading insolvently. It further acknowledged the FSA's concerns as to NDL's failure to make adequate provision for its financial liabilities and the negative impact this would have on consumers and ARs.
- 2.29 NDL presented details of the efforts it had been making to find a suitable purchaser for the business and argued that the existence of the FSA's action had hindered its attempts to do so. NDL argued that it would actively continue to make all necessary efforts to reach a deal which would be to the benefit of consumers and ARs. However, it required additional time to do so and for the Statutory Notices, including the First Supervisory Notice, to be withdrawn.
- 2.30 NDL regretted that the current situation had been allowed to develop over a considerable period of time. However, their only option now would be to pursue prospective interested parties to salvage what is left of the business.

Conclusions

- 2.31 The FSA finds that the Statutory Notices, including the First Supervisory Notice, were properly issued and therefore valid.
- 2.32 The FSA notes that NDL accepts it is trading insolvently. Therefore, the fundamental basis of the FSA's action remains valid. The FSA further notes NDL has had a considerable period of time resolve the issues referred to above but has failed to do so.

2.33 Accordingly, 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 maintain adequate resources, NDL 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 NDL has permission and it 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 NDL'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 NDL 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 NDL's Part IV permission should take immediate effect to address the FSA's serious concern that any further liabilities NDL incurs will not be met.

3. DECISION MAKER

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

4. IMPORTANT

4.1 This Supervisory Notice is given to NDL under section 53(4) and in accordance with section 53(5) of the Act, and is being served on you at NDL's 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, 5th Floor, 25 The North Colonnade, Canary Wharf, London E14 5HS.

Confidentiality and publicity

- 4.4 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

- 4.5 If you have any questions regarding the procedures of the Regulatory Decisions Committee, you should contact either Husayn Rahman (direct line: 020 7066 1072/fax: 020 7066 1073) or Jackie Noonan, RDC Professional Support Services (direct line: 020 7066 3074/fax: 020 7066 3075).
- 4.6 For more information concerning this matter generally, you should contact Martin Badcock at the FSA (direct line: 020 7066 1560 / fax: 020 7066 1561).

Andrew Long
Deputy Chairman, Regulatory Decisions Committee