
FIRST SUPERVISORY NOTICE

To: **Ian Barber trading as PDS Financial Services**

**FSA Reference
Number:** **435229**

Of: **Allt Y Rheiny
Cilgerran
Cardigan
Dyfed
SA43 2TJ**

Dated: **16 September 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, Ian Barber trading as PDS Financial Services, pursuant to Part IV of the Act (“your Part IV permission”) by removing all regulated activities with immediate effect. Accordingly, your Part IV permission no longer includes the following regulated activities:

- (a) advising on investments (except on pension transfers and 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) dealing in investments as agent;

- (g) making arrangements with a view to transactions in investments; and
- (h) making arrangements with a view to regulated mortgage contracts.

1.2 The FSA has further decided to vary your Part IV 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 do not have Professional Indemnity Insurance (“PII”) in place and 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 concluded, on the basis of the facts and matters described below, that you are 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, your resources are not adequate in relation to the regulated activities you have 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 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

- 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 “Handbook”). The main provisions relevant to the proposed action are set out below.

Relevant Principles

- 2.8 Principle 4 (Financial prudence) of the FSA’s Principles for Businesses (the “Principles”) requires a firm to maintain adequate financial resources.

Relevant Rule

- 2.9 FSA Rule MIPRU 3.2.1R (the "PII Rule") in the Mortgage and Home Finance Firms, and Insurance Intermediaries ("MIPRU") section of the Handbook requires that:

"A *firm* must take out and maintain professional indemnity insurance that is at least equal to the requirements of [MIPRU 3.2.4R]..."

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 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 firm are adequate in relation to the regulated activities that it carries on, to have regard to the provision it 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 firm 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(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.
- 2.19 EG 8.9(1) 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

- 2.20 You have been authorised since 17 October 2005 to carry on regulated home finance and insurance mediation business.
- 2.21 You have failed to satisfy the FSA that you maintain current PII, despite having had reasonable opportunities to do so.

Conclusions

- 2.22 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 satisfy the FSA that you have effected compliant PII, you are failing to make adequate provision in respect of your liabilities, including contingent and future liabilities, and to maintain adequate resources in breach of Principle 4. That failing is material in relation to the regulated activities for which you have permission and you therefore fail to satisfy Threshold Condition 4 (Adequate resources);
 - the risk of loss or other adverse effect on consumers by your failing, which is a material breach of a requirement imposed upon you by the FSA's rules, causes the FSA to have very serious concerns about you, such that the exercise of the

FSA's own-initiative power to vary your Part IV permission with immediate effect is an appropriate response to those concerns; and

- specifically, the variation of your Part IV permission should take immediate effect to address the FSA's serious concern that claims for which you are uninsured might arise from new business.

3. DECISION MAKER

- 3.1 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 the principal place of business last notified by you to the FSA. The following statutory rights are important.

The Tribunal

- 4.2 You have the right to refer the matter to which this Supervisory Notice relates to the Upper Tribunal (the "Tribunal"). Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, you have 28 days from the date on which this Supervisory Notice is given to you to refer the matter to the Tribunal. A reference to the Tribunal is made by way of a reference notice (Form FTC3) signed by you (or on your behalf) and filed with a copy of this Supervisory Notice. The Tribunal's address is: The Upper Tribunal, Tax and Chancery Chamber, 45 Bedford Square, London WC1B 3DN (tel 020 7612 9700; email financeandtaxappeals@tribunals.gsi.gov.uk). Further details are contained in "Making a Reference to the UPPER TRIBUNAL (Tax and Chancery Chamber)" which is available from the Upper Tribunal website:

<http://www.tribunals.gov.uk/financeandtax/FormsGuidance.htm>

- 4.3 You 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 Alexander Banerjee at the FSA, 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 20 October 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 Michelle Broadhurst in writing of your intention to do so by 28 September

2010. If you do not notify the FSA by 28 September 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 a supervisory notice takes effect (this Supervisory Notice takes immediate 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: 0207 066 2724).
- 4.7 For more information concerning this matter generally, you should contact Alexander Banerjee at the FSA (direct line: 0207 066 7206/fax 0207 066 7207).

Tim Herrington
Chairman, Regulatory Decisions Committee