
SECOND SUPERVISORY NOTICE

To: **Harry Selvarajah**

Dated: **10 April 2007**

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

1. ACTION

For the reasons listed below and having had regard to the written representations made in your letter dated 7 March 2007, the FSA has decided not to rescind the variation of the permission granted to you, Harry Selvarajah ("HS"), pursuant to Part IV of the Act ("your Permission") effected by the First Supervisory Notice issued on 7 February 2007. That variation was to remove all regulated activities with immediate effect and to include the following requirements, namely that within 14 days of the First Supervisory Notice 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 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 the FSA is not satisfied that you are a fit and proper person having regard to all the circumstances. That is because, in the opinion of the FSA, you have failed to conduct your business with integrity. Furthermore, your conduct has not met the requirements of Principle 11 under which firms must co-operate with the FSA.
- 2.2 The FSA has therefore concluded that it should not rescind the variation of your Part IV Permission effected by the First Supervisory Notice.

Relevant Principles

- 2.3 Principle 1 of the FSA's Principles for Businesses requires that a firm must conduct its business with integrity.
- 2.4 Principle 11 requires a firm to deal with its regulator in an open and cooperative way, and to disclose to the FSA appropriately anything relating to the firm of which the FSA would reasonably expect notice.

Relevant Statutory Provisions

- 2.5 The FSA's regulatory objectives, established in section 2(2) of the Act, include the protection of consumers.
- 2.6 By section 45 of the Act, the FSA is authorised:
- 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 permission by removing a regulated activity from those for which the permission is given;
 - to vary an authorised person's permission, where it is desirable to exercise that power in order to protect the interests of consumers; 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.
- 2.7 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

- 2.8 In exercising its power to vary a Part IV permission, the FSA must have regard to guidance published in the FSA Handbook. The main considerations in relation to the action specified above are set out below.

ENF 3.5 - The FSA's policy for exercising its own-initiative power to vary a Part IV permission

- 2.9 ENF 3.5.2G requires the FSA to have regard to its regulatory objectives and the range of regulatory tools that are available to it.
- 2.10 ENF 3.5.8G(1)(b)(iii) provides that the circumstances in which the FSA will consider exercising its power include where the FSA has serious concerns that the authorised person 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.
- 2.11 ENF 3.5.13G 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 following:
- (1) the extent of any loss or risk of loss or other adverse effect on consumers; and
 - (3) where the nature and extent of any false or inaccurate information provided by the firm which will depend on matters, for example:
 - (3)(b) whether the information appears to have been provided in an attempt knowingly to mislead the FSA, rather than through inadvertence.

Guidance concerning the Fit and Proper test for Approved persons: FIT 2.1 Honesty, integrity and reputation

- 2.12 FIT 2.1.1G specifies that in determining a person's honesty, integrity and reputation, the FSA will have regard to matters including, but not limited to, those set out in FIT 2.1.3G which may have arisen either in the United Kingdom or elsewhere. The FSA should be informed of these matters (see SUP 10.13.16R), but will consider the circumstances only where relevant to the requirements and standards of the regulatory system. For example, under FIT 2.1.3G (1), conviction for a criminal offence will not automatically mean an application will be rejected. The FSA treats each candidate's application on a case-by-case basis, taking into account the seriousness of, and circumstances surrounding, the offence, the explanation offered by the convicted person, the relevance of the offence to the proposed role, the passage of time since the offence was committed and evidence of the individual's rehabilitation.
- 2.13 FIT 2.1.3G specifies items referred to in FIT 2.1.1G to which the FSA will have regard, but are not limited to:

- FIT 2.1.3G(1) whether the person has been convicted of any criminal offence; this must include, where relevant, any spent convictions excepted under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (see Articles 3 and 4 of the order); particular consideration will be given to offences of dishonesty, fraud, financial crime or an offence whether or not in the United Kingdom or other offences under legislation relating to companies, building societies, industrial and provident societies, credit unions, friendly societies, banking and or other financial services, insolvency, consumer credit companies, insurance, and consumer protection, money laundering, market manipulation or insider dealing.

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

- 2.14 COND 2.5.1D 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.
- 2.15 COND 2.5.4G(2)(a) requires the FSA, when forming its opinion as to whether an authorised person is conducting its affairs soundly and prudently, to have regard to relevant matters, including whether it conducts its business with integrity and in compliance with proper standards.
- 2.16 COND 2.5.4G(3) requires the FSA only to take into account relevant matters which are significant in the context of the suitability of the firm.
- 2.17 COND 2.5.6G permits the FSA, when forming its opinion as to whether an authorised person is conducting its business with integrity and in compliance with proper standards, to have regard to relevant matters, including whether:
- (1) the firm has been open and co-operative in all its dealings with the FSA and is ready and willing to comply with the requirements and standards under the regulatory system;
 - (2) the firm has been convicted of any unspent offence involving, among other things, fraud, theft, false accounting or other dishonesty; where relevant, any spent convictions excepted for this purpose under the Rehabilitation of Offenders Act 1974, will be taken into consideration;
 - (4) the firm has contravened, among other things, the requirements of the regulatory system, which includes the threshold conditions and the FSA Principles and other rules.

Facts and matters relied on

- 2.18 The FSA has become aware of the following material adverse information about you which was not disclosed by you to the FSA in your applications for authorisation and approval or at any later stage:

- you were convicted on 21 October 1983 at Watford Magistrates Court and fined £50 plus £6 costs for shoplifting;
- you were convicted on 10 January 1986 at Tower Bridge Magistrates Court under Section 169(1)(a) of the Road Traffic Act 1972 (an offence involving dishonesty) and fined £100
- you were convicted on 24 July 1989 at Peterborough Crown Court and sentenced to 6 months imprisonment for using a false instrument with intent, contrary to Section 3 Forgery and Counterfeiting Act 1981.

Representations

2.19 You made written representations by letter dated 7 March 2007. In that letter you argued that:

- (a) the basis of the FSA's decision predates your authorisation by a considerable time, and it would be unfair and unreasonable to take action on that basis;
- (b) you had spoken to "a lady officer" of the FSA in April 2004 when making your application for authorisation, disclosed the three matters referred to in paragraph 2.18 to her and told her that "a court solicitor ... said that after 10 years these matters would cease to be an issue and may be considered 'spent'";
- (c) the "lady officer" had agreed with that by saying "if that is what the court solicitors said then that is how it is"; and
- (d) you carry on the business for which you are authorised openly and honestly to support your family, and it would be unreasonable to deprive you of your ability to do so.

Conclusions

2.20 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 been convicted of criminal offences involving theft, deception and fraud;
- you failed to disclose to the FSA your convictions and other material adverse information to the FSA and in doing so, you denied the FSA the opportunity of making a fully informed assessment of your fitness and propriety to be authorised to conduct regulated activities, and you have breached Principles 1 and 11;
- your explanation for not disclosing your convictions, specifically that you were advised by a court solicitor that the 1989 conviction would be "wiped off [your] records...within 10 years", is not adequate in that the terms of the questions in your application for authorisation were unambiguous and clear;

- the FSA has no record of you informing the FSA about your convictions in April 2004, and notes that your letter of 7 March 2007 is the first occasion on which you have asserted this; the FSA does not accept that your assertion is accurate, because it is implausible in the context of the unambiguous and clear question in the relevant application form about criminal convictions involving dishonesty; even if the alleged conversation had taken place, there is no basis for suggesting that it overrode or discharged you from your obligation to complete your application for authorisation so as to enable the FSA to make a fully informed assessment from the application of your fitness to be authorised;
- these matters are material in relation to your permitted regulated activities and you therefore fail to satisfy Threshold Condition 5 (Suitability); and
- the convictions and your failure to disclose them to the FSA, including the potential effect any non disclosure to your professional indemnity insurers may have on the validity of your insurance, cause 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.

2.21 Accordingly the FSA has concluded that it should not rescind the variation of your Part IV permission effected by the First Supervisory Notice.

3. DECISION MAKER

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

4. IMPORTANT

This Supervisory Notice is given to you in accordance with section 53(7) of the Act. The following statutory rights are important.

The Tribunal

- 4.1 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.
- 4.2 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 Ann Paterson at the FSA, 9th Floor, 25 The North Colonnade, Canary Wharf, London E14 5HS.

Confidentiality and publicity

- 4.3 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

- 4.4 For more information concerning this matter generally, you should contact Ann Paterson at the FSA (direct line: 020 7066 2728/fax: 020 7066 1459).

Tim Herrington
Chairman, Regulatory Decisions Committee