
FINAL NOTICE

To: **Simply Trading Group Limited**

Address: **The Lodge
Worting House
Church Lane
Basingstoke
Hampshire
RG23 8PX**

FSA reference number: **486925**

Dated: **28 July 2010**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives you final notice about a decision to cancel the permission granted to Simply Trading Group Limited (“STG”) to carry on regulated activities

1. THE ACTION

- 1.1. The FSA gave STG a Decision Notice dated 28 July 2010 which notified STG that, pursuant to section 45 of the Financial Services and Markets Act 2000 (“the Act”), the FSA had decided to cancel the permission granted to STG pursuant to Part IV of the Act (“STG’s Part IV permission”).
- 1.2. STG agreed that it would not be referring the matter to the Upper Tribunal (Tax and Chancery Chamber).
- 1.3. Accordingly, for the reasons set out below and having agreed with STG the facts and matters relied on, the directors of STG voluntarily agreed to its cancellation. The FSA has therefore today cancelled STG’s Part IV permission.

2. REASONS FOR THE ACTION

- 2.1. The FSA has concluded, on the basis of the facts and matters set out below, that STG is failing to satisfy the threshold conditions set out in Part 1 of Schedule 6 to the Act (“the Threshold Conditions”).
- 2.2. By Final Notices dated 28 July 2010, having concluded that Stephen John Coles (“Mr Coles”), Luke Michael Ryan (“Mr Ryan”) and Michael Kwesi Yamoah (“Mr Yamoah”) are not fit and proper persons, pursuant to sections 63 and 56 of the Act, the FSA withdrew their approval to perform significant influence functions and made orders prohibiting them from carrying out any controlled function involving the exercise of significant influence over any person in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.
- 2.3. Mr Coles, Mr Ryan and Mr Yamoah are the only directors and approved persons at STG. As a consequence of the action taken by the FSA to withdraw Mr Coles’, Mr Ryan’s and Mr Yamoah’s approval and to prohibit them, STG does not have any approved persons to carry out significant influence functions. In these circumstances, STG is failing to satisfy Threshold Condition 4 (adequate resources) in that it has inadequate human resources in relation to the regulated activities that it has permission to carry on.
- 2.4. In addition, the FSA is not satisfied that STG is a fit and proper person having regards to all the circumstances by virtue of its connection with Mr Coles, Mr Ryan and Mr Yamoah, whom the FSA considers to be unfit controllers. Consequently, STG is failing to satisfy Threshold Condition 5 (suitability) in that it does not have a competent and prudent management.

3. STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY

- 3.1. Relevant statutory provisions, regulatory guidance and policy are set out in an Annex to this Final Notice.

4. FACTS AND MATTERS RELIED ON

Background

- 4.1. STG is a small private client advisory stockbroker, which operates in Hampshire. It specialises in telephone sales of securities traded on the main market of the London Stock Exchange to retail clients. With effect from 21 November 2008, STG became authorised and regulated by the FSA to carry on the following regulated activities (those marked with an asterisk were limited to non-investment insurance contracts):
 - (1) advising on investments (except on pension transfers and pension opt outs)*;
 - (2) agreeing to carry on a regulated activity;
 - (3) arranging (bringing about) deals in investments*; and

- (4) making arrangements with a view to transactions in investments*.
- 4.2. STG appointed two appointed representatives in the period 17 December 2008 to 30 March 2009. The appointed representatives specialised in telephone sales of higher risk securities issued by smaller capitalised companies traded on the AIM and PLUS markets to retail clients. STG terminated its relationships with these appointed representatives on 8 May 2009 and 30 June 2009 respectively.
- 4.3. With effect from 13 May 2009, STG voluntarily varied its Part IV permission such that it is unable to carry on any of the regulated activities in its permission.
- 4.4. Mr Coles, Mr Ryan and Mr Yamoah were approved by the FSA on 21 November 2008 to perform the following controlled functions at STG: CF1 (Director) and CF30 (Customer). In addition, Mr Coles was approved to perform the controlled function of CF10 (Compliance oversight) and Mr Yamoah was approved to perform the controlled function of CF11 (Money laundering reporting).
- 4.5. Apart from Mr Coles, Mr Ryan and Mr Yamoah, there are no other persons approved to perform controlled functions in relation to the regulated activities for which STG has permission.

Mr Coles, Mr Ryan and Mr Yamoah: withdrawal of approval and prohibition

- 4.6. The FSA has conducted an investigation into Mr Coles, Mr Ryan and Mr Yamoah and as a result identified serious concerns relating to their fitness and propriety as significant influence function holders. Specifically, Mr Coles, Mr Ryan and Mr Yamoah failed to demonstrate the competence and capability required of approved persons while performing controlled functions as senior managers in relation to STG's regulated investment business in the period from 21 November 2008 to 13 May 2009. The FSA's concerns are set out more fully in the Final Notices dated 28 July 2010. In summary, the FSA found that Mr Coles, Mr Ryan and Mr Yamoah:
 - (1) placed undue reliance on an external compliance consultant to manage STG's business;
 - (2) failed to put in place adequate monitoring arrangements over its appointed representatives; and
 - (3) failed to put in place adequate compliance systems to ensure that STG met regulatory requirements and standards.

5. ANALYSIS OF THE MISCONDUCT AND THE ACTION

- 5.1. The FSA has considered whether it would be appropriate to cancel STG's Part IV permission. In doing so, the FSA has considered its regulatory objectives, the regulatory guidance and policy referred to in the Annex.
- 5.2. The facts and matters described above lead the FSA to conclude that STG is failing, and will continue to fail, to satisfy:

- (1) Threshold Condition 4 (adequate resources) as it does not have adequate human resources as a consequence of the FSA's withdrawal of the approval of Mr Coles, Mr Ryan and Mr Yamoah and prohibition orders against them; and
- (2) Threshold Condition 5 (suitability) as it no longer satisfies the FSA that it is a fit and proper person having regard to all the circumstances, including its connection with Mr Coles, Mr Ryan and Mr Yamoah.

5.3. In the circumstances, the FSA considers it appropriate to cancel STG's Part IV permission to achieve the FSA's regulatory objective of maintaining confidence in the financial system and the protection of consumers.

6. DECISION MAKERS

6.1. The decision which gave rise to the obligation to give this Final Notice was made by the Settlement Decision Makers on behalf of the FSA.

7. IMPORTANT

7.1. This Final Notice is given to STG in accordance with section 390 of the Act.

Publicity

7.2. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Final Notice relates. Under those provisions, the FSA must publish such information about the matter to which this Final Notice relates as the FSA considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to you or prejudicial to the interests of consumers.

7.3. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contact

7.4. For more information concerning this matter generally, STG should contact Anna Hynes of the Enforcement and Financial Crime Division at the FSA (direct line: 020 7066 9464).

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Tom Spender
Head of Department
FSA Enforcement and Financial Crime Division

STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY**1. Statutory provisions**

- 1.1. The FSA's regulatory objectives are set out in section 2(2) of the Act and include maintaining confidence in the financial system and the protection of consumers.
- 1.2. Section 41 and Schedule 6 of the Act set out the Threshold Conditions which are conditions that the FSA must ensure a firm will satisfy, and continue to satisfy, in relation to regulated activities for which it has permission.
- 1.3. The FSA is authorised by sections 45(1) and 45(2) of the Act to cancel an authorised person's Part IV permission where it appears to the FSA that such a person is failing, or likely to fail, to satisfy the Threshold Conditions.
- 1.4. Paragraph 4 of Schedule 6 to the Act sets out Threshold Condition 4 (adequate resources) which provides 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.
- 1.5. Paragraph 5 of Schedule 6 to the Act sets out Threshold Condition 5 (suitability) which provides that the person concerned must satisfy the FSA that he is a fit and proper person having regard to all the circumstances, including: (a) his connection with any person; (b) the nature of any regulated activity that he carries on or seeks to carry on; and (c) the need to ensure that his affairs are conducted soundly and prudently.

2. Regulatory provisions

- 2.1. In exercising its power to cancel a firm's Part IV permission, the FSA has had regard to relevant regulatory guidance and policy published in the FSA's Handbook.
- 2.2. The guidance and policy that the FSA considers relevant to this case is set out below.

Threshold Conditions

- 2.3. Guidance on the Threshold Conditions is set out in the Threshold Conditions manual ("COND") of the FSA Handbook.

Threshold Condition 4: Adequate resources (paragraph 4, Schedule 6 to the Act) – COND 2.4

- 2.4. COND 2.4.1UK(1) states 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.

- 2.5. COND 2.4.2G(1) provides that Threshold Condition 4 requires the FSA to ensure that a firm has adequate resources in relation to the specific regulated activity or regulated activities which it seeks to carry on, or carries on.
- 2.6. COND 2.4.2G(2) provides that the FSA will interpret the term “adequate” as meaning sufficient in terms of quantity, quality and availability, and “resources” as including all financial resources, non-financial resources and means of managing its resources such as, for example, human resources and effective means by which to manage risks.
- 2.7. COND 2.4.3G(1) provides that when assessing this Threshold Condition, the FSA may have regard to any person appearing to it to be, or likely to be, in a relevant relationship with the firm, in accordance with section 49 of the Act (Persons connected with an applicant); for example, a firm’s controllers, its directors or partners, other persons with close links to the firm, and other persons that exert influence on the firm which might pose a risk to the firm’s satisfaction of the Threshold Conditions and would, therefore, be in a relevant relationship with the firm.

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

- 2.8. COND 2.5.1UK states that the person concerned must satisfy the FSA that he is a fit and proper person having regard to all the circumstances, including: (a) his connection with any person; (b) the nature of any regulated activity that he carries on or seeks to carry on; and (c) the need to ensure that his affairs are conducted soundly and prudently.
- 2.9. COND 2.5.2G(1) provides that Threshold Condition 5 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 its connections with other persons, the range and nature of its regulated activities and the overall need to be satisfied that its affairs are and will be conducted soundly and prudently.
- 2.10. COND 2.5.3G(1) provides that the emphasis of this Threshold Condition is on the suitability of the firm itself. The suitability of each person who performs a controlled function will be assessed by the FSA under the approved persons regime. In certain circumstances, however, the FSA may consider that the firm is not suitable because of doubts over the individual or collective suitability of persons connected with the firm.
- 2.11. COND 2.5.3G(2) permits the FSA, when assessing this Threshold Condition in relation to a firm, to have regard to any person appearing to it to be, or likely to be, in a relevant relationship with the firm, as permitted by section 49 of the Act (Persons connected with the applicant). The guidance in COND 2.5.3G(2) also refers to COND 2.4.3G, which sets out examples of persons in a relevant relationship with the firm.
- 2.12. COND 2.5.4G(1) and (2) provide that when determining whether the firm will satisfy and continue to satisfy Threshold Condition 5, the FSA will have regard to all relevant matters including whether a firm: (a) conducts, or will conduct, its business with integrity and in compliance with proper standards; or (b) has or will have a competent and prudent management.

- 2.13. COND 2.5.6G provides that in determining whether a firm will satisfy, and continue to satisfy, Threshold Condition 5 in respect of conducting its business with integrity and in compliance with proper standards, relevant matters may include whether:
- (1) the firm has contravened, or is connected with a person who has contravened, any provisions of the Act, the regulatory system or the rules, statements of principles or codes of practice (COND 2.5.6G(4)); and
 - (2) the firm has taken reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory systems that apply to the firm and the regulated activities for which it has permission (COND 2.5.6G(6)).
- 2.14. COND 2.5.7G provides that in determining whether a firm will satisfy, and continue to satisfy, Threshold Condition 5 in respect of having competent and prudent management, relevant matters may include whether:
- (1) the governing body of the firm is made up of individuals with an appropriate range of skills and experience to understand, operate and manage the firm's regulated activities (COND 2.5.7G(1)); and
 - (2) the firm has made arrangements to put in place an adequate system of internal control to comply with the requirements and standards under the regulatory system (COND 2.5.7G(5)).

Enforcement Guide (“EG”)

- 2.15. The FSA's approach to cancellation under section 45 of the Act is set out in Chapter 8 of EG.
- 2.16. EG 8.13(1) provides that the FSA will consider cancelling a firm's Part IV permission using its own-initiative powers contained under section 45 of the Act where the FSA has very serious concerns about a firm, or the way its business is or has been conducted.
- 2.17. EG 8.14 provides that the grounds on which the FSA may exercise its power to cancel an authorised person's permission under section 45 of the Act are set out in section 45(1). These include where it appears to the FSA that the firm is failing, or is likely to fail, to satisfy the Threshold Conditions.