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## FINAL NOTICE

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**To: Kevin Allsop**

**Of: c/o Mr Simon Young  
McCormicks Solicitors  
Britannia Chambers  
4 Oxford Place  
Leeds LS1 3AX**

**Date: 31 March 2003**

**TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives you final notice about an order prohibiting you from performing any function in relation to any regulated activity carried on by any authorised person.**

### **THE ORDER**

The FSA gave you a decision notice dated 26 February, which notified you that, pursuant to section 56 of the Financial Services and Markets Act 2000 (“the Act”), the FSA had decided to make an order prohibiting you, Mr Kevin Allsop, from performing any function in relation to any regulated activity carried on by any authorised person.

You have not referred the matter to the Financial Services and Markets Tribunal within 28 days of the date on which the decision notice was given to you.

Accordingly, for the reasons set out below and having taken into account your written representations dated 19 November 2002 and your oral representations on 11 February 2003 to the Regulatory Decisions Committee, the FSA hereby makes an order pursuant to section 56 of the Act prohibiting you, Mr Kevin Allsop, from performing any function in relation to any regulated activity carried on by an authorised person. This order has effect from 2 April 2003.

## **REASONS FOR ORDER**

### **Introduction**

1. The order arises from your conduct since April 1988. In particular:
  - (a) Between the fourth quarter of 1994 and August 1998 you carried on investment business beyond the terms of your exemption by dealing as principal in Traded Endowment Policies (“TEPs”) and thus carried on unauthorised investment business in contravention of section 3 of the Financial Services Act 1986 (“the FS Act”);
  - (b) From August 1998 until January 2001, no longer having any form of authorisation or exemption you advised on TEPs, arranged deals in TEPs and dealt as principal in TEPs thus carrying on unauthorised investment business in contravention of section 3 of the FS Act;
  - (c) Between about 1996 and 2000 you established and operated Allsop Mortgage Services Ltd (“AMS”) client accounts in which monies belonging to clients in relation to TEP business being conducted by AMS and Allsop Financial Services Ltd (“AFS”) was held. Effectively, AFS was, through AMS, both being companies which you controlled, operating a client account in breach of the terms of its exemption.
  - (d) On various occasions between July 2000 and July 2002 you failed to co-operate and/or be entirely truthful with FSA investigators; and
  - (e) Between April 1988 and August 1998 you, whether by Kevin Allsop Associates Ltd/Allsop Financial Services Limited or personally, were an appointed representative of Allied Dunbar and of Countrywide. This status as appointed representative was in both cases terminated owing to your conduct.
  - (f) To the extent that the activities referred to in this notice were carried on by companies entirely under your control, for example, AMS and AFS, the FSA considers your responsibility for these activities to be the same as your responsibility for your own personal activities.

### **Relevant Statutory Provisions**

2. The FSA is authorised by section 56 of the Act to exercise the power to make a prohibition order if it appears to the FSA that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person.
3. The procedure to be adopted in relation to prohibition orders is set out at ss57-58 of the Act.

### **Relevant Guidance:**

4. In deciding to make the order, the FSA has had regard to guidance published in the FSA handbook, in particular in the Enforcement Manual at:
5. ENF 8.1.2 explains the purpose of prohibition orders in relation to the FSA's statutory objectives.
6. ENF 8.4.2 concerns the scope of prohibition orders – they may be blanket or limited to specified regulated activities depending on the reasons why the individual is not fit and proper and the severity of risk he poses to consumers or the market generally.
7. ENF 8.4.3 states that the FSA will consider all relevant areas, including whether other enforcement action has been taken.
8. ENF 8.4.4 recognises that prohibition is a serious penalty, given its wide scope, and requires the FSA to consider whether other regulatory actions are available and appropriate where the person under consideration is not an approved person. The fact that such regulatory action is not available may indicate that prohibition is the only appropriate action.
9. ENF 8.6 says that, when considering making a prohibition order against an individual employed by a firm which is not an approved person, the only grounds on which such an order may be made are that the individual is not fit and proper to carry out functions in relation to regulated activities carried on by an authorised person, with reference to the factors set out in ENF 8.5.2 (1), (3) and (5). In broad terms, the relevant factors include honesty, integrity and reputation, the length of time since the matters indicating unfitness and the severity of the risk the individual poses to consumers and to confidence in the financial system. Where a number of such factors pertain, they may be considered cumulatively.
10. ENF 8.8 relates to prohibition orders against individuals who are neither approved persons nor employed by firms. The FSA will consider an individual's fitness and propriety where it appears that the individual has been involved in conducting regulated activities in breach of the general prohibition, has been involved in other misconduct or offences under the Act calling into question his honesty, integrity or competence or appears likely to pose a serious risk to consumers or confidence in the financial system in future.
11. In addition, the FSA having regard to SUP 10, has considered the nature of the functions for which you were exempt in the past and the standard of conduct to be expected of such a person.

### **Facts and Matters Relied On**

13. The FSA considers that you are not a fit and proper person owing to the facts and matters set out below.

## **Background**

14. Between April 1988 and July 1991 you, trading as Kevin Allsop Associates ("KAA"), had a "self-employed contract" with Allied Dunbar. You were, therefore, an exempt person for the purposes of section 44 of the FS Act. Allied Dunbar terminated your contract in July 1991. On 14 August 1991 KAA entered into a conditional membership of Countrywide and you were an exempt person by virtue of being a principal and adviser within KAA. On 29 November 1991 Kevin Allsop Associates Ltd ("KAAL"), of which you were a director, became a member of Countrywide in place of KAA. On 31 July 1995 you established AFS, of which you were a director, which became a member of Countrywide on 15 August 1995 in place of KAAL.
15. On 28 August 1998 the contract between Countrywide and AFS was terminated. Since that time neither you nor any of your businesses has been authorised or exempt.
16. On 27 August 1992 you incorporated a business with the name Woodall Corporate and Commercial Finance Limited ("Woodall"). On 3 July 1997 the name of this company was changed to Allsop Mortgage Services Limited ("AMS") and on 11 October 2000 the name was changed to Allsop Group.co.uk Ltd. This business currently has an estate agency franchise employing approximately 28 people giving advice on and arranging mortgages.
17. In July 2000 the FSA commenced a statutory investigation under section 105 of the FS Act into you, AMS and AFS. You were interviewed under section 105 and, more recently, under caution pursuant to the Police and Criminal Evidence Act 1984. The FSA has taken 12 witness statements from persons who have done business with you, and from a witness, employed by Beale Dobie, having expertise in dealing with TEPs. The FSA has also obtained information from other sources such as product providers and banks.

## **Conduct while an exempted person**

18. During the period of your exemptions while appointed by Allied Dunbar and Countrywide, you were permitted, by virtue of your terms of appointment with each of these authorised persons, to arrange deals in investments and to provide investment advice. You were not, however, at any time exempted in respect of dealing in investments. In signing the Countrywide membership agreement you accepted a number of general conditions including a prohibition on doing any business which was not on the Countrywide "Recommended Products List" without prior authorisation and were prohibited from opening client bank accounts or handling client money.
19. During the period of membership of Countrywide you dealt as principal in TEPs which was outside your exemption. Further, you opened client accounts at Yorkshire Bank and Fleming Premier Banking in the name of AMS into which monies relating to this business was placed. The account at Fleming was formed into a number of sub accounts in the name of clients, none of whom had signing

power over these sub accounts and some of whom did not know the sub accounts existed.

20. You were an appointed representative of Allied Dunbar between April 1988 and July 1991 when your contract was terminated owing to your conduct.
21. AFS (and previously KAA and KAAL) was an appointed representative of Countrywide between August 1991 and July 1998 when its contract, and thus your exemption as AFS's principal and adviser, was terminated owing to your conduct.
22. For the reasons above the FSA is of the view that your conduct while an exempted person is of relevance to your fitness and propriety.

### **Unauthorised investment business in breach of section 3 of the FS Act**

23. TEPs were, at all relevant times, investments within the meaning of paragraph 10 of Part I Schedule 1 to the FS Act. Between the fourth quarter of 1994 and the first quarter of 2000 you purchased at least 55 TEPs from and sold at least 50 TEPs to about 50 persons. Either you or one of your companies dealt as principal in each of those transactions. At least 29 of these deals have been completed since August 1998. The majority of these deals in TEPs was done through your unregulated companies which dealt as principal in investments by purchasing TEPs from policyholders in their own names and owning them for a period prior to selling them to investors. In that there was effectively no segregation between your regulated and un-regulated businesses and that your unregulated entities corresponded directly with clients, it is the FSA's view that deals were not done with or through an exempt person. Dealing in investments constitutes investment business by virtue of paragraph 12 of Part II, Schedule 1 to the FS Act.
24. In addition to dealing in investments, in relation to which you were never exempt, you also arranged deals in investments by arranging for clients to buy or sell TEPs. While you were permitted to do this as an exempt person, you ceased to be an exempt person in August 1998 and continued to arrange deals in TEPs until, at the earliest, the first quarter of 2000. Arranging deals in investments constitutes investment business by virtue of paragraph 13 of Part II, Schedule 1 to the FS Act. TEPs are investments, therefore advising on their purchase or sale is the giving of investment advice. At the same time as you were dealing and arranging deals in TEPs you also advised investors on both the purchase and sale of TEPs. Prior to August 1998 you were exempt in relation to the giving of investment advice by operation of section 44 of the FS Act. However, you continued to give investment advice about TEPs until at least the fourth quarter of 1999 when you were not exempt. Giving investment advice constitutes investment business by virtue of paragraph 15 of Part II, Schedule 1 to the FS Act. Further, the evidence of a leading market maker in TEPs (Beale Dobie) indicates that you sold TEPs to investors at prices far in excess of their market value at the time.
25. Therefore, for the reasons given above, the FSA considers that between 1994 and 2000 you carried on investment business in contravention of section 3 of the FS Act.

## **Failure to comply with the FSA's investigators**

26. The FSA commenced its investigation in July 2000 and you were visited on 31 July 2000 by Roger Hearne and Jonathan Supran of the FSA. On 16 February 2001 the FSA sent you a letter requiring you under s105 of the Financial Services Act 1986 to confirm by return of post that you were no longer involved in the buying and selling of TEPs without authorisation and also to provide a list of TEPs traded by 9 March 2001. In partial compliance with this requirement you stated in a letter dated 2 March 2001 that you had not traded in TEPs since you ceased to be authorised in August 1998. Further, on 4 April 2001 you faxed a schedule to the FSA which showed that you had purchased 12 TEPs and sold 7 TEPs and which purported to be complete. However, the FSA had information that you had traded TEPs which did not appear in your schedule. Contact was made with the Chairman of Allsop Group.co.uk Ltd, Mr Smithson, and following a meeting between Mr Smithson and Mr Hearne a further schedule was quickly produced which showed 31 purchases and 26 sales. This was delivered to the FSA by Mr Smithson, together with a file of supporting documentation, on 26 April 2001. However, this schedule is also incomplete. The FSA has information that you have purchased at least 55 TEPs and sold at least 50 TEPs and that you continued to deal and to arrange deals in TEPs until, at the earliest, the end of December 2000 and you continued to give investment advice until January 2001. The statements you made in your letter of 2 March 2001 were, therefore, false. Further, you knew that the FSA would be relying on the information you provided and therefore that the FSA's investigators would be materially misled.
  
27. Section 200 of the FS Act provides that a person commits an offence if, in purported compliance with any requirement imposed upon him by or under the FS Act, he furnishes information which he knows to be false or misleading in a material particular or recklessly furnishes information which is false or misleading in a material particular. In providing inaccurate information concerning the number of TEPs in which you dealt and in providing false information as to the time when you ceased to deal in TEPs you have contravened section 200. You have also, for the same reasons, failed to comply with a requirement made of you under section 105 of the FS Act. These matters both reflect upon your honesty and your willingness to comply with regulators.

## **Application of Enforcement Manual Guidance**

28. The FSA considers that you present such a risk to consumers and/or to confidence in the market generally that it is necessary for the FSA to exercise its power to make a prohibition order.
  
29. The FSA considers that the bases upon which you are not fit and proper, the severity of the risk you pose to consumers and your current position controlling a company which, inter alia, advises on and arranges deals in mortgages, make it necessary to prevent you from carrying out any function in relation to regulated activities and from being employed by any authorised person.

30. In considering all relevant circumstances, in addition to those matters referred to above, the FSA is mindful of the fact that no other enforcement action has been taken against you.
31. The FSA considers that this is a serious case of lack of fitness and propriety and that, since you are not an approved person and the FSA does not therefore have the option of withdrawing approval or exercising disciplinary powers in relation to you, a prohibition order is the only appropriate regulatory action available.
32. The FSA considers that you are not fit and proper to perform functions in relation to regulated activities. In particular you do not satisfy the criterion of honesty, integrity and reputation. You have demonstrated a lack of openness and honesty in dealing with consumers, market participants and regulators. You have demonstrated a lack of ability and willingness to comply with regulatory, legal and professional standards and with ethical standards.
33. The length of time which has passed since events in 1988 is not sufficient to prevent the imposition of a prohibition order. The conduct in question demonstrates a fundamental lack of fitness and propriety. The conduct has continued throughout the period 1988 to 2001 following consistent themes and modes of behaviour. Throughout the period you have demonstrated a willingness to act in breach of the law, supervisory regulations and instructions from those authorised firms of which you were an appointed representative. You have demonstrated a lack of openness and honesty in your dealings with regulators.
34. You pose a severe risk to consumers and to confidence in the financial system.
35. The FSA considers that you have carried on unauthorised investment business in contravention of section 3 of the FS Act (currently regulated activities in breach of the general prohibition in section 19 of the Act), that you have been involved in other misconduct calling into question your honesty and integrity and so that you are likely to pose a serious risk to consumers and confidence in the financial system in future.

### **Fitness and propriety**

36. In light of the matters set out above, it appears to the FSA that you are not a fit and proper person to perform any functions in relation to regulated activities carried on by any authorised person.
37. In particular you have failed to satisfy the criterion of honesty, integrity and reputation in that you carried on unauthorised investment business and made misleading statements to FSA investigators. You have demonstrated a lack of openness and honesty in dealing with customers by selling TEPs to them at prices far in excess of their market values at the time. You have demonstrated a lack of ability and willingness to comply with regulatory, legal and professional and ethical standards in relation to your exceeding the terms of your appointment by both Allied Dunbar and Countrywide in terms of the business you did while exempt and in

seeking to mislead the FSA's investigators as to the size and duration of the TEP business that you did.

38. Accordingly, the FSA considers you are not fit and proper to perform functions in relation to regulated activities.

### **DECISION MAKER**

39. The decision which gave rise to the obligation to give this notice was made by the Regulatory Decisions Committee on behalf of the FSA.

### **IMPORTANT**

40. This final notice given to you in accordance with section 390 of the Act.

### **Publicity**

41. Section 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the FSA must publish such information about the matter to which this notice relates 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.
42. The FSA intends to publish such information about the matter to which this final notice relates as it considers appropriate.

### **Third Party Rights**

43. The FSA gave a copy of the decision notice to Allsop Group.co.uk Ltd. Accordingly, the FSA must also give a copy of this notice to Allsop Group.co.uk Ltd.

### **FSA Contact**

44. For more information concerning this matter generally, you should contact Adrian Berrill-Cox at the FSA (direct line: 020 7676 1212/fax: 020 7676 1213).

Helen J. Marshall  
Head of Retail Stockbroking and Fund Management  
FSA Enforcement Division