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**SECOND SUPERVISORY NOTICE**

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To: **Aidan Mortgage Consultants Limited**

Of: **Design Works  
William Street  
Gateshead  
Tyne & Wear NE10 0JP**

Dated: **15 January 2008**

**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 having had regard to the written representations made in your letter dated 30 November 2007, 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 Aidan Mortgage Consultants Limited ("Aidan"), pursuant to Part IV of the Act ("Aidan's permission") effected by the First Supervisory Notice issued on 23 November 2007. That variation removed all regulated activities with immediate effect. Accordingly, Aidan's permission no longer includes the following regulated activities:

- (a) advising on insurance mediation (except on Pension Transfers and Pension Opt Outs);
- (b) arranging deals in investments (insurance mediation);
- (c) making arrangements with a view to transactions in insurance mediation;
- (d) advising on regulated mortgage contracts;

- (e) arranging regulated mortgage contracts;
- (f) making arrangements with a view to regulated mortgage contracts, and
- (g) agreeing to carry on a regulated activity.

1.2 The variation effected by the First Supervisory Notice also varied Aidan's permission by including the following requirements, namely that within 14 days of the First Supervisory Notice Aidan must:

- (i) notify in writing all clients for its regulated activities that it is no longer permitted by the FSA to carry on regulated activities, and
- (ii) provide the FSA with a copy of the written notice sent in accordance with (i) above, together with a list of all clients to whom the notice 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 Aidan is failing to satisfy the threshold conditions set out in Part 1 of Schedule 6 to the Act (the "threshold conditions") in that, in the opinion of the FSA, its resources are not adequate in relation to the regulated activities it has permission to carry on.
- 2.2 The FSA has therefore concluded that it should not rescind the variation of Aidan's permission effected by the First Supervisory Notice.

### **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 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 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.

- 2.5 Section 53(3) of the Act allows such variations to take effect immediately if the FSA reasonably considers that it is necessary for the variations to take effect immediately.

### **Relevant Regulatory Provisions**

- 2.6 In exercising its power to vary a Part IV permission, the FSA must have regard to the relevant regulatory provisions and guidance, including the provisions and guidance contained in the FSA's Handbook of Rules and Guidance (the "Handbook"), and also, in particular, the Enforcement Guide ("EG"). The main considerations in relation to the action specified above are set out below.

#### EG 8 - The FSA's policy for exercising its own-initiative power to vary a Part IV permission

- 2.7 EG 8.1 provides that the FSA will have regard to its regulatory objectives and the range of regulatory tools that are available to it.
- 2.8 EG 8.2 provides that the FSA will take formal action affecting the conduct of a firm's commercial business only if that business is being conducted in such a way that the FSA judges it necessary to act in order to address the consequences of non-compliance with the Act, the Principles for Businesses and other rules.
- 2.9 EG 8.5 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. EG 8.5(1) (a) G specifies that the FSA will consider exercising its own-initiative power where a firm's financial resources appear to be inadequate.
- 2.10 EG 8.9 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 and the steps the authorised person has taken or is taking to address the issue.

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

- 2.11 COND 2.4.1(1) D 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 2.4.1(2) D 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 2.4.2(3) G states that, when assessing whether a firm has adequate resources for the purposes of Threshold Condition 4, the FSA will consider whether a firm is ready, willing and organised to comply with the detailed financial resources

requirements in the relevant section of the Prudential Standards part of the Handbook.

- 2.14 COND 2.4.4(3) G requires the FSA only to take into account relevant matters which are material in relation to the regulated activities for which the authorised person has permission.

### **Relevant Rules**

- 2.15 MIPRU 4.2.2 R requires that a firm must at all times maintain capital resources equal to or in excess of its relevant capital resources requirement.
- 2.16 MIPRU 4.2.11(1) R states that, where a firm is carrying on insurance mediation activity or home finance mediation activity (and no other regulated activity), and does not hold client money or other client assets in relation to these activities, its capital resources requirement is the higher of:
- (a) £5,000; and
  - (b) 2.5% of the annual income from its insurance mediation activity or home finance mediation activity (or both).

### **Facts and matters relied on**

- 2.17 Aidan is a limited company, authorised by the FSA to carry on regulated home finance business on 31 October 2004, and insurance mediation business on 14 January 2005. Aidan is subject to a requirement in MIPRU 4.2.11(1) to maintain capital resources of at least £5,000.
- 2.18 On 27 August 2007, Aidan's accountants informed the FSA that Aidan was insolvent, with net liabilities (and therefore negative capital resources) of £52,427 as at 31 January 2006. Financial forecasts provided by Aidan's accountants also demonstrated that Aidan is expected to continue to fail to meet the relevant capital resources requirement, with Aidan forecast to have net liabilities of £32,462 as at 31 August 2008. Aidan has provided no viable proposals to rectify its capital resources position.
- 2.19 In addition, the balance sheet in Aidan's Report and Financial Statements for the year ended 31 January 2006, as filed with Companies House, shows that Aidan had net liabilities (and therefore negative capital resources) of £41,764 as at 31 January 2005.
- 2.20 Aidan sent a letter to the FSA dated 30 November 2007 which did not dispute that it was appropriate for the FSA to vary its permission as effected by the First Supervisory Notice. In its letter Aidan asked about the possibility of making an application to cancel its Part IV Permission. The FSA has treated Aidan's letter as written representations and considered those representations in reaching its conclusions.

## **Conclusions**

2.21 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:

- that Aidan is failing to meet the requirement set out in MIPRU 4.2.2 R, that it must, at all times, maintain capital resources equal to or in excess of its relevant capital resources requirement, and it appears that Aidan has not met that requirement at any stage during its authorisation despite having made a specific commitment to do so when Aidan applied for FSA authorisation;
- this failing is significant and material in relation to the regulated activities for which Aidan has permission and Aidan therefore fails to satisfy Threshold Condition 4 (Adequate resources);
- the risk of adverse effect on consumers arising from this failing, which is a material breach of requirements imposed upon Aidan by the FSA's rules, causes the FSA to have very serious concerns about Aidan such that the exercise of the FSA's own-initiative power to vary Aidan's permission with immediate effect is an appropriate response to those concerns; and
- specifically, the variation of Aidan's permission should take immediate effect to address the FSA's serious concern that Aidan has failed to maintain capital resources which are adequate in relation to the activities it carries on.

2.22 Accordingly the FSA has concluded that it should not rescind the variation of Aidan's 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 Chairman of the Regulatory Decisions Committee.

### **4. IMPORTANT**

4.1 This Supervisory Notice is given to you, Aidan, in accordance with section 53(7) of the Act. 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, 9<sup>th</sup> 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 For more information concerning this matter generally, you should contact Martin Badcock at the FSA (direct line: 020 7066 1560 / fax: 020 7066 1561).

Tim Herrington  
Chairman, Regulatory Decisions Committee