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## **FIRST SUPERVISORY NOTICE**

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To: **Allan Austin Investment Services**  
Of: **16 Carmel Street**  
**Abertillery**  
**Gwent**  
**NP3 1DG**

Dated: **4 October 2002**

**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**

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 Allan Austin Investment Services (“AAIS”) pursuant to Part IV of the Act (“AAIS’s Part IV permission”) by removing all regulated activities with immediate effect. Accordingly, AAIS’s Part IV permission no longer includes the following regulated activities:

- (a) advising (excluding Pension Transfers and Opt-Outs);
- (b) agreeing to carry on a regulated activity;
- (c) arranging deals in investments;
- (d) making arrangements.

The FSA has further decided to vary AAIS's Part IV permission by including the following requirements, namely that AAIS must:

- (i) immediately advise in writing all clients for its regulated activities that it has failed to comply with an Award made by the PIA Ombudsman, that it has no professional indemnity insurance ("PII") cover in place and that it is no longer permitted by the FSA to carry on regulated activities;
- (ii) within 14 days provide the FSA with a copy of the written advice sent to all clients for its regulated activities pursuant to (i) above.

## **2. EFFECTIVE DATE**

The action specified above takes effect immediately.

## **3. REASONS FOR ACTION**

### **Summary**

The FSA has concluded, on the basis of the facts and matters described below, that AAIS is failing to satisfy the threshold conditions set out in Schedule 6 to the Act ("the threshold conditions") in that

- (i) AAIS is failing to ensure that its business is conducted soundly and prudently; and,
- (ii) in the opinion of the FSA, the resources of AAIS are not adequate in relation to the regulated activities it carries on.

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 effect immediately.

### **Relevant Statutory Provisions**

The FSA's regulatory objectives, established in section 2(2) of the Act, include the protection of consumers.

Section 41 of the Act and Schedule 6, paragraph 5, to the Act set out the threshold conditions which authorised persons are required to satisfy.

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 a permission by removing a regulated activity from those for which the permission is given;

- 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.

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**

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.

### **Relevant threshold conditions**

#### **COND 2.5 - Threshold condition 5: Suitability (paragraph 5, Schedule 6 to the Act)**

Paragraph 2.5.1 says:

“The person concerned must satisfy the FSA that he is a fit and proper person having regard to all the circumstances, including ... the need to ensure that his affairs are conducted soundly and prudently.”

Paragraph 2.5.4(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 in compliance with proper standards.

Paragraph 2.5.4(3) requires the FSA only to take into account relevant matters which are significant in the context of the suitability of the firm.

Paragraph 2.5.6(4) permits the FSA, when forming its opinion as to whether an authorised person is conducting its business in compliance with proper standards, to have regard to relevant matters, including whether the authorised person has contravened any provisions of the Act, the regulatory system, or the rules of other regulatory authorities, including the FSA’s predecessors.

#### **COND 2.4 - Threshold condition 4: Adequate resources (paragraph 4, Schedule 6 to the Act)**

Paragraph 2.4.1(1) says:

“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.”

Paragraph 2.4.1(2) 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).

Paragraph 2.4.4(3) 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.

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

Paragraph 3.5.2 requires the FSA to have regard to its regulatory objectives and the range of regulatory tools that are available to it.

Paragraphs 3.5.6 and 3.5.8 say the FSA will consider varying a Part IV permission in circumstances including:

- (i) where an authorised person fails to comply with the FSA's reasonable request to take remedial steps and the consequences of the authorised person's unwillingness or inability to take adequate and timely steps to address the FSA's concerns may be serious;
- (ii) 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.

Paragraph 3.5.13 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.

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

AAIS is a small Independent Financial Adviser with one approved person, its sole trader principal, Mr Allan Austin.

### ***Failure to comply with an Ombudsman Award***

AAIS has failed to comply with a PIA Ombudsman Award made on 9 May 2000 ("the Award").

Despite repeated requests and warnings from the PIA Ombudsman Bureau and the FSA, AAIS has been unwilling or unable to comply with PIA Rule 8.6 which required it to comply promptly with any award made against it by the PIA Ombudsman, unless it exercised in good faith a right of appeal, or applied for other relief, to the Court. The FSA has seen no evidence that such action was taken by AAIS. AAIS' failure to comply with the Award also constitutes a breach of Principle 6 of the FSA's

Principles for Businesses which requires an authorised person to pay due regard to the interests of customers and treat them fairly.

***Failure to maintain PII cover***

AAIS has had no PII cover since 24 March 2002.

Despite repeated requests and warnings from the FSA, AAIS has been unwilling or unable to demonstrate compliance with FSA Rule 13.1.3 IPRU(INV) which requires that (unless an exception which is not relevant to AAIS applies):

“a firm must effect and maintain at all times adequate professional indemnity insurance cover for all business activities which it carries on, or for which it is responsible.”

**Conclusions**

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:

***Failure to comply with an Ombudsman Award***

- AAIS, by failing to comply with the Award and thereby contravening the regulatory system and the rules of the PIA, one of the FSA’s predecessors, is failing to conduct its business in compliance with proper standards. That failure is significant in the context of the suitability of AAIS and AAIS therefore fails to satisfy Threshold Condition 5: Suitability.

***Failure to maintain PII cover***

- AAIS, by failing to effect compliant PII cover, is failing to make adequate provision in respect of its liabilities, including contingent and future liabilities. That failure is material in relation to the regulated activities for which AAIS has permission and AAIS therefore fails to satisfy Threshold Condition 4: Adequate resources.
- AAIS has for 6 months been in breach of FSA Rule 13.1.3 IPRU(INV), a requirement imposed upon it under the Act, and has failed to remedy that breach notwithstanding the FSA’s reasonable requests to do so. That failure is material and its consequences may be serious.
- The risk of loss or other adverse effect on consumers by AAIS’s failings causes the FSA to have very serious concerns about AAIS and is such that the exercise of the FSA’s own-initiative powers to vary AAIS’ Part IV permission is an appropriate response to those concerns.

#### **4. DECISION MAKER**

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

#### **5. IMPORTANT**

This Supervisory Notice is given to you in accordance with section 53(4) of the Act. The following statutory rights are important.

##### **The Tribunal**

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.

##### **Representations**

You have the right to make written and oral representations to the FSA (whether or not you refer this matter to the Tribunal). If you wish to make written representations you must do so within 28 days of receiving this Supervisory Notice or such longer period as may be permitted by the FSA. Written representations should be made to the Regulatory Decisions Committee and sent to Jackie Noonan, Regulatory Decisions Committee Secretariat, at the above address. If you wish to make oral representations, you should inform Mrs Noonan not less than 5 business days before the expiry of the 28 day period.

##### **Confidentiality and publicity**

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**

If you have any questions regarding the procedures of the Regulatory Decisions Committee, you should contact either Jackie Noonan (direct line: 020 7676 3196/fax: 020 7676 3197), or Brian Whitbread, Head of the Regulatory Decisions Committee Secretariat (direct line: 020 7676 3202/fax: 020 7676 3197).

For more information concerning this matter generally, you should contact Gary Hamilton at the FSA (direct line: 020 7676 5068/fax: 020 7676 5069).

Christopher FitzGerald  
Chairman, Regulatory Decisions Committee