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## FIRST SUPERVISORY NOTICE

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To: The Freedom SIPP Limited

Date: 3 July 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 pursuant to Section 45 and Section 48 of the Financial Services and Markets Act 2000 (“the Act”), the FSA has decided to vary the permission granted to The Freedom SIPP Limited (the “Firm”) pursuant to Part IV of the Act and to impose a requirement pursuant to Section 43 of the Act such that The Freedom SIPP scheme fund assets (“Scheme Funds”) held in accounts by any institution may not, so long as the requirement is in force, be released, save in accordance with the Terms and Conditions of The Freedom SIPP (in particular Clauses 3 and 10) (the “Terms”), the Deed of Amendment of the Freedom SIPP dated 8 January 2007 (in particular Clauses 4 to 10, 14, 15 and 17) (the “Deed”), and specifically:-

- (1) Subject to (2) below, any institution holding Scheme Funds in its accounts may only act on the authorised signatures of the the Firm **and** the Member (as defined in the Terms and the Deed) in respect of cheques or other orders for payment on the account, and authorities for sale, purchase, delivery or other dealing with securities, bills, coupons at any time held by that institution;

- (2) Any such institution may release Scheme Funds held in its accounts on the sole instructions of the Firm in relation to the payment of reasonable annual fees in accordance with the Terms.

## **2. REASONS FOR ACTION**

- 2.1. The FSA has concluded, on the basis of the facts and matters described below, that you have failed, and continue to fail, to pay<sub>due</sub> regard to the interests of your customers and to treat them fairly. As we are concerned that these failings are ongoing, we have concluded that it is desirable to exercise the power to vary your permission in order to protect the interests of consumers or potential consumers.
- 2.2. Specifically, you have failed to satisfy the FSA that you have complied with the requirement of the Terms (in particular Clauses 3 and 10) and the Deed (in particular Clauses 4 to 10, 14, 15 and 17), in relation to obtaining authorisation from Members to move funds from the Scheme Fund, and in notifying Members of fees and charges deducted from the Scheme Fund.
- 2.3. The FSA also considers, on the basis of those facts and matters, that it is necessary, in order to protect the interests of consumers or potential consumers, for the action specified above to take immediate effect.

## **3. RELEVANT STATUTORY AND REGULATORY PROVISIONS**

- 3.1. The FSA's regulatory objectives, established in section 2(2) of the Act, include securing the appropriate degree of protection for consumers.
- 3.2. By section 45 of the Act, the FSA is authorised:
- to vary an authorised person's permission, where it appears to the FSA that it is desirable to vary the permission in order to protect the interests of consumers or potential consumers (section 45(1)(c));
- 3.3. By section 48(1)(b) of the Act, the FSA can vary an authorised person's permission so as to alter an assets requirement imposed on him or impose such a requirement on him. "Assets requirement" means a requirement under section 43 of the Act, prohibiting the disposal of, or other dealing with any of a party's assets, (whether in the United Kingdom or elsewhere) or restricting such disposals or dealings.
- 3.4. 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.

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

- 3.5. In exercising its power to vary a Part IV permission, the FSA must have regard to the Enforcement Guide ("EG"). The main considerations in relation to the action specified above are set out below.
- 3.6. EG 8.5 states that the FSA will consider varying a firm's Part IV permission in support of its enforcement function in circumstances where it has serious concerns about a firm, or about the way its business is being or has been conducted.

- 3.7. Paragraph 8.5(2) of EG states that an example of such circumstances in relation to the grounds for exercising the power under section 45(1)(c) is where it appears that the interests of consumers are at risk because the firm appears to have breached any of Principles 6 to 10 of the FSA's Principles to such an extent that it is desirable that restrictions are placed on the firm's regulated activity.
- 3.8. EG 8.6 states that the FSA may impose a variation of permission so that it takes effect immediately or on a specified date if it reasonably considers it necessary for the variation to take effect immediately (or on the date specified), having regard to the ground on which it is exercising its own-initiative power.
- 3.9. Paragraph 8.7 of EG indicates that the FSA will consider exercising its own initiative power as a matter of urgency where:
  - (1) the information available to it indicates serious concerns about the firm or its business that need to be addressed immediately; and
  - (2) circumstances indicate that it is appropriate to use statutory powers immediately to require and/or prohibit certain actions by the firm in order to ensure the firm addresses these concerns.
- 3.10. EG 8.8 gives examples of situations that will give rise to the serious concerns mentioned in EG 8.7. These include information indicating significant loss, risk of loss or other adverse effects for consumers, where action is necessary to protect their interests (EG 8.8(1)).
- 3.11. EG 8.9 states that the FSA will consider the full circumstances of each case when it decides whether an urgent variation of Part IV permission is appropriate and provides a list of factors which it may consider, including:
  - (1) the extent of any loss, or risk of loss, or other adverse effect on consumers. The more serious the loss or potential loss or other adverse effect, the more likely it is that the FSA's urgent exercise of own-initiative powers will be appropriate, to protect consumers' interests (EG 8.9(1))
  - (2) the extent to which customers assets appear to be at risk. Urgent exercise of the FSA's own-initiative power may be appropriate where the information available to the FSA suggests that customer assets held by, or to the order of, the firm, may be at risk ((EG 8.9(2)).
- 3.12. EG 8.10 states that when varying Part IV permission at its own-initiative under its section 45 power the FSA may include in the Part IV permission as varied any limitation or restriction which it could have imposed if a fresh permission were being given in response to an application under section 40 of the Act.
- 3.13. EG 8.12 provides examples of requirements that the FSA may consider including in a firm's Part IV permission when exercising its own-initiative power in support of its enforcement function, including a requirement that prohibits the disposal of, or other dealing with, any of the firm's assets (whether in the United Kingdom or elsewhere) or restrict those disposals or dealings.

## 4. FACTS AND MATTERS RELIED ON

### Background

- 4.1 The Firm (FRN 465194) is authorised by the FSA to establish, operate and wind up personal pension schemes and is the operator and the administrator of The Freedom SIPP pension scheme (“the pension scheme”).
- 4.2 The pension scheme was established in 2004 and is used as an investment savings vehicle that provides benefits on retirement for the member. The member directs the investment accounts and those accounts are operated jointly by the Member or group of their individual fund and can make investments within those allowed by HMRC regulations for Members with a Self Invested Personal Pension Scheme (“SIPP”). Each Member enters into a supplementary trust deed that appoints the Member as a joint trustee with the scheme Trustee. Contributions are received into individual Member accounts and those accounts are operated jointly by the member and the Trustee. The Trustee is advised by a firm of Solicitors (“the Solicitors”). All three entities are controlled by the same personnel. Neither the Trustee nor the Solicitors are authorised by the FSA.
- 4.3 As at 29 February 2008, the cash value of the pension scheme under the joint control of the Trustee and individual Members was £16,748,000 (according to bank statements). The Solicitors have indicated that this represents 10% of the overall fund.
- 4.4 The Terms (in particular Clauses 3 and 10), and the Deed (in particular Clauses 4 to 10, 14, 15 and 17) require, in the FSA’s view, Members and the Trustee of the pension scheme jointly to authorise transfers of Scheme Funds. They also require notification to the Members of any payment of reasonable annual fees, in accordance with the Terms, authorised solely by the Trustee.
- 4.5 In a mandate to the original Banker for the pension scheme (“Bank 1”) in relation to money in the Scheme Funds, the Trustee stated that they were duly authorised by the Deed to operate the bank account as set out in the mandate. The mandate required the authorised signatures of the Firm **and** the Member (as defined in the Terms and the Deed) in respect of cheques or other orders for payment on the account, and authorities for sale, purchase, delivery or other dealing with securities, bills, coupons at any time held by Bank 1. The mandate also stated that Bank 1 may release money from Scheme Funds on the sole instructions of the Firm in relation to the payment of fees.

### Concerns

- 4.6 On 1 July 2008, the FSA became aware of the following matters via a complaint from a member of the pension scheme:
- (1) On 4 April 2008, the the Trustee of behalf of the Firm wrote to Bank 1 to notify them of its intention to transfer its members’ accounts to the Bank 2

within the next few weeks. Bank 1 was also notified that rather than transferring each account individually, the transfer would be done in one tranche and that the transfer should take effect on 25 April 2008.

- (2) The complainant notified the FSA that the Firm had written to him on 10 April 2008 stating:

"After careful consideration we have sought out a new cash deposit provider to ensure sustained and competitive rates on your SIPP account. Our review of the marketplace has resulted in Freedom SIPP linking up [Bank 2] ... who we feel offer the best combination of rates, security and service, the features we believe are most important to our members."

- (3) The letter also included an Application Form to be completed and returned by the Member no later than 18 April 2008 as the scheduled date for the migration to Bank 2 was 26 April 2008. The letter is silent on the terms of the mandate with Bank 2 and whether the pension scheme member had any alternative but to transfer his fund in accordance with the wishes of the Firm, and if so, what he or she should do in that event.

4.7 Bank 2 has confirmed that Bank 1 transferred the following amounts to them in relation to the Scheme Funds:

- (1) £4,851,630.57 on 01 May 2008
- (2) £4,945,152.16 on 10 June 2008
- (3) £9,000,000.00 on 10 June 2008

4.8 The FSA understand that a similar letter to the one received by the complainant was sent to 340 Members of the pension scheme and that only 230 of the 340 Members replied to the letter.

4.9 Bank 2 has indicated that the account into which the money outlined in paragraph 4.7 above has been transferred is an internet only account and that only a username and password is required to make payments using the online system. The system does not therefore have any mechanism whereby Bank 2 can verify that the Firm has the necessary authorisation from the Members in accordance with the Deed and the Terms.

4.10 The FSA is particularly concerned regarding the current position given that:

- (1) A charge was levied against the fund of a particular member of £8,284 on 1 May 2007. There was no evidence on files that the work for which the charge was levied had been completed or that the member of the scheme had

consented to the work being undertaken or notified of the payment of the charge;

- (2) There is evidence that loans had been made from the fund of a member of the pension scheme to connected entities. There is no evidence to determine whether those loans had been repaid. Such loans are not generally allowed by HMRC rules;
- (3) The Trustee operates the pension scheme. Operating a personal pension scheme is a regulated activity for the purposes of section 19 of FSMA. By operating the pension scheme, the Trustee appears to be in breach of the general prohibition. There is no evidence to determine what steps, if any, the Firm took to satisfy itself that the Trustee was either authorised or exempt from being so; and
- (4) The Firm's client money procedures appear to be deficient in so far as the procedures did not cover the requirements set out in CASS such as calculations, reconciliations or notification requirements. The Firm had not conducted a tax reclaim account reconciliation in a timely manner or conducted daily client money reconciliations (both of which are required by FSA rules - CASS 4.3.89 and CASS 4.3.87 respectively).
- (5) It appears that the Bank 2 bank account is not currently mandated on terms which replicate the requirements of the Deed and Terms, meaning that the authority of individual Members of the pension scheme is not required to make payments out of their funds;
- (6) The Members of the pension scheme were given insufficient details in the letter to allow them to make an informed decision. In particular, no mention was made of the loss of the right to jointly sign off on any payments made from the account;
- (7) The FSA's general concerns in respect of the running of the pension scheme are such that the FSA is, as yet, unable to satisfy itself that consumers' interests will be protected by leaving the status quo in place; and
- (8) The Bank 2 account mandate effectively allows Members' Scheme Funds to be transferred from the account with immediate effect and without the Members' authorisation; offering the FSA no effective method to police the situation on an ongoing basis.

## **5. CONCLUSIONS**

5.1. The facts and matters described above lead the FSA, having regard to its regulatory objectives, which include securing the appropriate degree of protection for consumers, to the following conclusions:

- (1) You have not obtained the necessary authorisations from Members in relation to the movement of Scheme Funds, and have not properly notified Members in



relation to fees and charges. In doing so you have failed to pay due regard to the interests of your customers and to treat them fairly.

- (2) Your actions may have led and may lead in the future to consumer detriment, in that Members' money may be drawn upon from the Scheme Funds for unauthorised purposes.
- 5.2. These matters are material in relation to your permitted regulated activities and therefore it is desirable to vary your permission in order to protect the interests of consumers or potential consumers.
- 5.3. In support of the FSA's consumer protection objective, the exercise of the FSA's own-initiative power to vary your Permission with immediate effect is an appropriate response to these concerns.

## **6. DECISION MAKER**

- 6.1 The decision which gave rise to the obligation to give this First Supervisory Notice was made by a Director of the FSA, in accordance with DEPP 3.4.3.

## **7. IMPORTANT**

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

### **The Tribunal**

- 7.2. 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.
- 7.3. 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 Russell Clifton at the FSA, 25 The North Colonnade, Canary Wharf, London E14 5HS.

### **Representations**

- 7.4. 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 by 6 August 2008 or such later date as may be permitted by the FSA. Written representations should be made to the Regulatory Decisions Committee and sent to Iain McConville, Regulatory Decisions Committee Professional Support Services. The Regulatory Decisions Committee Professional Support Services' address is: 25 The North Colonnade, Canary Wharf, London E14 5HS. If you wish to

make oral representations, please inform us in writing of your intention to do so by 14 July 2008. If you do not notify us by 14 July 2008, you will not, other than in exceptional circumstances, be able to make oral representations

**Access to evidence**

7.5. Section 394 of the Act does not apply to this Supervisory Notice.

**Confidentiality and publicity**

7.6. 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**

7.7. If you have any questions regarding the procedures of the Regulatory Decisions Committee, you should contact Iain McConville, RDC Professional Support Services (direct line: 020 7066 3200 / fax: 020 7066 3201).

7.8. For more information concerning this matter generally, you should contact Russell Clifton of the FSA (direct line: 020 7066 5304).



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**Lesley Titcomb**

**Director**

**FSA**