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**FIRST SUPERVISORY NOTICE**

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To: **FTC London UK Limited**  
Of: **28 Bruton Street**  
**London**  
**W1J 6QW**

FSA  
Reference  
Number: **189268**

Dated: **2 July 2009**

**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 of the Financial Services and Markets Act 2000 (“the Act”), the FSA has decided to vary the permission granted to FTC London UK Limited (“FTC”) pursuant to Part IV of the Act (“FTC’s Part IV permission”), by removing all regulated activities with immediate effect. Accordingly, FTC’s Part IV permission no longer includes the following regulated activities:

- (a) advising (except pension transfers and opt-outs);
- (b) agreeing to carry on a regulated activity;

- (c) arranging deals in investments;
- (d) dealing in investments as agent; and
- (e) making arrangements with a view to investments.

1.2 The FSA has further decided to vary FTC's Part IV permission by including the following requirements, namely that within 14 days FTC must:

- (i) notify in writing all clients for FTC's regulated activities that FTC is no longer permitted by the FSA to carry on regulated activities; and
- (ii) provide the FSA with a copy of the written notification sent to all clients for FTC's regulated activities pursuant to (i) above, together with a list of all clients to whom such notification 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 FTC is failing to satisfy the threshold conditions set out in Schedule 6 to the Act ("the Threshold Conditions") in that FTC has failed to maintain a head office in the United Kingdom (the "UK") and does not have a competent and prudent management.
- 2.2 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 immediate effect.

### **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 The FSA is authorised by section 45 of the Act to exercise the following powers:
  - 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; 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 a variation to take effect immediately if the FSA reasonably considers that it is necessary for the variation to take effect immediately.

2.6 Paragraph 2(1) of Schedule 6 to the Act sets out Threshold Condition 2, which states that:

“If the person concerned is a body corporate constituted under the law of any part of the United Kingdom –

(a) its head office, and

(b) if it has a registered office, that office,

must be in the United Kingdom.”

2.7 Paragraph 5 of Schedule 6 to the Act sets out Threshold Condition 5, which states that:

“The person concerned must satisfy the Authority that he is a fit and proper person having regard to all the circumstances, including –

(c) the need to ensure that his affairs are conducted soundly and prudently.”

#### **Relevant Handbook provisions**

2.8 In exercising its power to vary a Part IV permission, the FSA must have regard to relevant provisions in the FSA Handbook of rules and guidance (the "FSA Handbook"). The relevant main considerations in relation to the action specified above are set out below.

#### **Guidance concerning the relevant Threshold Conditions**

2.9 Guidance on the Threshold Conditions is set out in Chapter 2 of the part of the FSA Handbook entitled Threshold Conditions ("COND").

#### Guidance concerning – Threshold Condition 2: Location of offices (paragraph 2, Schedule 6 to the Act)

2.10 COND 2.2.1UK(1) reproduces the relevant statutory provision in the Act that where the person concerned is a body corporate constituted under the law of any part of the UK, its head office must be in the UK.

2.11 COND 2.2.3G(1) states that the key issue in identifying the head office of a firm is the location of its central management and control, including the location of the directors and other senior management who make decisions relating to the firm's central direction, and the material management of the firm on a day to day basis.

#### Guidance concerning - Threshold Condition 5: Suitability (paragraph 5, Schedule 6 to the Act)

2.12 COND 2.5.1UK reproduces the relevant statutory provision that the person concerned must satisfy the FSA that he is a fit and proper person having regard to all the

circumstances, including, amongst other things, the need to ensure that his affairs are conducted soundly and prudently.

- 2.13 COND 2.5.4G(2)(a) states that the FSA, when forming its opinion as to whether an authorised person is conducting its affairs soundly and prudently, will have regard to relevant matters, including whether it conducts its business with integrity and in compliance with proper standards.
- 2.14 COND 2.5.4G(3) states that the FSA will take into account relevant matters only to the extent that they are significant in the context of the suitability of the firm.
- 2.15 COND 2.5.7G(3) states that the FSA, when forming its opinion as to whether an authorised person has a competent and prudent management, will have regard to whether the governing body of the firm is organised in a way that enables it to address and control the regulated activities of the firm.

#### **Other relevant regulatory provisions**

- 2.16 The FSA's policy in relation to its enforcement powers is set out in the Enforcement Guide ("EG") certain provisions of which are summarised below.
- 2.17 EG 8.1(1) reflects the provisions of section 45 of the Act that the FSA may use its own initiative power to vary or cancel the permission of an authorised firm where a firm is failing or is likely to fail to satisfy the Threshold Conditions.

#### Varying a firm's Part IV permission on the FSA's own initiative

- 2.18 EG 8.1B provides that the FSA will have regard to its regulatory objectives and the range of regulatory tools that are available to it, when it considers how it should deal with a concern about a firm.
- 2.19 EG 8.3 provides that the FSA will exercise its formal powers under section 45 of the Act, where the FSA considers it is appropriate to ensure a firm meets its regulatory requirements. EG 8.3(1) specifies that the FSA may consider it appropriate to exercise its powers where it has serious concerns about a firm or about the way its business is being or has been conducted.
- 2.20 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) and EG 8.5(1)(b)(ii) specify, respectively, that the FSA will consider using its own-initiative power where a firm's financial resources appear to be inadequate or where a firm appears not to be a fit and proper person to carry on a regulated activity because it has not been managed competently and prudently.
- 2.21 EG 8.9(1) 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.

## **Facts and matters relied on**

- 2.22 FTC has been authorised since 1 December 2001 to carry on designated investment business.
- 2.23 There is currently only one individual at FTC, Mr Guillermo Clamens, who is approved by the FSA to perform governing functions at FTC. Mr Clamens is also the only individual employed by FTC and the only person able to make decisions relating to the firm's central direction and the material management of the firm on a day to day basis. Mr Clamens currently resides in Venezuela.
- 2.24 On 20 May 2009, Mr Clamens was charged with conspiracy, securities fraud and wire fraud offences in the United States of America (the "USA"). Mr Clamens has not returned to the USA to address these matters with the relevant authorities.
- 2.25 FTC has stated to the FSA that it has not conducted regulated activities in recent months, however, without the restrictions placed upon it by the FSA in this Notice, FTC could have conducted regulated activities.

## **Conclusions**

- 2.26 The facts and matters described above lead the FSA, having regard to its regulatory objectives which include the protection of consumers and maintaining confidence in the financial system, to the conclusion that:
- by virtue of Mr Clamens' current residence in Venezuela, FTC has failed to ensure that its central management and control are located in the UK;
  - by virtue of that failing, FTC is failing to satisfy Threshold Condition 2 (Location of offices);
  - by failing to satisfy Threshold Condition 2, FTC is failing to satisfy the FSA that it has a competent and prudent management;
  - that failure is significant in the context of the suitability of FTC, and FTC therefore fails to satisfy the FSA that it is a fit and proper person having regard to all the circumstances;
  - FTC is therefore failing to satisfy Threshold Condition 5 (Suitability); and
  - the risk of loss to consumers arising from FTC's circumstances, if it were now to conduct regulated activities, causes the FSA to have very serious concerns about FTC such that the exercise of the FSA's own-initiative power to vary FTC's Part IV permission with immediate effect is an appropriate response to those concerns.

## **3. DECISION MAKER**

- 3.1 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 FTC in accordance with section 53(4) and in accordance with section 53(5) of the Act and it is being served on FTC at the address last notified to the FSA as the principal place of business of FTC. The following statutory rights are important.

##### **The Tribunal**

- 4.2 FTC may refer this matter to the Financial Services and Markets Tribunal ("the Tribunal"). Under section 133 of the Act, FTC has 28 days from the date it was 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 FTC 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 FTC should note that the Tribunal Rules provide that at the same time as filing a reference notice with the Tribunal, FTC must send a copy of the notice to the FSA. Any copy notice should be sent to Martin Badcock at the FSA, Enforcement Division, 25 The North Colonnade, Canary Wharf, London E14 5HS.

##### **Representations**

- 4.4 FTC has the right to make written and oral representations to the FSA (whether or not it refers this matter to the Tribunal). If FTC wishes to make written representations it must do so by 5 August 2009 or such later date as may be permitted by the FSA. Written representations should be made to the Regulatory Decisions Committee and sent to Lynn Cheesman, 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 FTC wishes to make oral representations, it should inform us in writing of its intention to do so by 13 July 2009. If FTC does not notify us by 13 July 2009, it will not, other than in exceptional circumstances, be able to make oral representations.

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

- 4.5 FTC 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). FTC 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**

- 4.6 If FTC has any questions regarding the procedures of the Regulatory Decisions Committee, it should contact either Lynn Cheesman (direct line: 020 7066 3192/fax: 020 7066 3193), or Jackie Noonan, RDC Professional Support Services (direct line: 020 7066 3074/fax: 020 7066 1015).

4.7 For more information concerning this matter generally, FTC should contact Martin Badcock at the FSA (direct line: 020 7066 1560 / fax: 020 7066 1561).

**Tim Herrington**  
**Chairman, Regulatory Decisions Committee**