

---

## **FIRST SUPERVISORY NOTICE**

---

To: **Gallagher & Company**

Of: **17 Malone Court  
Downpatrick  
Co. Down  
BT30 6UA**

Dated: **4 October 2002**

**TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) has decided to take 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 Gallagher & Company (“Gallagher”) pursuant to Part IV of the Act (Gallagher’s “Part IV permission”) by removing all regulated activities with immediate effect. Accordingly, Gallagher’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 Gallagher's Part IV permission by including the following requirements, namely that Gallagher must:

- (i) immediately advise in writing all clients for its regulated activities that it has failed to co-operate with the FSA and has no professional indemnity insurance ("PII") cover in place and 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 Gallagher is failing to satisfy the threshold conditions set out in Schedule 6 to the Act ("the threshold conditions") in that

- (i) Gallagher is failing to ensure that its business is conducted soundly and prudently; and
- (ii) in the opinion of the FSA, the resources of Gallagher 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.

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;
- 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 relevant considerations in relation to the action specified above and its effective date 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 with integrity and 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 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:

- (1) whether the authorised person has been open and co-operative in all its dealings with the FSA and any other regulatory body and is ready and willing and organised to comply with the requirements and standards under the regulatory system;
- (4) whether the authorised person has contravened the regulatory system or the rules, regulations or statements of principles of other regulatory bodies (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 on 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 provide that the circumstances in which the FSA will consider exercising its powers include:

- 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;
- where the FSA has serious concerns that the authorised person has breached requirements imposed on him 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 that the firm has taken or is taking to address the issue.

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

Gallagher is a small Independent Financial Adviser firm with one approved person, its sole trader principal, Mr E Gallagher (“the principal”).

### ***Failure to co-operate with regulators***

Following numerous unsuccessful attempts over a period of six months the Regulatory Events Department of the FSA’s Investment Firm’s Division (“RED”)

eventually made a Supervision Visit to Gallagher on 26 March 2002. During the visit RED reviewed a total of five client files and found deficiencies in four of those files. Gallagher had failed to obtain and record sufficient Know Your Customer information, issue adequate Reason Why Letters, retain copies of completed application forms and ensure Terms of Business letters were issued to clients.

RED wrote to Gallagher on 17 April 2002 specifying corrective action to be taken and requiring written confirmation within 20 business days that such action had been taken. RED followed this up with letters on 29 April and 7 May 2002. RED also wrote to Gallagher on 23 April 2002 requesting information about its principal's current financial position and by a further letter on 8 May 2002 set a deadline of 24 May 2002 for the production of that information. Gallagher has made no response of any kind to any of these communications and, specifically, has failed:

- (i) to provide evidence that it has undertaken the corrective action specified following the Supervision Visit in March 2002;
- (ii) to provide the FSA with information about the principal's current financial position;
- (iii) to co-operate with the FSA's reasonable requests for this information.

Gallagher, by failing to co-operate with the FSA and reply to its reasonable requests for information, is failing to comply with Principle 11 of the FSA's Principles for Businesses, under which a firm must deal with its regulators in an open and co-operative way.

#### ***Failure to maintain PII cover***

Gallagher has had no PII cover since 22 February 2002.

Despite repeated requests and warnings from the FSA over more than 6 months, Gallagher has been unable or unwilling to demonstrate compliance with FSA Rule 13.1.3 IPRU(INV) which requires that (unless an exception which is not relevant to Gallagher 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 co-operate with regulators***

- Gallagher, by failing to provide evidence that it has undertaken the corrective action specified in the Supervision Visit Report dated 17 April 2002 and to provide the FSA with information about its principal's current financial position, has failed to demonstrate the openness and co-operation with the FSA required of

it by, and that it is ready and willing to comply with the requirements and standards under, the regulatory system and is therefore failing to conduct its business in compliance with proper standards. That failure is significant in the context of the suitability of Gallagher and Gallagher therefore fails to satisfy Threshold Condition 5: Suitability.

***Failure to maintain PII cover***

- Gallagher, 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 Gallagher has permission and Gallagher therefore fails to satisfy Threshold Condition 4: Adequate resources.
- Gallagher has for more than 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 constituted by Gallagher's failings is such that the urgent exercise of the FSA's own-initiative power to vary Gallagher's Part IV permission is an appropriate response to the FSA's serious 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 7631 4242). 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 Mrs 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 Regulatory Decisions Committee Secretariat (direct line: 020 7676 3202/fax: 020 7676 3197).

For more information concerning this matter generally, you should contact Julia Medcalf at the FSA (direct line: 020 7676 5774/fax: 020 7676 5895).

Christopher FitzGerald  
Chairman, Regulatory Decisions Committee