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**FIRST SUPERVISORY NOTICE**

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To: **Harvey Simon Medical Insurance Services**

Of: **433 Chester Road  
Old Trafford  
Manchester  
M16 9HA**

Dated: **3 November 2004**

**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 Harvey Simon Medical Insurance Services (“HSMIS”), pursuant to Part IV of the Act (“HSMIS’s Part IV permission”) by removing all regulated activities with immediate effect. Accordingly, HSMIS’s Part IV permission no longer includes the following regulated activities:

- (a) advising on investments (excluding pension transfers and opt-outs);
- (b) agreeing to carry on a regulated activity;
- (c) arranging (bringing about) deals in investments;

- (d) making arrangements with a view to transactions in investments.

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

- (i) advise in writing all clients for its regulated activities that it does not have professional indemnity insurance ("PII") in place and that it is no longer permitted by the FSA to carry on regulated activities;
- (ii) provide the FSA with a copy of the written advice sent to all clients for its regulated activities pursuant to (i) above, together with a list of all clients to whom such advice has been sent.

## **2. REASONS FOR ACTION**

### **Summary**

The FSA has concluded, on the basis of the facts and matters described below, that HSMIS 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, HSMIS's resources 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 immediate effect.

### **Relevant Statutory Provisions**

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

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 are set out below.

#### **COND 2.4 - Threshold Condition 4: Adequate resources**

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.

Paragraph 3.5.8 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.

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**

HSMIS is a partnership operating as an independent financial adviser which has one approved person, Harvey Simon.

HSMIS has had no PII since 18 March 2003. Since that date and despite repeated requests and warnings from the FSA, HSMIS has continued in breach of the IPRU(INV) Rules requiring firms to maintain compliant PII.

HSMIS has also failed to present a reasonable case to the FSA that its financial position is such that it nonetheless has adequate resources to satisfy Threshold Condition 4: Adequate resources.

## 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:

- having failed to effect and maintain compliant PII or otherwise satisfy the FSA that HSMIS has adequate resources, HSMIS is failing to make adequate provision in respect of its liabilities, including contingent and future liabilities. That failing is material in relation to the regulated activities for which HSMIS has permission and HSMIS therefore fails to satisfy Threshold Condition 4: Adequate resources;
- the risk of loss or other adverse effect on consumers arising from HSMIS's failings, which are material breaches of requirements imposed upon HSMIS by the FSA's rules, causes the FSA to have very serious concerns about HSMIS such that the exercise of the FSA's own-initiative power to vary HSMIS's Part IV permission with immediate effect is an appropriate response to those concerns;
- specifically, the variation of HSMIS's Part IV permission should take immediate effect to address the FSA's serious concern that claims for which HSMIS is uninsured might arise from new investment business.

### 3. DECISION MAKER

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

### 4. 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.

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 Stephen Oakes at the FSA, 9<sup>th</sup> Floor, 25 The North

Colonnade, Canary Wharf, London E14 5HS.

### **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 by 2 December 2004 or such date as may be permitted by the FSA. Written representations should be made to the Regulatory Decisions Committee and sent to Lynn Richardson, Regulatory Decisions Committee Secretariat, at the above address. If you wish to make oral representations, you should inform Miss Richardson not less than 5 business days before 2 December 2004.

### **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 Lynn Richardson (direct line: 020 7066 3192 / fax: 020 7066 3193), or Brian Whitbread, Head of the Regulatory Decisions Committee Secretariat (direct line: 020 7066 3202 / fax: 020 7066 3203).

For more information concerning this matter generally, you should contact Stephen Oakes at the FSA (direct line: 020 7066 5530/ fax: 020 7066 9720).

**His Honour Dr Colin Kolbert**  
**Deputy Chairman, Regulatory Decisions Committee**