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**FIRST SUPERVISORY NOTICE**

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To: **Irvine North Credit Union Limited**  
Of: **Redburn Community Centre**  
**Dickson Drive**  
**Irvine**  
**Ayrshire**  
**KA12 9HB**

FSA  
Reference  
Number: **213969**

Dated: **19 February 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 varied the permission granted to Irvine North Credit Union Limited ("Irvine North") pursuant to Part IV of the Act ("Irvine North's permission") by removing its regulated activity with immediate effect. Accordingly, Irvine North's permission no longer includes the regulated activity of accepting deposits.
- 1.2 The FSA has further varied Irvine North's permission by including the following requirements, namely that Irvine North must not:
- i. make new loans, or make further advances in relation to, or otherwise vary the terms of, any existing loans;
  - ii. redeem any member's shares;

- iii. repay any deposits;
  - iv. effect any share to loan transfers, or
  - v. without the written consent of the FSA, make any payment, or otherwise dispose of, deal with or diminish the value of any of its assets, including the payment of expenses incurred in the ordinary course of Irvine North's business (by payment from any of its bank accounts or otherwise).
- 1.3 For the avoidance of doubt, the terms of the requirements in paragraph 1.2v do not extend to the repayment of loans by members or the receipt of interest on loans.
- 1.4 The FSA has further varied Irvine North's permission by including the following requirements, namely that within 14 days Irvine North must:
- i. advise in writing all members of Irvine North that it is no longer permitted by the FSA to carry on accepting deposits and is subject to the other restrictions contained within this Notice; and
  - ii. provide the FSA with a copy of the written advice sent to all members for its regulated activity pursuant to (i) above, together with a list of all members to whom such advice 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 Irvine North is failing and will continue to fail 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, Irvine North has not been conducting its business in compliance with proper standards and therefore is in breach of Threshold Condition 5 (Suitability). Irvine North has also failed to comply with Principle 11 (Relations with Regulators) of the FSA's Principles for Businesses under which firms must co-operate with the FSA.
- 2.2 Specifically, the FSA has become aware that Irvine North failed to comply with the requirements contained in a First Supervisory Notice issued to it by the FSA on 10 June 2008, the effect of which was maintained by a Second Supervisory Notice issued to it by the FSA on 8 August 2008 (the "Supervisory Notices"). Irvine North has also failed to comply with requirements added to its permission, at its own request, by a Variation of Permission application (the "VOP") dated 8 September 2008.
- 2.3 The FSA considers that Irvine North should not be permitted to make any payment from its bank accounts without prior approval of the FSA, because the FSA is not satisfied that Irvine North has in the past adhered to the requirements imposed upon it by the FSA in the Supervisory Notices, or the requirements imposed upon itself by means of the VOP. Irvine North has continued to accept deposits and repay shares to

members in the period since 10 June 2008, when it was first subject to regulatory restrictions preventing it from doing so.

- 2.4 The FSA 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**

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

- 2.6 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 which may extend to activities which are not regulated activities.

- 2.7 The FSA is authorised by section 48 of the Act to vary an authorised person's Part IV permission so as to alter an assets requirement imposed on him or to impose such a requirement on him, and to give notice to an institution with whom the authorised person maintains an account so that the institution is, in effect, required to give effect to the assets requirement.

- 2.8 Section 53(3) of the Act allows such variations to take effect immediately if the FSA reasonably considers that it is necessary for the variations to take effect immediately.

#### **Relevant Handbook provisions**

- 2.9 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 relevant to the action specified above are set out below.

#### ***Relevant Principle***

- 2.10 Principle 11 requires a firm to deal with its regulator in an open and co-operative way and to disclose to the FSA appropriately anything relating to the firm of which the FSA would reasonably expect notice.

### ***Relevant regulatory guidance***

- 2.11 Guidance on the Threshold Conditions is set out in the part of the FSA Handbook entitled Threshold Conditions ("COND"), and Guidance on the application of the Threshold Conditions to Credit Unions is set out in the Credit Unions sourcebook ("CRED").

#### Guidance concerning the Threshold Conditions for Credit Unions – CRED 5

- 2.12 CRED 5.1.5G requires the Threshold Conditions to be met on a continuing basis by credit unions, and states that failure to meet one of the Conditions is sufficient grounds for the exercise by the FSA of its power.
- 2.13 CRED 5.2.1(5)G requires the FSA to be satisfied that a credit union is "fit and proper" to be authorised and permitted to carry on regulated activities.
- 2.14 CRED 5.2.4G allows the FSA to vary a credit union's Part IV permission on its own initiative if it appears that the credit union is failing, or is likely to fail, to satisfy the Threshold Conditions.

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

- 2.15 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, among other things, the need to ensure that his affairs are conducted soundly and prudently.
- 2.16 COND 2.5.2G(1) requires the firm to satisfy the FSA that it is 'fit and proper' to have Part IV permission. Paragraph 2.5.2(2) requires the FSA to take into consideration anything that could influence a firm's continuing ability to satisfy the Threshold Condition of Suitability, when forming its opinion as to whether the firm is a fit and proper person.
- 2.17 COND 2.5.6G(1) requires the FSA to take into account whether the firm has been open and co-operative in its dealings with the FSA and is ready, willing and organised to comply with the requirements and standards under the regulatory system.

### **Other relevant regulatory provisions**

- 2.18 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.
- 2.19 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

- 2.20 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.
- 2.21 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.
- 2.22 EG 8.9 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**

- 2.23 Irvine North is a credit union with 2 executive directors and 1 non executive director. In its return to the FSA for the quarter ended 30 June 2008, Irvine North reported that it had 426 members.
- 2.24 On 10 June 2008, the FSA issued a First Supervisory Notice (the "Notice") which varied Irvine North's Part IV permission by removing its only regulated activity of accepting deposits on the grounds that Irvine North had failed to submit its annual returns or its audited accounts to the FSA for the years ended 30 September 2006 and 2007, despite repeated requests by the FSA. The Notice also imposed additional requirements on Irvine North preventing it from undertaking unregulated activities that would ordinarily form part of its day-to-day function; namely that Irvine North must not accept any new deposits, redeem any membership shares, repay any deposits to members or make any payment without the FSA's consent except expenses incurred in the ordinary course of its business. That action was confirmed in a Second Supervisory Notice dated 8 August 2008.
- 2.25 On 3 September 2008, as Irvine North had submitted the overdue returns and accounts, the FSA withdrew the requirements imposed by the First and Second Supervisory Notices, and restored the regulated activity of accepting deposits to Irvine North's permission.
- 2.26 On 8 September, Irvine North submitted a Variation of Permission application to the FSA requesting that its permission be varied to add the same requirements as those imposed by the First Supervisory Notice. On the same day, the FSA added the requirements to Irvine North's permission, effectively closing it to regulated business.
- 2.27 During a visit to Irvine North by the FSA on 5 February 2009, the FSA found, from an examination of relevant records, that Irvine North had continued to receive share deposits from members and allow withdrawals by members in the period since 10 June 2008, during which period its permission expressly forbade such transactions.

## **Conclusions**

2.28 The facts and matters described above lead the FSA, having regard to its regulatory objectives, to the following conclusions:

- Irvine North failed to comply with the terms of the requirements imposed upon it by the First Supervisory Notice of 10 June 2008 and the Second Supervisory Notice of 8 August 2008;
- Irvine North has failed to comply with the terms of the requirements imposed upon it at its own request by the Variation of Permission application dated 8 September 2008;
- Irvine North has not been open and co-operative in its dealings with the FSA, by failing to comply both with restrictions imposed by the FSA and restrictions imposed voluntarily by Irvine North;
- Irvine North has therefore failed to comply with Principle 11 (Relations with Regulators) of the FSA's Principles for Businesses, and has failed to satisfy the FSA that it is ready and willing and organised to comply with the requirements and standards under the regulatory system;
- Irvine North has also failed to satisfy the FSA that it is conducting its business in compliance with proper standards. That failure is significant in the context of its suitability and Irvine North therefore fails to satisfy the FSA that it is a fit and proper person having regard to all the circumstances;
- Irvine North is therefore failing to satisfy Threshold Condition 5 (Suitability) in relation to the regulated activities which Irvine North wishes to have permission to conduct;
- the risk of loss or other adverse effect on consumers arising from Irvine North's conduct, causes the FSA to have serious concerns about Irvine North such that the exercise of the FSA's own-initiative power to vary Irvine North's Part IV permission with immediate effect is an appropriate response to those concerns; and
- the own-initiative power should be exercised so as to enable the FSA to communicate this Notice to the bank with which Irvine North holds an account pursuant to section 48 of the Act.

### **3. DECISION MAKER**

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 you, Irvine North, under section 53(4) and in accordance with section 53(5) of the Act, and it is being served on you at the address you provided to the FSA for the service of such notices. The following statutory rights are important.

##### **The Tribunal**

- 4.2 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.
- 4.3 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 John Kirby at the FSA, 4<sup>th</sup> Floor, 25 The North Colonnade, Canary Wharf, London E14 5HS.

##### **Representations**

- 4.4 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 25 March 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 you wish to make oral representations, please inform us in writing of your intention to do so by 2 March 2009. If you do not notify us by 2 March 2009, you will not, other than in exceptional circumstances, be able to make oral representations.

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

- 4.5 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**

- 4.6 If you have any questions regarding the procedures of the Regulatory Decisions Committee, you 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 3075).

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

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