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## **FIRST SUPERVISORY NOTICE**

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**To: Greater Pollokshaws Credit Union Limited**

**Of: Community Rooms  
21 Riverbank Street  
Pollokshaws  
Glasgow  
G43 1QD**

**Dated: 11 August 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 varied the permission granted to Greater Pollokshaws Credit Union Limited ("Pollokshaws CU") pursuant to Part IV of the Act ("Pollokshaws CU's Part IV permission") by removing its regulated activity with immediate effect. Accordingly, Pollokshaws CU's Part IV permission no longer includes the following regulated activity: accepting deposits.

The FSA has further varied Pollokshaws CU's Part IV permission by including the following requirements, namely that within 14 days it must:

- (i) advise in writing all members of Pollokshaws CU that it is no longer permitted by the FSA to carry on accepting deposits; 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**

The FSA has concluded, on the basis of the facts and matters described below, that Pollokshaws CU 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, it has not satisfied the FSA that it is a fit and proper person having regard to all the circumstances, including the need to ensure that its affairs are conducted soundly, prudently and in compliance with proper standards. Pollokshaws CU has also failed to comply with Principle 11 of the FSA's Principles for Businesses (“FSA Principles”), under which firms must co-operate with the FSA.

The FSA considers that Pollokshaws CU should not be permitted to accept new deposits when it has failed to provide minimum financial information to, and reply adequately to communications from, the FSA.

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; 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.

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 Credit Unions Sourcebook (“CRED”) sets out the regulatory requirements which apply to credit unions. The main considerations in relation to the action specified above are set out below.

## **CRED 5.1 – Application and purpose**

Paragraph 5.1.5 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.

Paragraph 5.2.1(5) requires the FSA to be satisfied that a credit union is "fit and proper" to be authorised and permitted to carry on regulated activities.

Paragraph 5.2.4 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.

## **Relevant Threshold Condition**

### **COND 2.5 - Threshold Condition 5: Suitability (paragraph 5, Schedule 6 to the Act)**

Paragraph 2.5.1(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 2.5.2(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.

Paragraph 2.5.6(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. Such requirements include the obligation to submit financial returns.

### **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.

### **Financial Reporting requirements**

Failure to submit returns to the FSA is a breach of Rule 16.7.62 of the Supervision Manual ("SUP") which states:

*"a credit union must submit reports to the FSA in accordance with and in the same format as, the forms contained in SUP 16 Ann 14R as set out in SUP 16.7.63R"*

SUP Rule 16.7.63 requires credit unions to submit key financial data quarterly (Form CQ), one month after each quarter end, as well as extended financial data (Form CY) annually, seven months after the financial year end.

CRED Rule 14.10.10 of the Credit Union Sourcebook also requires that:

*"Every credit union must send to the FSA a copy of its audited accounts published in accordance with section 3A of the Friendly and Industrial and Provident Societies Act 1968 (See CRED 14 Ann 1G.)"*

*The accounts must*

- (a) (text omitted); and*
- (b) accompany the annual return submitted to the FSA under SUP 16.7.62R (see CRED 14.10.7R), unless they have been submitted already."*

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

Pollokshaws CU is a credit union which has 9 approved persons, 6 of whom are Pollokshaws CU's executive directors.

Pollokshaws CU failed to submit (Form CQ) returns to the FSA for the quarters ended 30 June 2003, 30 September 2003 and 31 December 2003. In addition, Pollokshaws CU has not submitted Form CY return or its annual accounts for the year ended 30 September 2003. Despite repeated requests and warnings from the FSA, Pollokshaws CU still has failed to submit these returns and accounts to the FSA. Pollokshaws CU has also failed to submit the quarterly return for the period ended 31 March 2004. Consequently, Pollokshaws CU has acted in breach of the SUP and CRED Rules requiring firms to submit returns to the FSA.

### **Conclusions**

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

- Pollokshaws CU has failed to submit quarterly returns for the quarters ended

30 June 2003, 30 September 2003, 31 December 2003 and 31 March 2004 by the due dates, or at all, and therefore Pollokshaws CU is in breach of SUP Rule 16.7.62;

- Pollokshaws CU has failed to submit an annual return and/or audited accounts for the year ended 30 September 2003 by the due dates, or at all, and therefore Pollokshaws CU is in breach of SUP Rule 16.7.62 and CRED Rule 14.10.10;
- Pollokshaws CU, by failing to make financial returns in a timely fashion despite repeated requests for such information from the FSA, is failing to comply with Principle 11 of the FSA Principles, under which a firm must deal with its regulator in an open and co-operative way;
- Pollokshaws CU, by failing to make financial returns in a timely fashion despite repeated requests for such information from the FSA, is failing to satisfy the FSA that it is conducting its business soundly and prudently and in compliance with proper standards and it is therefore in breach of Threshold Condition 5 – Suitability;
- the risk of loss or other adverse effect on consumers by Pollokshaws CU's failing, causes the FSA to have serious concerns about Pollokshaws CU such that the exercise of the FSA's own-initiative powers to vary Pollokshaws CU's Part IV permission with immediate effect is an appropriate response to those concerns; and
- specifically, the variation of Pollokshaws CU's Part IV permission should take immediate effect to address the FSA's serious concern that it is not a fit and proper to conduct regulated activities.

### **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 James Bennett 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 10 September 2004 or such later date as may be permitted by the FSA. Written representations should be made to the Regulatory Decisions Committee and sent to Liane Silvester, Regulatory Decisions Committee Secretariat, at the above address. If you wish to make oral representations, you should inform Mrs Silvester not less than 5 business days before 10 September 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 Liane Silvester (direct line: 020 7066 3198/fax: 020 7066 3199), 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 James Bennett at the FSA (direct line: 020 7066 9980 / fax: 020 7066 9720).

Sir Anthony Holland  
Deputy Chairman, Regulatory Decisions Committee