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## FIRST SUPERVISORY NOTICE

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To: **Michael Reilly (trading as Abercorn Financial Services)**

Dated: **15 November 2007**

**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 you, Michael Reilly, trading as Abercorn Financial Services ("Abercorn"), pursuant to Part IV of the Act ("your permission") by removing all regulated activities with immediate effect. Accordingly, your permission no longer includes the following regulated activities:

- (a) advising on investments (except on Pension Transfers and Pension Opt Outs);
- (b) arranging (bringing about) deals in investments;
- (c) making arrangements with a view to transactions in investments;
- (d) advising on regulated mortgage contracts;
- (e) arranging (bringing about) regulated mortgage contracts;
- (f) making arrangements with a view to regulated mortgage contracts, and
- (g) agreeing to carry on a regulated activity.

1.2 The FSA has further decided to vary your permission by including the following requirements, namely that within 14 days you must:

- (i) notify in writing all clients for your regulated activities that you are no longer permitted by the FSA to carry on regulated activities, and
- (ii) provide the FSA with a copy of the written notice sent in accordance with (i) above, together with a list of all clients to whom the notice 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 you are 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, your resources are not adequate in relation to the regulated activities you have permission to carry on.
- 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 By section 45 of the Act, the FSA is authorised:
- 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 an authorised person's permission, where it is desirable to exercise that power in order to protect the interests of consumers, 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 variations to take effect immediately if the FSA reasonably considers that it is necessary for the variations to take effect immediately.

### Relevant Regulatory Provisions

- 2.6 In exercising its power to vary a Part IV permission, the FSA must have regard to the relevant regulatory provisions and guidance, in particular the Enforcement Guide ("EG"). The main considerations in relation to the action specified above are set out below.

#### **EG 8 - The FSA's policy for exercising its own-initiative power to vary a Part IV permission**

- 2.7 EG 8.1 provides that the FSA to have regard to its regulatory objectives and the range of regulatory tools that are available to it.
- 2.8 EG 8.2 provides that the FSA will take formal action affecting the conduct of a firm's commercial business only if that business is being conducted in such a way that the

FSA judges it necessary to act in order to address the consequences of non-compliance with the Act and the Principles for Businesses.

- 2.9 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) G specifies that the FSA will consider exercising its own-initiative power where a firm's financial resources appear to be inadequate.
- 2.10 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.

**Guidance concerning Threshold Condition 4: Adequate resources (paragraph 4, Schedule 6 to the Act) - COND 2.4**

- 2.11 COND 2.4.1(1) D reproduces the relevant statutory provision that 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.
- 2.12 COND 2.4.1(2) D 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).
- 2.13 COND 2.4.4(2)(c)(vi) G states that the FSA, when assessing whether a firm will satisfy and continue to satisfy Threshold Condition 4, will have regard to whether the firm has entered into a deed of arrangement or an individual voluntary agreement (or in Scotland, a trust deed) or other composition in favour of its creditors, or is doing so.
- 2.14 COND 2.4.4(3) G 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.

**Facts and matters relied on**

- 2.15 You are a sole trader authorised by the FSA on 3 January 2006 to carry on designated investment business and home finance business.
- 2.16 On 14 June 2007, you entered into a Trust Deed under Section 5 of the Bankruptcy (Scotland) Act 1985 and your Estimated Statement of Affairs as at that date showed that the amounts you owed to creditors exceeded your available assets by £108,717. You are therefore failing to demonstrate compliance with FSA Rule 4.2.1 in the Prudential Sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries ("MIPRU") section of the FSA Handbook which states that:

"A firm must at all times ensure that it is able to meet liabilities as they fall due."

## **Conclusions**

- 2.17 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:
- that you are failing to meet the requirement set out in MIPRU 4.2.1 R, that you must be able to meet your liabilities as they fall due;
  - this failing is material in relation to the regulated activities for which you have permission and you therefore fail to satisfy Threshold Condition 4: Adequate resources;
  - the risk of adverse effect on consumers arising from this failing, which is a material breach of requirements imposed upon you by the FSA's rules, causes the FSA to have very serious concerns about you such that the exercise of the FSA's own-initiative power to vary your permission with immediate effect is an appropriate response to those concerns; and
  - specifically, the variation of your permission should take immediate effect to address the FSA's serious concern that any liabilities incurred by you cannot be met.

### **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 in accordance with section 53(4) of the Act. 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 Lehong Mac at the FSA, 9<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 19 December 2007 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, you should inform Mrs Cheesman not less than 5 business days before 19 December 2007.

## **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, Regulatory Decisions Committee Professional Support Services (direct line: 020 7066 3074 / fax: 020 7066 1015).
- 4.7 For more information concerning this matter generally, you should contact Lehong Mac at the FSA (direct line: 020 7066 5742 / fax: 020 7066 1459).

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