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## SECOND SUPERVISORY NOTICE

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To: **Rotton Park/Winson Green Credit Union Limited**  
Of: **260 Dudley Road**  
**Birmingham**  
**West Midlands**  
**B18 4HL**  
Dated: **7 February 2006**

**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 not to rescind the variation of the permission granted to Rotton Park/Winson Green Credit Union Limited ("RP/WG") pursuant to Part IV of the Act ("RP/WG's Part IV permission") effected by the First Supervisory Notice issued on 23 November 2005. This removed RP/WG's only regulated activity with immediate effect, and included the following requirements, namely that RP/WG 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; or
  - (iv) 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, except to pay expenses incurred in the ordinary course of RP/WG's business.

- 1.2 The First Supervisory Notice also made clear that the expenses referred to in 1.1(iv) do not include gifts, nor payments of unusual or significant amounts to RP/WG's employees or officers or any persons connected to them.

## **2. REASONS FOR ACTION**

### **Summary**

- 2.1 The FSA has concluded, on the basis of the facts and matters described below, that RP/WG 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, RP/WG's financial resources are not adequate in relation to the regulated activities it carries on.
- 2.2 The FSA has therefore concluded that it should not rescind the variation of RP/WG's Part IV Permission effected by the First Supervisory Notice.

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

- 2.3 RP/WG is a version 1 credit union, with 6 executive directors and 4 non executive directors. In its return to the FSA for the quarter ended 30 September 2005, RP/WG reported that it had 755 members.
- 2.4 RP/WG's audited accounts for the year ended 30 September 2004 showed that it had negative capital of £33,922, a significant decline from the position shown in the audited accounts for the year ended 30 September 2003 which was negative capital of £29,344.
- 2.5 In its financial return for the quarter ended 30 June 2005, RP/WG reported negative capital of £33,572 and in the quarter ended 30 September 2005, the situation had only marginally improved to £31,784.
- 2.6 The FSA has given RP/WG a reasonable period in which to correct its capital position, but RP/WG has failed to do so.

### **Representations**

- 2.7 *RP/WG made written representations by letters dated 19 December 2005 and 19 January 2006, and made oral representations through its Board of Management on 19 January 2006. RP/WG stated that it had complied with the First Supervisory Notice, despite the difficulties which resulted in that RP/WG has not been able to expand its operations and gain additional funding through new deposits. RP/WG emphasised the factors which mean that its continuing operation is important to the local community.*
- 2.8 *In relation to the First Supervisory Notice, RP/WG acknowledged that it does not have sufficient capital to comply with the relevant FSA requirements in CRED. However, RP/WG is now taking steps to remedy that position, in particular through costs savings (including the paid member of staff waiving his salary, RP/WG's landlord agreeing to forego rent, both over a period of three years) and through enhanced efforts to collect debts owed to RP/WG. In the view of RP/WG these steps will lead to a positive capital position, or a profit, being achieved within three years – and potentially more quickly if*

*the collection of debts proceeds more successfully than projected. However a three year period for remedying the position is considered realistic.*

- 2.9 *RP/WG also have a longer term goal of a merger with one or more neighbouring credit unions to cover the North West Birmingham area and so that the merged credit union can be more effective than the existing smaller credit unions. But RP/WG acknowledges that this is not an imminent prospect – it would not be in the interests of any merger partner for the merged union to have a negative capital position.*
- 2.10 The FSA has considered your representations and notes your frank acknowledgment of non-compliance with the FSA's requirements as to capital. Similarly the FSA welcomes the efforts that RP/WG has made to identify potential costs savings and to improve its debt collection – and the FSA particularly notes the support from the local community in these efforts. However, the FSA considers that the deficit in the capital position is not a recent event – it has existed for about two years before the First Supervisory Notice was given, and only once that Notice was given has RP/WG demonstrated any intent to take action to remedy it. The course of action outlined on behalf of RP/WG is unlikely to demonstrate a continuing trend of improvement until it has been followed, at minimum, for several months. Until then RP/WG will not comply with, and will not be able to comply with, the relevant regulatory requirements in CRED, nor with Threshold Condition 4 (Adequate resources).

### **Conclusions**

- 2.11 The facts and matters described above lead the FSA, having regard to the representations made on behalf of RP/WG and to the FSA's regulatory objectives, to the following conclusions:
- in breach of CRED 8.3.1 R, RP/WG has failed to maintain a positive amount of capital since 30 September 2003 and therefore the amount saved by its members is worth less than they deposited;
  - these failures are material in relation to the regulated activity for which RP/WG has permission and it therefore fails to satisfy Threshold Condition 4 (Adequate resources);
  - the risk of loss or other adverse effect on consumers by RP/WG's failings, causes the FSA to have serious concerns about RP/WG such that the exercise of the FSA's own-initiative powers to vary RP/WG's Part IV permission with immediate effect was and remains an appropriate response to those concerns;
  - the steps outlined on behalf of RP/WG, and summarised above, are capable of being given effect without the FSA revoking the First Supervisory Notice;
  - those steps will take time to have effect on RP/WG's financial resource position, and the FSA considers that it is premature to remove the protections resulting from the variation of RP/WG's permission until RP/WG is able to demonstrate that they have been, or (at the least) are being, successful; and

- unless and until those steps (or other steps) taken by RP/WG demonstrate sufficient improvement for the FSA to be able to be satisfied as to the ability of RP/WG to meet and continue to meet the relevant financial resource requirements, the FSA does not consider that revoking the First Supervisory Notice accords with its obligations under the Act.

2.12 Accordingly, the variation of RP/WG's Part IV permission should remain in effect to address the FSA's serious concern that its resources are inadequate to conduct the regulated activity it carries on.

### **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**

4.1 This Supervisory Notice is given to RP/WG 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 Olukemi Yusuph at the FSA, 9<sup>th</sup> Floor, 25 The North Colonnade, Canary Wharf, London E14 5HS.

#### **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**

- 4.7 For more information concerning this matter generally, you should contact John Kirby at the FSA (direct line: 020 7066 1458 / fax: 020 7066 1459).

**Timothy J. Herrington**  
**Chairman, Regulatory Decisions Committee**

## **Annex – Relevant Statutory Provisions and Guidance**

### **Relevant Statutory Provisions**

- 2.4 The FSA’s regulatory objectives established in section 2(2) of the Act include the protection of consumers.
- 2.5 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, and
  - 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.
- 2.6 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 Guidance**

- 2.7 In exercising its power to vary a Part IV permission, the FSA must have regard to guidance published in the FSA Handbook. The relevant guidance is found in the Credit Unions Sourcebook (“CRED”), which sets out the regulatory requirements which apply to credit unions, the Threshold Conditions (“COND”) and the Enforcement Manual (“ENF”). The main considerations relevant to the action specified above are set out below.

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

- 2.8 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.
- 2.9 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.
- 2.10 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.

#### **ENF 3.5 - The FSA’s policy on exercising its own-initiative power to vary Part IV permission**

- 2.11 ENF 3.5.2 G requires the FSA to have regard to its regulatory objectives and the range of regulatory tools that are available to it.
- 2.12 ENF 3.5.8 G 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.
- 2.13 ENF 3.5.13 G 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 the relevant Threshold Condition: COND 2.4 - Threshold Condition 4: Adequate Resources (paragraph 4, Schedule 6 to the Act)

- 2.14 COND 2.4.1 G 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.
- 2.15 COND 2.4.2 G (2) in giving guidance on the interpretation of “adequate resources”, defines the term “adequate” as meaning sufficient in terms of quantity, quality and availability and “resources” as including all financial resources, capital, provisions against liabilities, holdings of or access to cash and other liquid assets.
- 2.16 COND 2.4.4 G (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.

CRED 8.3.1 R – The financial resources requirement

- 2.17 Failure to maintain positive capital is a breach of FSA Rule CRED 8.3.1 R, which states:
- “A version 1 credit union must at all times maintain a positive amount of capital.”
- 2.18 The guidance in CRED 8.3.3 G states that “CRED 8.3.1R implements the principle that every pound saved by a depositor with a credit union should always be worth at least a pound.”