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## **SUPPLEMENTAL FIRST SUPERVISORY NOTICE**

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To: **Rotton Park/Winson Green Credit Union Limited**  
Of: **Old Lloyds Bank Building**  
**260 Dudley Road**  
**Winson Green**  
**Birmingham**  
**B18 4HL**

Dated: **23 June 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 By a First Supervisory Notice dated 23 November 2005, as confirmed by a Second Supervisory Notice dated 7 February 2006 (together the "Original Supervisory Notices"), and pursuant to section 45 of the Financial Services and Markets Act 2000 (the "Act"), the FSA has varied 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") by removing its regulated activity. Accordingly, RP/WG's Part IV permission no longer includes the regulated activity of accepting deposits.
- 1.2 For the reasons listed below, and pursuant to sections 45 and 48 of the Act, the FSA has now further varied RP/WG's Part IV permission by including the following requirements, namely that:
- (1) RP/WG must not, 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 RP/WG's business (by payment from any of its bank accounts or otherwise); and

(2) RP/WG must:

- (i) notify its members of the fact that its permission has been varied as set out by the Second Supervisory Notice dated 7 February 2006, and by this Notice; and
- (ii) provide the FSA, within 14 days, with written details of the arrangements by which it will comply with the requirement in paragraph 1.2(2)(i) above.

1.3 For the avoidance of doubt, the terms of the requirements do not extend to the repayment of loans by members or the receipt of interest on loans.

1.4 This Notice imposes requirements in addition to the action specified in the Original Supervisory Notices referred to in paragraph 1.1 and the Original Supervisory Notices remain in effect except that the requirement in paragraph 1.2(2)(i) above supersedes the Original Supervisory Notices and further restricts payments of expenses incurred in the ordinary course of RP/WG's business.

## **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 has not been conducting its business in compliance with proper standards and therefore is in breach of Threshold Condition 5 (Suitability). RP/WG 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. Specifically, RP/WG has failed to comply with the terms of the requirements contained in the Original Supervisory Notices.

2.2 The FSA considers that RP/WG 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 RP/WG has in the past adhered to the requirements imposed upon it by the Original Supervisory Notices. RP/WG has continued to accept deposits and repay shares to members in the period since 23 November 2005, when it was first subject to regulatory restrictions (imposed by the First Supervisory Notice of that date) preventing it from doing so.

2.3 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**

2.4 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 or where it is desirable to exercise that power in order to protect the interests of consumers and potential 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.
- 2.6 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.
- 2.7 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.
- 2.8 Section 43(3) of the Act permits a requirement to extend to activities which are not regulated activities.

### **Relevant Guidance**

- 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 relevant guidance is found in the Credit Unions Sourcebook ("CRED"), which sets out the regulatory requirements which apply to credit unions, the Threshold Conditions Manual ("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

- 2.10 CRED 5.1.5 G 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.
- 2.11 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.
- 2.12 CRED 5.2.4 G 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

- 2.13 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.
- 2.14 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.
- 2.15 ENF 3.5.11 G provides that the FSA will consider exercising its own-initiative power as a matter of urgency where:
- the information available to it indicates serious concerns about the firm or its business that need to be addressed immediately; and
  - circumstances indicate that it is appropriate to use statutory powers immediately to require and/or prohibit certain actions by the firm in order to ensure the firm addresses these concerns.
- 2.16 ENF 3.5.12 (1) G provides that situations that will give rise to serious concerns include the situation where there is information indicating significant loss, risk of loss or other adverse effects to consumers, where action is necessary to protect their interests.
- 2.17 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;
  - the extent to which customer assets appear to be at risk;
  - the seriousness of any suspected breach of the requirements of the legislation or the rules and the steps that need to be taken to correct that breach; and
  - the firm's conduct, including whether the firm identified the issue, whether the firm brought the issue promptly to the FSA's attention, the firm's past history, management ethos and compliance culture and steps that the firm has taken or is taking to address the issue.

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

- 2.18 COND 2.5.1 G 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, amongst other things, the need to ensure that his affairs are conducted soundly and prudently.

- 2.19 COND 2.5.4(2)(b) G requires the FSA, when forming its opinion as to whether an authorised person is conducting its affairs soundly and prudently, to have regard to relevant matters including whether it has, or will have, a competent and prudent management.
- 2.20 COND 2.5.4(3) G requires the FSA only to take into account relevant matters which are significant in the context of the suitability of the firm.
- 2.21 COND 2.5.7(1) G permits the FSA, when forming its opinion as to whether an authorised person has a competent and prudent management, to have regard to relevant matters, including whether the authorised person has a governing body made up of individuals with an appropriate range of skills and experience to understand, operate and manage the firm's regulated activities, in determining whether a firm satisfies Threshold Condition 5.

#### Relevant Principle

- 2.22 Principle 11 of the FSA's Principles for Businesses 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.

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

- 2.23 RP/WG is a credit union with 6 executive directors and 4 non executive directors. In its return to the FSA for the quarter ended 31 March 2006, RP/WG reported that it had 623 members.
- 2.24 On 23 November 2005, the FSA issued a First Supervisory Notice which varied RP/WG's Part IV permission by removing its only regulated activity of accepting deposits on the grounds that RP/WG had been unable to address its regulatory capital deficiency. The Notice also imposed additional requirements on RP/WG preventing it from undertaking unregulated activities that would ordinarily form part of its day-to-day function; namely that RP/WG 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 7 February 2006.
- 2.25 Through contact with members of RP/WG, it appeared to the FSA that RP/WG may have continued to receive share deposits from members and allow withdrawals of savings by members in the period since 23 November 2005, during which time it was subject to regulatory restrictions preventing it from doing so.
- 2.26 An examination by the FSA of RP/WG's cash book and records that support the cash book entries has revealed that RP/WG accepted deposits and repaid deposits to members in the period since 23 November 2005, when RP/WG's Part IV permission did not allow it to do so.

## **Conclusions**

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

- RP/WG has failed to comply with the terms of the requirements imposed upon it by the First Supervisory Notice of 23 November 2005 and the Second Supervisory Notice dated 7 February 2006;
- RP/WG has not been open and co-operative in its dealings with the FSA, namely by failing to comply with restrictions imposed by the FSA;
- RP/WG 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;
- RP/WG 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 RP/WG therefore fails to satisfy the FSA that it is a fit and proper person having regard to all the circumstances;
- RP/WG is therefore failing to satisfy Threshold Condition 5 (Suitability) in relation to the regulated activities which RP/WG wishes to have permission to conduct;
- the risk of loss or other adverse effect on consumers arising from RP/WG's conduct, causes the FSA to have serious concerns about RP/WG such that the exercise of the FSA's own-initiative power to vary RP/WG'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 give notice of this Notice to the banks with which RP/WG hold accounts 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 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 Pauline Cheng at the FSA, 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 24 July 2006. Written representations should be made to the Regulatory Decisions Committee and sent to Lynn Cheesman, Regulatory Decisions Committee Professional Support Services, at the above address. If you wish to make oral representations, you should inform Mrs Cheesman not less than 5 business days before 24 July 2006 deadline.

## **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 Brian Whitbread, Head of the Regulatory Decisions Committee Professional Support Services (direct line: 020 7066 3202 / fax: 020 7066 3203).
- 4.7 For more information concerning this matter generally, you should contact Pauline Cheng at the FSA (direct line: 020 7066 5228 / fax: 020 7066 5229).

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