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## FIRST SUPERVISORY NOTICE

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To: **South West Durham Credit Union Limited**

Of: **75 Church Street  
Shildon  
County Durham  
DL4 1DT**

Dated: **24 November 2008**

**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 you, South West Durham Credit Union Limited ("SWD"), pursuant to Part IV of the Act ("SWD's Part IV permission") by removing its regulated activity with immediate effect. Accordingly, SWD's Part IV permission no longer includes the regulated activity of accepting deposits.
- 1.2 The FSA has further varied SWD's Part IV permission by including the following requirements, namely that SWD 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) effect any share to loan transfers;
  - (iv) repay any deposits; 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, except to pay expenses incurred in the ordinary course of SWD's business.
- 1.3 For the avoidance of doubt, the expenses referred to in 1.2(v) do not include gifts, nor payments of unusual or significant amounts to SWD's employees or officers or any persons connected to them.

- 1.4 The FSA has also varied SWD's Part IV permission by including the following requirements, namely that within 14 days it must:
- (i) advise in writing all members of SWD that it is no longer permitted by the FSA to carry on accepting deposits and of the other restrictions placed upon it by the FSA; 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 SWD 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, SWD has not maintained positive capital and presents a risk to consumers by continuing to be permitted to conduct the regulated activity it carries on.
- 2.2 The FSA considers that SWD should not be permitted to accept new deposits nor should it make any further loan advances or redeem any membership shares, when it has failed to maintain adequate capital.
- 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, 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.

2.7 Paragraph 4(1) of Schedule 6 to the Act sets out Threshold Condition 4, which states:

“The resources of the person concerned must, in the opinion of the Authority, be adequate in relation to the regulated activities that he seeks to carry on, or carries on.”

### **Relevant Handbook provisions**

2.8 In exercising its power to vary a Part IV permission, the FSA must have regard to relevant provisions in the FSA Handbook of Rules and Guidance (the “FSA Handbook”). The main considerations relevant to the action specified are set out below.

2.9 Principle 4 (Financial Prudence) requires that a firm must maintain adequate financial resources, as laid out in of the FSA's Principles for Businesses in the FSA Handbook.

2.10 FSA Rule 8.3.1R of the Credit Unions Sourcebook in the FSA Handbook (“CRED”) states:

“A version 1 credit union must at all times maintain a positive amount of capital.”

2.11 The guidance in CRED 8.3.2G states that:

“CRED 8.3.1R means that a credit union’s assets will at all times exceed its non-capital liabilities.”

2.12 The guidance in CRED 8.3.3G 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.”

### **Guidance concerning the relevant Threshold Condition**

2.13 Guidance on the Threshold Conditions is set out in Chapter 2 of the Part of the FSA Handbook entitled Threshold Conditions (“COND”).

#### COND 2.4 - Threshold Condition 4: Adequate Resources (paragraph 4, Schedule 6 to the Act)

2.14 COND 2.4.1UK 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 2.4.2G(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 2.4.4G(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.

## **Relevant regulatory provisions**

2.17 The FSA's policy in relation to the use of its enforcement powers is set out in the Enforcement Guide ("EG").

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

2.18 EG 8.1 states 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.

2.19 EG 8.2 states 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.

2.20 EG 8.5 states that the circumstances in which the FSA will consider varying a firm's Part IV permission include those where the FSA has serious concerns about the firm or about the way its business is being or has been conducted.

2.21 EG 8.5(1)(a) states that the FSA will consider exercising its own-initiative power where a firm's financial resources appear to be inadequate for the scale or type of regulated activity it is carrying on.

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 SWD is a version 1 credit union. In its Quarterly Return for the period ended 30 June 2008, SWD reported that it had 745 members.

2.24 SWD's draft audited accounts for the year ended 30 September 2007 showed that it had negative capital of £37,254.

2.25 SWD has failed to provide any viable plan to remedy its capital position promptly, despite being given adequate time and opportunity to do so.

## **Conclusions**

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

- SWD is in breach of CRED 8.3.1R by failing to maintain a positive amount of capital at all times 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 SWD has permission and it therefore fails to satisfy Threshold Condition 4 (Adequate resources);
- the risk of loss or other adverse effect on consumers by SWD's failings, causes the FSA to have serious concerns about SWD such that the exercise of the FSA's own-initiative powers to vary SWD 's Part IV permission with immediate effect is an appropriate response to those concerns; and
- specifically, the variation of SWD's Part IV permission should take immediate effect to address the FSA's serious concern that its resources are inadequate to conduct the regulated activity it carries on.

### **3. DECISION MAKER**

3.1 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 SWD 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 Isabel Barnes 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 29 December 2008 or such later date as may be permitted by the FSA. Written representations should be made to the Regulatory Decisions Committee and sent to Iain McConville, 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 us in writing of your intention to do so by 5 December 2008. If you do not notify us by 5 December 2008, 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 Iain McConville (direct line: 020 7066 3200 / fax: 020 7066 3201, 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 Isabel Barnes at the FSA (direct line: 020 7066 1426 / fax: 020 7066 1427).

Tim Herrington  
Chairman, Regulatory Decisions Committee