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## SECOND SUPERVISORY NOTICE

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To: **Wilmot Financial Solutions Limited**  
Of: **8 Rectory Lane**  
**Banstead**  
**Surrey**  
**SM7 3PP**  
Firm Reference Number: **401311**  
Dated: **24 February 2009**

**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, having taken account of your written representations dated 25 November 2008 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 permission granted to you, Wilmot Financial Solutions Limited ("Wilmot"), pursuant to Part IV of the Act ("Wilmot's Permission") effected by the First Supervisory Notice. Accordingly, Wilmot's Permission no longer includes the following regulated activities:

- (1) advising on investments (excluding pension transfers and pension opt outs);
- (2) advising on pension transfers and pension opt outs;
- (3) arranging deals in investments;
- (4) making arrangements with a view to transactions in investments, and
- (5) agreeing to carry on a regulated activity.

1.2 The FSA has further decided to vary Wilmot's Permission by including the following requirements, namely that within 14 days it must:

- (1) advise in writing all clients for Wilmot's regulated activities that it is no longer permitted by the FSA to carry on regulated activities; and

- (2) provide the FSA with a copy of the written advice sent to all clients for Wilmot's regulated activities pursuant to (i) above, together with a list of all clients to whom such advice has been sent.

## **2. REASONS FOR ACTION**

- 2.1 The FSA has concluded, on the basis of the facts and matters described below, that Wilmot's conduct has not met the requirements of the FSA's Principles for Businesses (the "Principles") and that it 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, Wilmot is not a fit and proper person as it has failed to conduct its business in compliance with proper standards. Specifically, whilst acting as an investment adviser on behalf of a client's self administered pension scheme (the "Scheme"), the sole director and main controller of Wilmot, Mr Gerard Wilmot, falsified the signature of the Scheme's member trustee on 23 occasions. As a result, unauthorised payments totalling £49,550 were made from the Scheme's bank account to Wilmot Group's bank account. Mr Wilmot has also confirmed, through his solicitors, that he falsified the Scheme's member trustee's signature on various other documents.
- 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 Principles**

- 2.3 Principle 1 (Integrity) requires a firm to conduct its business with integrity.
- 2.4 Principle 6 (Customers' interests) requires a firm to pay due regard to the interests of its customers and treat them fairly.

### **Relevant statutory provisions**

- 2.5 The FSA's regulatory objectives, established in section 2(2) of the Act, include the protection of consumers.
- 2.6 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 or where it is desirable to exercise that power in order to protect the interests of consumers;
  - to vary such 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.
- 2.7 Section 53(3) of the Act allows such a variation to take effect immediately if the FSA, having regard to the ground on which it is exercising its own initiative power,

reasonably considers that it is necessary for the variation to take effect immediately.

### **Relevant regulatory provisions**

- 2.8 In exercising its power to vary a Part IV permission, the FSA must have regard to the relevant regulatory provisions and guidance, including the provisions and guidance contained in the FSA's Handbook of Rules and Guidance (the "Handbook"), and also, 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

- 2.9 The FSA's policy in relation to exercising its power to vary a Part IV permission is set out in EG.
- 2.10 EG 8.1 provides that the FSA will have regard to its regulatory objectives and the range of regulatory tools that are available to it.
- 2.11 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, the Principles for Businesses and other rules.
- 2.12 EG 8.5 provides that the circumstances in which the FSA will consider exercising its power include where the FSA has serious concerns about a firm or about the way its business is being or has been conducted. EG 8.5 (1)(b)(i) specifies that the FSA will consider exercising its own-initiative power where a firm appears not to be a fit and proper person to carry on regulated activities because it has not conducted its business in compliance with high standards and has been involved in financial crime. EG 8.5 (1)(b)(iii) specifies that the FSA will consider exercising its own-initiative power where a firm has breached requirements imposed on it under the Act (including the Principles and the Rules), for example in respect of disclosure or notification requirements, and the breaches are material in number or individual seriousness.
- 2.13 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. In addition, in considering whether to exercise its urgent own-initiative powers, the FSA will also take into consideration the risk that the firm's business may be used or has been used to facilitate financial crime, including money laundering. Where it appears that the firm is being used for, or is itself involved in, financial crime and is failing to meet the Threshold Conditions, then the urgent use of the FSA's own-initiative powers is appropriate.

#### **Guidance concerning the relevant Threshold Condition ("COND")**

- 2.14 Guidance on the Threshold Conditions is set out in Chapter 2 of the part of the FSA Handbook entitled Threshold Conditions ("COND").

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

- 2.15 COND 2.5.1 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, among other things, the need to ensure that his affairs are conducted soundly and prudently.
- 2.16 COND 2.5.3G(1) states that the emphasis of the Threshold Condition is on the suitability of the firm itself. However, in circumstances the FSA may consider that the firm is not suitable because of doubts over the individual or collective suitability of persons connected with the firm.
- 2.17 COND 2.5.4G(2)(a) and (b) require 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 conducts its business with integrity and in compliance with proper standards and whether it has, or will have, competent and prudent management.
- 2.18 COND 2.5.4G(3) requires the FSA only to take into account relevant matters which are significant in the context of the suitability of the firm.
- 2.19 COND 2.5.6G permits the FSA, when forming its opinion as to whether an authorised person is conducting its business with integrity and in compliance with proper standards, to have regard to relevant matters, including whether:
- "(1) the firm has been open and co-operative in all its dealings with the FSA and is ready and willing to comply with the requirements and standards under the regulatory system";
  - "(4) the firm has contravened, among other things, the requirements of the regulatory system, which includes the threshold conditions and the FSA Principles and other rules".

**Facts and matters relied on in the First Supervisory Notice**

- 2.20 Wilmot became authorised by the FSA on 11 April 2005 to carry on designated investment business. Mr Gerard Wilmot is the sole director of Wilmot. Mr Wilmot is the main controller of Wilmot as he holds the majority of the share capital of Wilmot Group Limited ("Wilmot Group"), an unregulated company, which in turn owns the entire share capital of Wilmot.
- 2.21 On 1 June 2005, Wilmot was appointed to act as the investment adviser of the Scheme. On one occasion prior to Wilmot's appointment as the Scheme investment adviser, Mr Wilmot sent an invoice to the Scheme which led to an unauthorised payment of £1,050 being made from the Scheme's bank account to the bank account of Wilmot Group. Following Wilmot's appointment as the Scheme investment adviser and up until May 2008, Mr Wilmot falsified the Scheme Trustee's signature on 23 occasions, so as to cause unauthorised payments totalling £48,500 to be made from the Scheme's bank account into the bank account of Wilmot Group. Mr Wilmot has stated, through his solicitors, that he signed documents as the Scheme Trustee to effect the payment of fees purportedly owed to Wilmot, totalling £49,550. Mr Wilmot has also confirmed that he falsified the Scheme Trustee's signature on numerous occasions in relation to other fees which needed to be paid from the

Scheme's bank account to third parties.

- 2.22 At no stage did Mr Wilmot or Wilmot notify the Scheme Trustee of the purported fees or that documents were being signed on his behalf. The Scheme trustee only later discovered that unauthorised payments were being from the Scheme's bank account after making his own enquiries.
- 2.23 Mr Wilmot has attempted to justify his actions by stating that the unauthorised payments made from the Scheme to Wilmot relate to fees for services rendered and that the trustees of the Scheme could have become aware of Wilmot's fees via the Scheme's annual accounts.

### **Representations**

- 2.24 In its written representations dated 25 November 2008, Wilmot accepted that prima facie the allegations were of the utmost seriousness and without further investigation the decision to vary (and subsequently cancel) its permission would seem entirely justified. However, Mr Wilmot was only seeking to recover what was properly due to Wilmot and it was inconceivable that the directors of the client would not have noticed the payment of fees over a period of five years. The decision to sign on behalf of the Scheme's trustees was designed only to account for fees properly due. The decision was regrettable and Mr Wilmot should not have signed on the Schemes. Given Wilmot's previous conduct, Wilmot maintained that it conducted its business with integrity.
- 2.25 Mr Wilmot accepted candidly signing other documents for the client including authorising payment of fees due to himself or a company controlled by himself. Mr Wilmot asserted that his actions were simply to administer the Scheme which was expected of him by the client and he therefore exercised his discretion in administering the Scheme in a way which the applicant felt served the best interest of his client.
- 2.26 Wilmot said that the FSA had sought to make a decision without having had the benefit of speaking with Mr Wilmot. Without any investigation, the FSA had sought to vary and cancel Wilmot's Permission without reference to Mr Wilmot. The FSA had neglected to even ask Mr Wilmot for his version of events let alone examine his files which would demonstrate that all work was completed and properly billed.
- 2.27 The written representations did not refer in any detail to the relevant regulatory provision or the Principles simply because the FSA would without reference to Mr Wilmot or his files have a prima facie case.

### **Findings and conclusions**

- 2.28 The FSA considered carefully the bundle of documents before it comprising some 150 pages of invoices, letters of authority, faxes, notes of telephone conversations, bank statements, witness statements and other letters and found that:
- Mr Wilmot had forged the signature of a client over a period of years;
  - the client (the sole member of the Scheme) had not received any documentation relating to the Scheme and was not aware of the unauthorised

payments;

- the invoices on which the signature was forged were, on a number of occasions, either vague or unsubstantiated; and
- the possibility of questioning the payments from annual accounts was fanciful.

2.29 The FSA noted the Mr Wilmot failed to take the opportunity to make oral representations despite the written representations that, amongst other things, it had sought to take action without knowing his version of the events.

2.30 The FSA finds that Mr Wilmot acted dishonestly over a period of years and without regard to the law, regulatory provisions or the interests of his client.

2.31 Taking into account all of the above, the FSA has decided not to rescind its decision in the First Supervisory Notice to remove all regulated activities from your permission, as set out in more detail in paragraph 1.1.

2.24 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:

- the sole director of Wilmot has confirmed that he falsified the signature of the Trustee of a client pension scheme on numerous occasions, which directly caused unauthorised payments to be made from the pension scheme's bank account;
- these acts of dishonesty constitute breaches of Principle 1 in that Wilmot has acted without integrity, and of Principle 6 in that Wilmot has not treated its customers fairly, and relate directly to the regulated activities for which Wilmot has permission;
- Wilmot's attempts to justify its actions indicates its failure to recognise the seriousness of the misconduct;
- given the nature of the misconduct the FSA considers that Wilmot is failing to satisfy Threshold Condition 5 (Suitability);
- the above failings present a risk to the FSA's consumer protection objective. Appropriate action is necessary to help provide protection to consumers;
- the risk of adverse effect on consumers arising from Wilmot's failings, which are material breaches of requirements imposed upon Wilmot by the FSA's rules, causes the FSA to have very serious concerns about Wilmot such that the exercise of the FSA's own-initiative power to vary its permission with immediate effect is an appropriate response to those concerns; and
- specifically, the variation of Wilmot's permission should not be rescinded.

### **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 you in accordance with section 53(7) 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, 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**

- 4.6 If you have any questions regarding the procedures of the Regulatory Decisions Committee, you should contact either Clare Massey (direct line: 020 7066 3194 /fax: 020 7066 3195) or Jackie Noonan, RDC 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 5743).

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