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**FINAL NOTICE**

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Elmswood EU Ltd  
2 Eaton Gate  
Belgravia  
London  
SW1W 9BJ

David J Sime  
Field House  
10 Elmfield  
Bookham  
Surrey  
KT23 3LQ

Date: 16 March 2012

**TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London, E14 5HS ("the FSA") has decided to take the following action**

**1. ACTION**

- 1.1. By an application received on 21 December 2009 ("the Application"), Elmswood.EU Ltd ("Elmswood.EU") applied under section 60 of the Financial Services and Markets Act 2000 ("the Act") for approval of David J Sime ("Mr Sime") to perform the controlled functions of director (CF1), compliance oversight (CF10), money laundering reporting (CF11) and customer (CF30).
- 1.2. The Application was completed by the provision of further information on 10 June 2010.
- 1.3. For the reasons listed below the FSA has refused the Application and, in the light of the Upper Tribunal's ("the Tribunal") dismissal of the reference to it as referred to below, has issued this Final Notice.

## **2. REASONS FOR THE ACTION**

- 2.1. By its Warning Notice dated 8 July 2010 (“the Warning Notice”), the FSA gave Elmswood EU notice that it proposed to refuse the Application. Elmswood EU and Mr Sime were given the opportunity to make representations to the FSA about that proposed action.
- 2.2. By its Decision Notice dated 8 December 2010 (“the Decision Notice”), the FSA gave each of Elmswood EU and Mr Sime notice that it had decided to refuse the Application.
- 2.3. On 30 December 2010, Mr Sime acting on behalf of Elmswood EU, referred the Decision Notice to the Tribunal. The Tribunal, in a written decision dated 10 January 2012 (which can be found on the Tribunal’s website at [http://www.tribunals.gov.uk/financeandtax/Documents/decisions/sime\\_v\\_fsa\\_decision.pdf](http://www.tribunals.gov.uk/financeandtax/Documents/decisions/sime_v_fsa_decision.pdf)) (the “Decision”) found that the FSA had been correct to refuse Elmswood EU’s Application and dismissed the reference. Accordingly the FSA has refused the Application and issued this Final Notice.

### **Summary**

- 2.4. On the basis of the facts and matters set out in the Tribunal’s Decision and for the reasons set out therein, the FSA has concluded that it cannot be satisfied that Mr Sime is a fit and proper person to perform the controlled functions to which the Application relates.
- 2.5. The Tribunal’s Decision sets out fully the Tribunal’s (and thus the FSA’s) reasons for refusing the Application and should therefore be read in full. By way of summary, the Authority notes the following particular paragraphs of the Decision (with references to FIM and RAM being references to certain of Mr Sime’s former employers and references to Bailey, Witkin and Coan to former clients of Mr Sime’s previous employers):

#### **“OUR ASSESSMENT OF MR SIME**

94. Mr Sime’s disclosure to the Authority was not what it ought to have been. He did not treat the FIM application with sufficient seriousness, and signed a false declaration. After the difficulties and delays encountered with the FIM application, he should have understood (1) the importance of satisfying himself fully as to the accuracy and completeness of an application for approval, and (2) that the FSA wished to make its own judgment about allegations which Mr Sime regarded as unfounded. He failed or was unwilling to learn from this experience.
95. He was careless or reckless in filling in his December 2009 application. He failed to mention the theft allegation and police interview; while the FSA knew of them, his failure to mention them

rendered his declaration untrue and indicated an uncooperative attitude to the FSA's requirements. He made a misjudgement in not taking the opportunity to disclose the Bailey matter in order to demonstrate an open attitude to the regulator. He failed to provide clarity regarding the circumstances in which he left RAM and failed to disclose that the relationship had ended in an unsatisfactory fashion, with allegations of misconduct being made on both sides.

96. His combative and evasive reactions to the various allegations made against him showed an impatient inability to control his temper, a degree of aggression which was unnecessary and inappropriate in a professional context, and a readiness to make extravagant accusations against others without a sufficient basis for doing so. Because of his lack of patience, it appears to have been beyond his ability to rebut allegations by dealing with them directly, systematically, and comprehensively. He was unable to deal calmly and professionally with situations that made him angry.
97. We found him arrogant. He adopted an unrealistic position that fault was always 100% with someone else. In his oral opening he described himself to us as "a cut above the rest". This claim was not borne out by (for example) his defective applications for approval, the way he dealt with the Witkin and Coan commissions, or the way he managed his departure from RAM. We were also concerned by his attitude to record-keeping, and instances of his lack of close attention to detail.
98. Because of the nature of the issues and the contentions put forward by the FSA our factual findings have been concentrated upon the negatives. These need to be balanced by the positives. We gained the impression that Mr Sime was hard working, was ordinarily good to his employees or colleagues, and normally acted with honesty and integrity. It was when he was under pressure and insufficiently supported that he let himself down.
99. In our judgment the Authority was correct not to regard him as fit and proper for the controlled functions for which he applied for approval in December 2009, given the context in which it was proposed that he would work. The Authority was also correct to refuse the application by Elmswood, on the basis of insufficient human resources, because Elmswood would be wholly dependent upon Mr Sime.
100. We wish to make clear that this conclusion is not a decision that Mr Sime is not fit and proper for work in the financial services industry. In a well-controlled environment with proper support and supervision he could again be successful, as he was when he worked

for insurance companies. What he is not suitable for is an environment where he works without effective supervision and support. Our decision is unanimous.”

- 2.6. In relation to certain of the non-disclosures, the Tribunal held that, whilst the FSA had been informed previously of these matters (ie prior to and outside of the Application), Mr Sime ought to have brought them to the FSA’s specific attention in the Form A. For example, at paragraph 64 the Tribunal stated that:

“We acknowledge that the FSA already had details of the theft allegation and of the police interview. Mr Sime knew this, and cannot have intended positively to conceal these matters from the FSA in December 2009. But he was either careless in filling in the form or perhaps hoped (even if unconsciously) that the matters might be overlooked if he did not draw attention to them again. By failing to mention them in the December 2009 application Mr Sime was guilty of making a false declaration that the application form information was accurate and complete, and he did not demonstrate the open and cooperative attitude to the regulator which he should have done.”

- 2.7. The Tribunal also found that, if Mr Sime “had adopted an open attitude with the FSA, as he ought to have done, he would have disclosed to the Authority” that, for example, his relationship with a former employer “had ended in an unsatisfactory fashion, with allegations of misconduct being made on both sides” (paragraph 89 of the Decision).

### **Relevant statutory provisions**

- 2.8. The FSA may grant an application for approval under section 60 of the Act only if it is satisfied that the person in respect of whom the application is made is a fit and proper person to perform the controlled function to which the application relates (section 61(1) of the Act).

### **Relevant Handbook provisions**

- 2.9. The Fit and Proper test for Approved Persons ("FIT") sets out the criteria that the FSA will consider when assessing the fitness and propriety of a person to perform a particular controlled function. The most important considerations include the person’s honesty, integrity and reputation (FIT 1.3.1G).
- 2.10. In assessing fitness, the FSA will take account of the activities of the firm for which the controlled function is to be performed, the permission held by that firm and the markets within which it operates (FIT 1.3.2G).
- 2.11. If a matter comes to the FSA’s attention which suggests that the person might not be fit and proper, the FSA will take into account how relevant and how important that matter is (FIT 1.3.4G).

2.12. In determining a person's honesty, integrity and reputation, the matters to which the FSA will have regard include:

- (1) whether the person has been the subject of any adverse finding or any settlement in civil proceedings, particularly in connection with investment or other financial business, misconduct, fraud or the formation or management of a body corporate FIT 2.1.3G(2);
- (2) whether the person has been the subject of, or interviewed in the course of, any existing or previous investigation or disciplinary proceedings, by the FSA, by other regulatory authorities (including a previous regulator), clearing houses and exchanges, professional bodies, or government bodies or agencies FIT 2.1.3G(3);
- (3) whether the person is or has been the subject of any proceedings of a disciplinary or criminal nature, or has been notified of any potential proceedings or of any investigation which might lead to those proceedings FIT 2.1.3G(4);
- (4) whether the person has contravened any of the requirements and standards of the regulatory system or the equivalent standards or requirements of other regulatory authorities (including a previous regulator), clearing houses and exchanges, professional bodies, or government bodies or agencies FIT 2.1.3G(5);
- (5) whether, as a result of the removal of the relevant licence, registration or other authority, the person has been refused the right to carry on a trade, business or profession requiring a licence, registration or other authority FIT 2.1.3G(8);
- (6) whether the person has been dismissed, or asked to resign and resigned, from employment or from a position of trust, fiduciary appointment or similar FIT 2.1.3G(11);
- (7) whether, in the past, the person has been candid and truthful in all his dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards FIT 2.1.3G(13).

**Facts and matters relied on**

2.13. The facts and matters relied on are set out more fully in the Tribunal's Decision and are incorporated herein by reference.

### **3. CONCLUSION**

- 3.1. On the basis of the facts and matters described above, the FSA is not satisfied that Mr Sime is a fit and proper person to perform the controlled functions to which the Application relates.

### **4. IMPORTANT NOTICES**

- 4.1. This Final Notice is given to you pursuant to Section 390(2) of the Act

#### **Publication**

- 4.2. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Final Notice relates. Under those provisions the FSA must publish such information about the matter to which the Final Notice relates as the FSA considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to you or prejudicial to the interests of consumers.
- 4.3. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

#### **FSA contact**

- 4.4. For more information concerning this matter generally, you should contact Gillian Lavabre, Manager, Permissions Department at the FSA (direct line: 020 7066 4582 / e-mail: [gillian.lavabre@fsa.gov.uk](mailto:gillian.lavabre@fsa.gov.uk)).

**Sharon Campbell**  
**Acting Director, Authorisations Division**