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**FINAL NOTICE**

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Elmswood EU Ltd  
2 Eaton Gate  
Belgravia  
London  
SW1W 9BJ

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 by the FSA on 21 December 2009 ("the Application"), Elmswood.EU Ltd ("Elmswood") applied under section 40 of the Financial Services and Markets Act 2000 ("the Act") for Part IV permission to carry on the regulated activities of :

- (1) advising on investments including pension transfers and pension opt-outs;
- (2) arranging (bringing about) deals in investments;
- (3) making arrangements with a view to transactions in investments;
- (4) advising on regulated mortgage contracts;
- (5) arranging (bringing about) regulated mortgage contracts; and
- (6) making arrangements with a view to regulated mortgage contracts;

- 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 take the action described above and Elmswood EU was 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 Elmswood EU notice that it had decided to refuse the Application as it could not ensure that Elmswood EU satisfied and would continue to satisfy the threshold conditions as set out in Schedule 6 to the Act ("the threshold conditions").
- 2.3. On 30 December 2010, 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)) 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 ensure that Elmswood EU will satisfy, and continue to satisfy, the threshold conditions in relation to all of the regulated activities for which it would have permission if the Application were granted.
- 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 paragraph of the Decision (with reference to Mr Sime being to the sole proposed approved person at Elmswood EU):

"In our judgement the Authority was correct not to regard [Mr Sime] 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 for Elmswood, on the basis of insufficient human resources, because Elmswood would be wholly dependent upon Mr Sime."

### **Relevant statutory provisions**

- 2.6. Section 41(2) of the Act requires the FSA, in giving a Part IV permission, to ensure that the person concerned will satisfy, and continue to satisfy, the threshold conditions in relation to all of the regulated activities for which he will have permission. The threshold conditions are set out in Schedule 6 of the Act.
- 2.7. Section 49(1) of the Act entitles the FSA, in considering an application for Part IV permission, to have regard to any person appearing to be, or likely to be, in a relationship with the applicant which is relevant.

### **Relevant Handbook provisions**

- 2.8. In exercising its powers in relation to the granting of a Part IV permission, the FSA must have regard to guidance published in the FSA Handbook, including the part titled Threshold Conditions ("COND"). The main considerations in relation to the action specified are set out below.
- 2.9. COND 1.3.2G states that, in relation to threshold conditions 4 and 5, the FSA will consider whether a firm is ready, willing and organised to comply on a continuing basis with the requirements and standards under the regulatory system which will apply to the firm if it is granted Part IV permission.

#### *Threshold condition 4: Adequate resources*

- 2.10. COND 2.4 sets out guidance on threshold condition 4 (Adequate resources). COND 2.4.2G states that threshold condition 4 requires the FSA to ensure that a firm has adequate resources in relation to the specific regulated activity which it seeks to carry on. In this context, the FSA will interpret the term "adequate" as meaning sufficient in terms of quantity, quality and availability, and "resources" as including all financial resources, non-financial resources and means of managing its resources including, for example, human resources.
- 2.11. COND 2.4.3G provides that, when assessing this threshold condition, the FSA may have regard to any person appearing to it to be, or likely to be, in a relevant relationship with the firm; for example, a firm's controllers, its directors or partners and other persons with close links to the firm.

### **Facts and matters relied upon**

- 2.12. 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 has concluded that it cannot be satisfied that Elmswood will satisfy, and continue to satisfy, the threshold conditions in relation to all of the regulated activities for which Elmswood would have permission if the Application were granted.

#### **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**