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**FINAL NOTICE**

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To: Michael Wheelhouse

Of: Sindicatum Holdings Limited  
33 Duke Street  
London  
W1U 1JY

Date: 29 October 2008

**TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives you final notice about a requirement to pay a financial penalty.**

**1. THE PENALTY**

1.1. The FSA gave Michael Wheelhouse a Decision Notice on 20 October 2008 which notified Mr Wheelhouse that pursuant to section 66 of the Financial Services and Markets Act 2000 ("the Act"), the FSA had decided to impose a financial penalty of £17,500 on Mr Wheelhouse in respect of breaches of Statement of Principle 7 of the FSA's Statements of Principle for Approved Persons issued under section 64 of the Act. The said penalty relates to failures by Mr Wheelhouse in overseeing and implementing the anti-money laundering systems and controls at Sindicatum Holdings Limited (formerly known as Sindicatum Limited) ("SHL"/"the Firm"). These failures occurred in the period October 2003 to September 2007 (the “Relevant Period”).

- 1.2. Mr Wheelhouse agreed to settle at an early stage of the FSA's investigation. He therefore qualified for a 30% (stage 1) discount under the FSA's executive settlement procedures. Were it not for this discount the FSA would have imposed a financial penalty of £25,000 on Mr Wheelhouse.
- 1.3. Mr Wheelhouse confirmed on 10 October 2008 that he will not be referring the matter to the Financial Services and Markets Tribunal.
- 1.4. Accordingly, for the reasons set out below and having agreed with Mr Wheelhouse the facts and matters relied on, the FSA imposes a financial penalty on Mr Wheelhouse in the amount of £17,500.

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

- 2.1. Throughout the Relevant Period, Mr Wheelhouse was approved by the FSA to perform and performed the controlled function of Money Laundering Reporting Function (CF11). As such, he was the Firm's money laundering reporting officer. In that role, he had responsibility for oversight of the Firm's compliance with the FSA's rules on systems and controls against money laundering.
- 2.2. However, in performing that role and discharging CF11, Mr Wheelhouse failed to take reasonable steps to ensure that the business of the Firm for which he was responsible in his controlled function complied with the relevant standards and requirements of the regulatory system (as required by Statement of Principle 7 of APER ("Statement of Principle 7")).
- 2.3. Mr Wheelhouse breached Statement of Principle 7 by failing to take reasonable steps to implement adequate procedures for verifying the identity of the Firm's clients; by failing to ensure that the Firm adequately verified the identity of a significant number of its clients; and by failing to ensure that the Firm kept adequate records to demonstrate that it had verified the identity of a significant number of its clients.
- 2.4. These failures occurred against a background of heightened public awareness of the need for firms to maintain adequate systems and controls for verifying client identity.

- 2.5. From 1990 the Joint Money Laundering Steering Group – a body made up of the leading UK trade associations in the financial services industry whose aim is to promulgate good practice in countering money laundering and to give practical assistance in interpreting the UK money laundering regulations - provided advice on anti-money laundering controls by issuing Guidance for the Financial Sector (“the JMLSG Guidance”). Subsequent editions of the JMLSG Guidance took account of relevant legal changes and evolving practice within the financial services industry.
- 2.6. The FSA has repeatedly stressed the importance of effective anti-money laundering controls and has on seven previous occasions taken disciplinary action against regulated firms for failing to meet the FSA's anti-money laundering requirements.
- 2.7. It is fundamental to the health of the United Kingdom’s financial services industry that firms establish and maintain effective systems and controls for countering the risk that their products and services might be used to facilitate money laundering or for other purposes connected with financial crime.
- 2.8. Against that backdrop, the nature, extent and potential implications of Mr Wheelhouse’s failures merit the imposition of the financial penalty set out in paragraphs 1.1 and 1.2 above.

### **3. RELEVANT STATUTORY AND REGULATORY PROVISIONS AND GUIDANCE**

- 3.1. Under section 2(2) of the Act the reduction of financial crime is a regulatory objective of the FSA, and includes reducing the extent to which it is possible for a regulated person to be used for a purpose connected with financial crime.

- 3.2. Section 64(1) of the Act states that:

*The Authority may issue statements of principle with respect to the conduct expected of approved persons.*

3.3. Section 66 of the Act states that:

- (1) *The Authority may take action against a person under this section if-*
  - (a) *it appears to the Authority that he is guilty of misconduct; and*
  - (b) *the Authority is satisfied that it is appropriate in all the circumstances to take action against him.*
- (2) *A person is guilty of misconduct if, while an approved person-*
  - (a) *he has failed to comply with a statement of principle issued under section 64;...*
- (3) *If the Authority is entitled to take action under this section against a person, it may-*
  - (a) *impose a penalty on him of such amount as it considers appropriate; or*
  - (b) *publish a statement of his misconduct.*

3.4. Pursuant to section 64 of the Act, the FSA has issued the Statements of Principle and Code of Practice for Approved Persons (contained in the part of the FSA Handbook entitled APER). The Statement of Principle most relevant to this matter is Statement of Principle 7, which provides that:

*“An approved person performing a significant influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled function complies with the relevant requirements and standards of the regulatory system”.*

3.5. The Code of Practice for Approved Persons (“APER 4”) also sets out descriptions of conduct which, in the opinion of the FSA, does not comply with the Statements of Principle. In determining whether Mr Wheelhouse’s conduct amounts to a breach of Statement of Principle 7, the FSA has had regard to the descriptions of conduct in APER 4.7. The relevant provisions are set out in full in the Appendix to this notice.

3.6. The FSA has had regard to the relevant provisions in its Decision Procedure and Penalties Manual (DEPP). In particular, the FSA has had regard to its policy on taking action against approved persons pursuant to section 66 of the Act, contained in DEPP 6.

3.7. The FSA has also had regard to the relevant guidance set out in the Enforcement (ENF) and Decision Making (DEC) Manuals (which preceded DEPP and were in force until 28 August 2007), as some of Mr Wheelhouse's breaches occurred prior to 28 August 2007.

#### **4. FACTS AND MATTERS RELIED ON**

##### **Background**

###### *Mr Wheelhouse and SHL*

4.1. Mr Wheelhouse jointly founded SHL and has been a director of the firm since it commenced regulated activities in August 2002.

4.2. SHL is a corporate advisory firm with approximately 35 clients for whom it has periodically advised and arranged dealing in investments. It is not currently engaged in regulated activity for clients. Its clients are predominantly small and medium corporates based overseas. During the Relevant Period, SHL provided 26 of these clients with services which constituted the carrying on of regulated activities for the purposes of section 22 of the Act and were thus subject to the identification requirements of the FSA's Anti-Money Laundering regime.

4.3. The relevant controlled function in respect of which Mr Wheelhouse is an approved person is Controlled Function 11 (Money Laundering Reporting). The Money Laundering Reporting function is the function of acting in the capacity of the money laundering reporting officer of a firm, with responsibility for oversight of its compliance with the FSA's rules on systems and controls against money laundering. Mr Wheelhouse was the Firm's money laundering reporting officer ("MLRO").

4.4. This is a "significant influence" function to which Statement of Principle 7 (amongst others) applies.

###### *Failings in SHL's systems and controls*

4.5. In addition to this Final Notice to Mr Wheelhouse, the FSA has also given a Final Notice to SHL. The FSA has determined that SHL failed to take reasonable care to

organise and control its affairs responsibly and effectively, with adequate risk management systems. In particular, SHL did not take reasonable care to establish and maintain effective systems and controls for countering the risk that the Firm might be used to further financial crime.

#### **Breach of Statement of Principle 7**

- 4.6. The FSA considers that Mr Wheelhouse has breached Statement of Principle 7. In determining whether Mr Wheelhouse's conduct amounts to a breach of Statement of Principle 7, the FSA has had regard to the particular facts and circumstances of this case and to the descriptions of non-compliant conduct in APER 4.7.
- 4.7. As the MLRO, Mr Wheelhouse was responsible for implementing and monitoring and ensuring the effectiveness of the Firm's anti-money laundering procedures and ensuring that it complied with the FSA's rules on the establishment and maintenance of effective systems and controls for countering the risk that the Firm might be used to further money laundering or other financial crime. As such he should have been aware that, during the Relevant Period, SHL did not fully implement the anti-money laundering and client identification and verification procedures contained in its AML Handbooks dated 2004 and 2006 (the "Handbooks"); failed to implement adequate procedures for verifying the identity of its clients; failed to adequately verify the identity of a significant number of its clients; and failed to keep adequate records with regard to the verification of the identity of its clients.
- 4.8. Although Mr Wheelhouse set up a New Business Committee in November 2006 to monitor the introduction of new business and took advice from independent consultants, this was insufficient to ensure or improve compliance with the Firm's procedures and the FSA's requirements. Mr Wheelhouse failed to ensure that client checklists were fully completed and he made no reference to any such matters in the MLRO reports that he presented to the board of SHL.
- 4.9. By reason of the breach of Principle 7, the FSA also considers that Mr Wheelhouse was a cause of the failure by SHL to take reasonable care to establish and maintain

effective systems and controls for countering the risk that the Firm might be used to further money laundering or other financial crime.

- 4.10. As part of his duties as the Firm's money laundering reporting officer, Mr Wheelhouse was required to review and sign off client acceptance checklists, which recorded information about the Firm's clients and confirmed that sufficient evidence had been obtained and reviewed.
- 4.11. The FSA has determined that during the Relevant Period SHL should have followed its client identification procedures in relation to 26 of its clients. Of those, 13 may be classified as low risk by reason of the entities being publicly listed, regulated by the FSA or an equivalent regulator, or otherwise. The Firm's identification of these clients was appropriate.
- 4.12. In respect of the remaining 13 clients (who were not low risk), although some customer due diligence ("CDD") evidence was available, Mr Wheelhouse failed to ensure that the documentation was adequate to verify their identity.
- 4.13. Mr Wheelhouse did not ensure that all client acceptance checklists were completed. In 7 cases, client acceptance checklists were not fully completed for significant periods of time (up to 3 years) after client take-on and in some cases they were not completed at all.
- 4.14. In addition, Mr Wheelhouse failed to comply with his obligations as MLRO and with the Firm's procedures. On one occasion, Mr Wheelhouse applied an exemption from identification to a deposit-taking bank in Lithuania, despite Lithuania not appearing on the "equivalence" list for regulated entities. On this occasion, Mr Wheelhouse acted as the account executive collecting the identification evidence and also as the officer reviewing and signing off the account. Such an arrangement decreased the likelihood of this failure being identified.

#### **Analysis of the sanction**

- 4.15. In deciding upon the nature and level of disciplinary sanction, the FSA has had regard to all the relevant facts and circumstances of this case and to the guidance set out in

DEPP and ENF referred to in section 3 above. The following are particularly relevant:

#### **Effective deterrence**

- 4.16. The principal purpose for which the FSA imposes sanctions is to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant business. The financial penalty set out in paragraphs 1.1 and 1.2 above is required in part to strengthen the message to the market that it is imperative that senior managers who perform significant influence controlled functions take reasonable steps to ensure that the business of the firm for which they are responsible in their controlled function complies with the relevant requirements and standards of the regulatory system.

#### **The seriousness of the breaches**

- 4.17. The FSA has had regard to the seriousness of Mr Wheelhouse's breaches, including the nature of the requirements breached and the number and duration of the breaches.
- 4.18. The FSA considers that the breaches are serious, relate to a significant number of the Firm's clients, and have occurred over a long period, that is, October 2003 to September 2007, throughout which Mr Wheelhouse was the MLRO.
- 4.19. The FSA notes that throughout the Relevant Period Mr Wheelhouse attempted to reduce the risk of the Firm being used to further financial crime by employing independent compliance consultants to draft manuals, give training and conduct quarterly reviews of the Firm's adherence to its systems. However, this process was often informal, with no adequate processes for ensuring that feedback and advice was used to make necessary improvements to the Firm's systems.
- 4.20. Mr Wheelhouse has not been the subject of any previous disciplinary finding.

#### **Financial resources and other circumstances**

- 4.21. There is no evidence to suggest that Mt Wheelhouse is unable to pay the penalty.



### **Conduct following the breach**

- 4.22. Mr Wheelhouse has undertaken further AML training, has co-operated fully with Enforcement's investigation and has agreed to settle with the FSA at a very early stage in the investigation.
- 4.23. SHL has also now taken steps to review and improve its systems and controls in relation to financial crime.

### **Previous action taken in relation to similar failings**

- 4.24. In determining the level of the financial penalty, the FSA has taken into account penalties imposed by the FSA on other approved persons for similar behaviour. This was considered alongside the principal purpose for which the FSA imposes sanctions, as set out in paragraph 4.16 above.

### **Conclusion**

- 4.25. Having had regard to the matters set out in paragraphs 4.16 to 4.24 above and the risk Mr Wheelhouse's breaches pose to the FSA's statutory objective of the reduction of financial crime, the FSA imposes a financial penalty of £17,500 on Mr Wheelhouse.

## **5. DECISION MAKER**

- 5.1. The decision which gave rise to the obligation to give this Final Notice was made by the Settlement Decision Makers on behalf of the FSA.

## **6. IMPORTANT**

- 6.1. This Final Notice is given to Michael Wheelhouse in accordance with section 390 of the Act.

### **Manner of and time for Payment**

- 6.2. The financial penalty must be paid in full by Mr Wheelhouse to the FSA by no later than 12 November 2008, 14 days from the date of the Final Notice.

### **If the financial penalty is not paid**

- 6.3. If all or any of the financial penalty is outstanding on 12 November 2008, the FSA may recover the outstanding amount as a debt owed by Mr Wheelhouse and due to the FSA.

### **Publicity**

- 6.4. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the FSA must publish such information about the matter to which this 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.
- 6.5. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

### **FSA contacts**

- 6.6. For more information concerning this matter generally, you should contact Hamish Armstrong at the FSA (direct line: 020 7066 1326 /fax: 020 7066 1327).

**William Amos**  
**FSA Enforcement Division**

## **APPENDIX I**

### **APER 4.7 Statement of Principle 7**

#### **APER 4.7.1**

The Statement of Principle 7 (see APER 2.1.2 P) is in the following terms: "An approved person performing a significant influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled function complies with the relevant requirements and standards of the regulatory system."

#### **APER 4.7.2**

In the opinion of the FSA, conduct of the type described in APER 4.7.3 E, APER 4.7.4 E, APER 4.7.5 E, APER 4.7.7 E, APER 4.7.9 E or APER 4.7.10 E does not comply with Statement of Principle 7 (APER 2.1.2 P).

#### **APER 4.7.3**

Failing to take reasonable steps to implement (either personally or through a compliance department or other departments) adequate and appropriate systems of control to comply with the relevant requirements and standards of the regulatory system in respect of its regulated activities falls within APER 4.7.2 E. In the case of an approved person who is responsible, under SYSC 2.1.3 R (2), with overseeing the firm's obligation under SYSC 3.1.1 R, failing to take reasonable care to oversee the establishment and maintenance of appropriate systems and controls falls within APER 4.7.2 E.

#### **APER 4.7.4**

Failing to take reasonable steps to monitor (either personally or through a compliance department or other departments) compliance with the relevant requirements and standards of the regulatory system in respect of its regulated activities falls within APER 4.7.2 E (see APER 4.7.12 G).

#### **APER 4.7.5**

Failing to take reasonable steps adequately to inform himself about the reason why significant breaches (whether suspected or actual) of the relevant requirements and

standards of the regulatory system in respect of its regulated activities may have arisen (taking account of the systems and procedures in place) falls within APER 4.7.2 E.

#### **APER 4.7.6**

Behaviour of the type referred to in APER 4.7.5 E includes, but is not limited to, failing to investigate what systems or procedures may have failed including, where appropriate, failing to obtain expert opinion on the adequacy of the systems and procedures.

#### **APER 4.7.7**

Failing to take reasonable steps to ensure that procedures and systems of control are reviewed and, if appropriate, improved, following the identification of significant breaches (whether suspected or actual) of the relevant requirements and standards of the regulatory system relating to its regulated activities, falls within APER 4.7.2 E (see APER 4.7.13 G).

#### **APER 4.7.8**

Behaviour of the type referred to in APER 4.7.7 E includes, but is not limited to:

- (1) unreasonably failing to implement recommendations for improvements in systems and procedures;
- (2) unreasonably failing to implement recommendations for improvements to systems and procedures in a timely manner.

#### **APER 4.7.9**

In the case of the money laundering reporting officer, failing to discharge the responsibilities imposed on him by the firm in accordance with SYSC 3.2.6I R falls within APER 4.7.2 E.

#### **APER 4.7.10**

In the case of an approved person performing a significant influence function responsible for compliance under SYSC 3.2.8 R, failing to take reasonable steps to ensure that appropriate compliance systems and procedures are in place falls within APER 4.7.2 E (see APER 4.7.14 G).

#### **APER 4.7.11**

The FSA expects an approved person performing a significant influence function to take reasonable steps both to ensure his firm's compliance with the relevant requirements and standards of the regulatory system and to ensure that all staff are aware of the need for compliance.

#### **Systems of control**

#### **APER 4.7.12**

An approved person performing a significant influence function need not himself put in place the systems of control in his business (APER 4.7.4 E). Whether he does this depends on his role and responsibilities. He should, however, take reasonable steps to ensure that the business for which he is responsible has operating procedures and systems which include well-defined steps for complying with the detail of relevant requirements and standards of the regulatory system and for ensuring that the business is run prudently. The nature and extent of the systems of control that are required will depend upon the relevant requirements and standards of the regulatory system, and the nature, scale and complexity of the business (see APER 3.3.2).

#### **Possible breaches of regulatory requirements**

#### **APER 4.7.13**

Where the approved person performing a significant influence function becomes aware of actual or suspected problems that involve possible breaches of relevant requirements and standards of the regulatory system falling within his area of responsibility, then he should take reasonable steps to ensure that they are dealt with in a timely and appropriate manner (APER 4.7.7 E). This may involve an adequate investigation to find out what systems or procedures may have failed and why. He may need to obtain expert opinion on the adequacy and efficacy of the systems and procedures.

#### **Review and improvement of systems and procedures**

#### **APER 4.7.14**

Where independent reviews of systems and procedures have been undertaken and result in recommendations for improvement, the approved person performing a

significant influence function should ensure that, unless there are good reasons not to, any reasonable recommendations are implemented in a timely manner (APER 4.7.10 E). What is reasonable will depend on the nature of the inadequacy and the cost of the improvement. It will be reasonable for the approved person performing a significant influence function to carry out a cost benefit analysis when assessing whether the recommendations are reasonable.