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**FINAL NOTICE**

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To: **Sheron & Company Financial Advisers**

Of: **30 Station Road  
Maghull  
Liverpool L31 3BD**

Date: 24 August 2007

**TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") gives you final notice about the cancellation of the permission granted to Sheron & Company Financial Advisers to carry on regulated activities.**

**1. ACTION**

- 1.1. The FSA gave Sheron & Company Financial Advisers ("the Partnership") a Decision Notice dated 24 August 2007 which notified the Partnership that, for the reasons given below, and pursuant to section 45 of the Financial Services and Markets Act 2000 ("the Act"), the FSA had decided to cancel the permission granted to the Partnership pursuant to Part IV of the Act ("the Partnership's Part IV permission"). Accordingly, the FSA has today cancelled the Partnership's Part IV permission.

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

2.1. The FSA has concluded, on the basis of the facts and matters set out in paragraph 4 below, that the Partnership is failing to satisfy the Threshold Conditions set out in Schedule 6 of the Act (“the Threshold Conditions”).

2.2. In the opinion of the FSA:

(1) the Partnership does not, and will not, have adequate resources given that the FSA has decided to withdraw the approval of Mr Michael Sheron and make a prohibition order against him so he can no longer carry out any significant influence controlled functions (Threshold Condition 4 – Adequate Resources); and

(2) the Partnership is not fit and proper having regard to all the circumstances including its connection with Mr Sheron, the nature of the regulated activities it carries on and its failure to ensure that its affairs are conducted soundly and prudently (Threshold Condition 5 – Suitability).

## **3. RELEVANT STATUTORY PROVISIONS AND RULES**

### **Statutory Provisions**

3.1. Section 41 and Schedule 6 of the Act set out the Threshold Conditions which are conditions that the FSA must ensure a firm will satisfy in relation to regulated activities for which it has permission.

3.2. Threshold Condition 4 states 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*”.

3.3. Threshold Condition 5 states that: “*the person concerned must satisfy the FSA that he is a fit and proper person having regard to all the circumstances, including the nature of any regulated activity that he carries on, and the need to ensure that his affairs are conducted soundly and prudently*”.

- 3.4. The Threshold Conditions represent the minimum conditions which a firm is required to satisfy, and continue to satisfy, in order to be given and to retain Part IV permission (COND 1.2.1G).
- 3.5. The FSA is authorised by section 45(2) of the Act to cancel an authorised person's Part IV permission where it appears that an authorised person is failing, or likely to fail, to satisfy the Threshold Conditions.

#### **FSA's policy for exercising its power to cancel Part IV permission**

- 3.6. In exercising its power to vary a firm's Part IV permission, the FSA must have regard to guidance published in the FSA Handbook. The FSA's policy in relation to the decision to cancel a firm's permission is set out in Chapters 3 and 5 of the Enforcement manual of the FSA Handbook
- 3.7. ENF 5.5.1G states that the FSA will consider cancelling a firm's IV permission in circumstances including where the FSA has very serious concerns about a firm, or the way its business is or has been conducted.
- 3.8. ENF 5.5.2G refers to examples of the circumstances in which the FSA will consider cancelling an authorised person's Part IV permission, details of which are set out in ENF 3.3.2G. These circumstances include where it appears to the FSA that the firm is failing, or likely to fail, to satisfy the Threshold Conditions relating to one or more, or all, of its regulated activities for which the firm concerned has Part IV permission because for instance the firm's material and financial resources appear inadequate for the scale or type of regulated activity it is carrying on (ENF 3.5.8G(1)).

#### **Guidance concerning Threshold Condition 4: Adequate resources**

- 3.9. COND gives guidance on the threshold conditions set out in or under Schedule 6 to the Act (COND 1.2.1).
- 3.10. COND 2.4.1D reproduces the relevant section of the statutory provision in relation to Threshold Condition 4, which provides 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.

- 3.11. COND 2.4.2G(2) provides that 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 such as, for example, human resources and effective means by which to manage risks.
- 3.12. COND 2.4.3G(1) 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, in accordance with section 49 of the Act (Persons connected with an applicant); for example, a firm’s controllers, its directors or partners, other persons with close links to the firm, and other persons that exert influence over the firm which might pose a risk to the firm’s satisfaction of the Threshold Condition and would, therefore, be in a relevant relationship with the firm.
- 3.13. COND 2.4.4G states that, when assessing whether a firm has adequate resources, the FSA will have regard to matters including:
- (1) COND 2.4.4G(2)(d) Whether the firm has taken reasonable steps to identify and measure any risks of regulatory concern that it may encounter in conducting its business and has installed appropriate systems and controls and appointed appropriate human resources to measure them prudently at all times.

#### **Guidance concerning Threshold Condition 5: Suitability**

- 3.14. COND 2.5.1D reproduces the relevant section of the 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 (a) his connection with any person; (b) the nature of any regulated activity that he carries on or seeks to carry on; and (c) the need to ensure that his affairs are conducted soundly and prudently.
- 3.15. COND 2.5.2G(1): Threshold Condition 5 (Suitability), requires the firm to satisfy the FSA that it is ‘fit and proper’ to have Part IV permission having regard to all the circumstances, including its connections with other persons, the range and nature of its regulated activities and the overall need to be satisfied that its affairs are and will be conducted soundly and prudently.

- 3.16. COND2.5.3G further provides that the emphasis of the Threshold Conditions is on the suitability of the firm itself (the suitability of each person who performs a controlled function being assessed by the FSA under the approved persons regime). However, COND 2.5.3G(2) permits the FSA, when assessing this Threshold Condition in relation to a firm, to have regard to any person appearing to it to be, or likely to be, in a relevant relationship with the firm, as permitted by section 49 of the Act (Persons connected with the applicant). The guidance in COND 2.5.3G(2) also refers to COND 2.4.3 G, which sets out examples of persons in a relevant relationship with the firm: “a firm’s controllers, its directors or partners, other persons with close links to the firm (see COND 2.3), and other persons that exert influence on the firm which might pose a risk to the firm’s satisfaction of the threshold conditions and would, therefore, be in a relevant relationship with the firm”.
- 3.17. COND 2.5.4G provides that when determining whether the firm will satisfy and continue to satisfy Threshold Condition 5, the FSA will have regard to all relevant matters including whether a firm:
- (1) conducts, or will conduct its business with integrity and in compliance with proper standards;
  - (2) has, or will have, a competent and prudent management; and
  - (3) can demonstrate that it conducts, or will conduct its affairs with the exercise of due skill, care and diligence.
- 3.18. COND 2.5.6G states that in determining whether a firm will satisfy, and continue to satisfy, Threshold Condition 5 in respect of conducting its business in compliance with proper standards, the relevant matters, as referred to in COND 2.5.4G(2) may include, but are not limited to, whether the firm:
- (1) has been open and cooperative in all its dealings with the FSA and is ready, willing and organised to comply with the requirements and standards under the regulatory system and other legal, regulatory and professional obligations (COND 2.5.6G(1));

- (2) has contravened any provisions of the Act or the regulatory system (COND 2.5.6G(4)); and
- (3) has taken reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system applicable to it (COND 2.5.6G(6)).

### **Principles for Businesses (PRIN)**

- 3.19. The FSA's regulatory objectives as set out in section 2(2) of the Act are: market confidence; public awareness; the protection of consumers and the reduction of financial crime.
- 3.20. Section 138 of the Act provides that the FSA may make such rules applying to authorised persons as appear to it to be necessary or expedient for the purpose of protecting the interests of consumers.
- 3.21. Pursuant to section 138, the FSA has published the Principles for Businesses ("the Principles") which apply either in whole or in part to all authorised persons. The Partnership is obliged to comply with the Principles.
- 3.22. The Principles are a general statement of the fundamental obligations of firms under the regulatory system and reflect the FSA's regulatory objectives, which include the protection of consumers and the reduction of financial crime (section 2(2) of the Act). In substance, the Principles express the main dimensions of the "fit and proper" standard set for firms in Thresholds Condition 5 (see above), although they do not derive their authority from that standard or exhaust its implications.
- 3.23. Breaching the Principles may call into question whether a firm with Part IV permission is still fit and proper (PRIN 1.1.4G).
- 3.24. Of particular relevance in this case are:
  - (1) Principle 2 (Skill care and diligence) under which a firm must conduct its business with due skill, care and diligence;

- (2) Principle 6 (Customers' interests) under which a firm must pay due regard to the interests of its customers and treat them fairly; and
- (3) Principle 11 (Relations with Regulators) under which a firm must demonstrate a willingness to deal with the FSA in an open and cooperative way.

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

##### **Background to the Partnership**

- 4.1. The Partnership is a small independent financial adviser based in Liverpool. Mr Sheron is the only partner involved in, and is solely responsible for, the day to day running of the Partnership.
- 4.2. The Partnership was authorised with effect from 1 December 2001 by the FSA to carry on the following regulated activities:
  - (1) advising on investments (except pension transfers and pension opt-outs);
  - (2) agreeing to carry on a regulated activity;
  - (3) arranging deals in investments; and
  - (4) making arrangements with a view to transactions in investments.
- 4.3. On 14 January 2005, the Partnership was granted permission to carry on the following additional regulated activities in relation to non-investment insurance contracts:
  - (1) assisting in administration of insurance; and
  - (2) dealing in investments as agent.
- 4.4. The Partnership is not permitted to hold or control client money.
- 4.5. There are currently two CF21 approved advisers at the Partnership. Previously there were three other CF21 advisers at the Partnership, including Adviser A referred to below.

- 4.6. The business conducted by Adviser A on behalf of the Partnership comprised mainly term assurance/pure protection contracts.
- 4.7. Adviser A was made bankrupt in 2000 and remains undischarged. The bankruptcy related to commission clawback at a previous firm, of which Adviser A was a director.

#### **Summary of the conduct in issue**

- 4.8. The Partnership failed to exercise adequate management and oversight of the regulated activities carried on. The Partnership failed adequately to supervise the activities of Adviser A, or to take appropriate action once it became aware of misconduct by Adviser A. The Partnership failed to complete its Pensions Review and to comply with two Awards made by the Financial Ombudsman Service (“FOS”). It also failed to draw material information about the business of the Partnership to the attention of the FSA.
- 4.9. Adviser A has made recommendations to customers to purchase term assurance policies without necessarily being able to justify their suitability. Adviser A appears to have done this for the purpose of securing business and obtaining the associated commissions. As a result, a high proportion of policies sold by Adviser A through the Partnership have either lapsed or been cancelled by customers, causing high levels of recovery of overpaid commissions by product providers.
- 4.10. The Partnership was aware from at least April 2005 of the problems with the business arising from Adviser A’s actions and of the increasing risks to the Partnership but failed to take appropriate action or to notify the FSA of the matter, despite an insurance provider specifically warning Mr Sheron on two occasions in July and August 2005 of the Partnership’s obligation under FSA rules to report the matter.
- 4.11. In January 2006, the FSA obtained information which showed that the Partnership had debts totalling £163,789 owing to insurance providers by way of commission clawbacks. The largest creditor was owed £89,193.
- 4.12. By May 2006, the total sum owing to product providers by way of commission clawbacks was £240,965.



### **FSA investigation**

- 4.13. Information provided by the Partnership showed that, in the 12 months to May 2006, 159 items of new business were conducted, of which 152 related to pure protection policies; and 114 of these were policies written by Adviser A.
- 4.14. The FSA visited the Partnership and interviewed Mr Sheron and Adviser A. The following concerns were identified:
- (1) a large amount of the pure protection business written by the Partnership had either lapsed, or been cancelled, resulting in high levels of commission clawback as evidenced by the amount owed to insurance providers;
  - (2) a large proportion of the Partnership's pure protection business had been written by Adviser A. The Partnership had already paid Adviser A his share of commissions due;
  - (3) it appeared that the Partnership had no systems in place for monitoring and controlling the the activities of its staff and, specifically, Adviser A;
  - (4) Mr Sheron also failed to assess whether the Partnership's approved persons were fit and proper, and failed to disclose to the FSA that:
    - (a) Adviser A had been made bankrupt in 2000 and that his bankruptcy had not been discharged; and
    - (b) Adviser B had resigned from a previous employer ahead of disciplinary proceedings relating to complaints.
- 4.15. The Partnership also failed to complete its Pensions Review by 12 January 2007 (the original target date for completion was 30 June 2002) and to satisfy two outstanding Awards made by the FOS where in one case the Award was made in September 2005 and in the other case the Award was made in October 2006.

## **5. ANALYSIS OF BREACHES OF THE THRESHOLD CONDITIONS AND PRINCIPLES FOR BUSINESSES**

5.1. On the basis of the facts and matters referred to above, the FSA has concluded that the Partnership fails, and is likely to fail, to satisfy Threshold Condition 4 (Adequate resources) and Threshold Condition 5 (Suitability).

### **Threshold Condition 4**

5.2. On the basis that Mr Sheron will be the subject of a prohibition order there will be no one at the Partnership approved to carry out controlled functions. In these circumstances, the Partnership will fail to satisfy Threshold Condition 4 because it will not have adequate human resources.

### **Threshold Condition 5**

5.3. By virtue of the facts and matters referred to in section 4 above, and by virtue of the Partnership's connection with Mr Sheron, the FSA has concluded that the Partnership has not demonstrated that its affairs have been, and will be, conducted soundly and prudently and in compliance with Threshold Condition 5.

5.4. Mr Sheron failed to:

- (1) adequately monitor and supervise the activities of Adviser A so as to control the business being written on behalf of the Partnership by him;
- (2) adequately assess the quality and suitability of the business being written on behalf of the Partnership, specifically by Adviser A; and
- (3) take any adequate steps to address the increasing debt due to product providers so as to mitigate the financial risks to the Partnership.

5.5. By virtue of the conduct set out in paragraph 5.4 above, the FSA considers that the Partnership is in breach of Threshold Condition 5 because it has not conducted its business in compliance with proper standards.

- 5.6. In addition, the FSA considers the conduct referred to in paragraph 5.4 amounts to a breach of Principle 2 given that Mr Sheron is solely responsible for the management and the day to day running of the Partnership.
- 5.7. The Partnership has failed to:
- (1) complete its Pension Review and pay redress to customers as appropriate; and
  - (2) comply with two outstanding FOS Awards.
- 5.8. By virtue of the conduct set out in paragraph 5.7 above the FSA considers that the Partnership has:
- (1) failed to conduct its business in compliance with proper standards; and
  - (2) not demonstrated that it conducts, or will conduct, its affairs with the exercise of due skill, care and diligence.
- 5.9. In addition, the FSA considers the conduct referred to in paragraph 5.7 above amounts to a breach of Principle 6 in that the Partnership has failed to pay due regard to the interests of its customers and treat them fairly.
- 5.10. The Partnership has failed to:
- (1) notify the FSA about its financial position and the debt recovery action being taken by several product providers; and
  - (2) notify the FSA of material information about its employees, namely Adviser A's bankruptcy and adverse information provided about Adviser B by a previous employer.
- 5.11. By virtue of the conduct set out in paragraph 5.10 above the FSA considers that the Partnership has:
- (1) failed to be open and cooperative in its dealings with the FSA; and
  - (2) failed to demonstrate that it is ready, willing and organised to comply with the requirements and standards under the regulatory system.

5.12. In addition, the FSA considers the conduct referred to in paragraph 5.10 amounts to a breach of Principle 11 in that the Partnership has failed to disclose to the FSA appropriately anything relating to the firm of which the FSA would reasonably expect notice.

## **6. CONCLUSION**

6.1. The facts and matters described above lead the FSA, having regard to its regulatory objectives which include the protection of consumers and maintaining confidence in the financial system, to conclude that the Partnership is failing, and is likely to fail, to satisfy Threshold Condition 4 (Adequate resources) and Threshold Condition 5 (Suitability).

6.2. The Partnership will not have adequate resources in relation to the regulated activities it seeks to carry on. Specifically, the Partnership will not have adequate human resources (Threshold Condition 4).

6.3. The Partnership is not fit and proper (Threshold Condition 5) because:

- (1) it has not conducted its business in compliance with proper standards (COND 2.5.4G);
- (2) by virtue of its connection with Mr Sheron, it has not demonstrated that it has, or will have, a competent and prudent management (COND 2.5.4G);
- (3) it has not demonstrated that it has conducted, or will conduct, its affairs with the exercise of due skill, care and diligence (COND 2.5.4G);
- (4) it has not been open and cooperative in all its dealings with the FSA (COND 2.5.6G(1));
- (5) it has not demonstrated that it is ready, willing and organised to comply with the requirements and standards under the regulatory system (COND 2.5.6G(1)); and

(6) it has not taken reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system applicable to it (COND 2.5.6G(6)).

6.4. In addition, the Partnership has contravened the fundamental obligations of firms under the regulatory system by failing to comply with the Principles for Businesses, specifically Principles 2, 6, and 11.

## **7. DECISION MAKER**

7.1. The decision which gave rise to the obligation to give this Final Notice was made by the executive decision makers on behalf of the FSA.

## **8. IMPORTANT**

8.1. This Final Notice is given to you under section 54 and in accordance with section 390 of the Act. The following statutory rights are important.

### **Third party rights**

8.2. There are no third party rights as defined by section 393 of FSMA in relation to this Final Notice.

### **Publicity**

8.3. 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 the Partnership or prejudicial to the interests of consumers.

8.4. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

### **FSA contacts**

8.5. For more information concerning this matter generally, you should contact Chris Walmsley (direct line: 020 7066 5894) of the Enforcement Division of the FSA.

Jonathan Phelan  
Head of Department  
Enforcement Division