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## FINAL NOTICE

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To: Xsavi Ltd  
C/o: Rifsons  
Rifsons House  
63-64 Charles Lane  
St John's Wood  
London  
NW8 7SB

Date: 21 February 2006

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

### 1. ACTION

The FSA gave Xsavi Ltd ("Xsavi / the Firm") formerly of Cotswold House, 37 London Road, Stroud, Gloucestershire, GL5 2AJ a Decision Notice on 27 January 2006 ("the Decision Notice") which notified Xsavi 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 Xsavi pursuant to Part IV of the Act ("the Part IV permission").

The Firm has confirmed that it will not be referring the matter to the Financial Services and Markets Tribunal. Accordingly, the FSA has today cancelled the Firm's Part IV Permission.

## **2. REASONS FOR ACTION**

2.1. The FSA has decided, on the basis of the facts and matters described below that Xsavi is failing to satisfy the Threshold Conditions set out in Schedule 6 to the Act (“the threshold conditions”) in that, in the opinion of the FSA, Xsavi is not a fit and proper person:

- (1) By virtue of its insolvency Xsavi has inadequate financial resources in breach of threshold condition 4 (adequate resources); and
- (2) Xsavi has failed to ensure that its business is conducted soundly and prudently and in compliance with proper standards in breach of threshold condition 5 (Suitability).

2.2. In breaching threshold condition 5, Xsavi has failed to comply with the FSA’s Principles for Businesses (“the Principles”): Principle 1 (integrity); Principle 2 (skill care and diligence); Principle 3 (management and control) and Principle 6 (customers’ interests).

2.3. The FSA has concluded that in the period 1 February 2005 – 25 February 2005 Xsavi represented to others that it was acting as agent for an insurer and accordingly had authority to bind the insurer when it did not. Therefore, the customers to whom the travel insurance had been issued did not have the benefit of any insurance cover.

2.4. Additionally, in the period March – August 2005 Xsavi exceeded its authority in respect of its agency agreement with two other insurers.

2.5. Accordingly, the FSA is proposing to cancel Xsavi’s Part IV permission and issue a notice identifying the above stated breaches in relation to Xsavi’s

- (1) facilitation of the sale of policies of insurance without having an underwriter in place;
- (2) failure to adhere to the terms of its agency agreements with insurers;
- (3) failure to act with integrity;

- (4) failure to act with due care skill and diligence; and
- (5) failure to pay due regard to customers' interests.

2.6. These failings are viewed by the FSA as particularly serious in light of the following factors:

- (1) The misconduct posed a risk to retail consumers – 2,000 policies were sold in the period 1 - 25 February 2005 where there was no underwriting in place. Therefore 2,000 consumers were potentially without insurance;
- (2) The number of consumers affected would have been greater had it not been for the fact that the misconduct came to light at an early stage;
- (3) A further unidentified number of consumers could also have been left without insurance as Xsavi facilitated the sale of travel insurance policies which exceeded its authority; and
- (4) Xsavi's Managing Director, Ian Allan ("Mr Allan"), misrepresented to his market counterparties that he had underwriting in place at a time when an agreement had not been reached knowing that on the basis of his confirmation of underwriting his counterparties would obtain business from travel industry firms for the sale of travel insurance policies.

2.7. The FSA considers that these failing were mitigated, to some extent, by the following:

- (1) Xsavi was in genuine negotiations via an agent with an insurer to provide underwriting – however, Mr Allan "jumped the gun" in facilitating the sale of the policies through brokers at a time when there was no agency agreement in place;
- (2) No consumers were disadvantaged due to subsequent arrangements to put retrospective cover in place – albeit these arrangements were put in place with the assistance of third parties;
- (3) When it became clear that the business arrangement with the underlying insurer was not going to proceed, Xsavi reported the matter to the FSA; and

- (4) The FSA accepts that in the period prior to regulation by the FSA, it would not be uncommon for an insurer to provide retrospective cover. However, this type of behaviour does not meet the standard expected of firms by the FSA and where found the FSA will take action against firms for misconduct.

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

- 3.1. The FSA's statutory objectives, set out in Section 2(2) of the Act are: market confidence, public awareness, the protection of consumers and the reduction of financial crime.
- 3.2. Section 41 of the Act and Schedule 6, paragraph 5, to the Act set out the threshold conditions that authorised persons are required to satisfy. The relevant threshold conditions are threshold condition 4 (Adequate Resources) and threshold condition 5 (Suitability).
- 3.3. The FSA is authorised by virtue of section 45 of the Act to cancel an authorised person's part IV permission where it appears to the FSA that such a person is failing to satisfy the threshold conditions.
- 3.4. 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.
- 3.5. Under the FSA's rule-making powers the FSA has published the Principles, which apply either in whole, or in part to all authorised persons. The relevant Principles are as follows:

- (1) Principle 1 – Integrity

*A firm must conduct its business with integrity*

- (2) Principle 2 – Skill, care and diligence

*A firm must conduct its business with due skill, care and diligence*

- (3) Principle 3 – Management and control

*A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk and management systems*

(4) Principle 6 – Customers’ interests

*A firm must pay due regard to the interests of its customers and treat them fairly*

**4. FACTS AND MATTERS RELIED ON**

**Background**

- 4.1. Xsavi commenced trading under the name of Xsavi Limited in January 2005.
- 4.2. In the period 1 April 1996 to January 2005 Mr Allan's business was carried on by Ian Allan Underwriters ("IAU"). IAU used a variety of insurance providers, including an offshore provider to cover its business. With the advent of regulation by the FSA Mr Allan thought it would be beneficial for Xsavi to replace the overseas insurance provider with a UK based insurance provider.
- 4.3. The majority of Xsavi’s business is in the travel insurance market. It identifies gaps in the current travel insurance market, designing schemes with insurers with a view to selling the schemes through brokers to the travel industry and other firms. They in turn would sell policies under the schemes to their customers.
- 4.4. Xsavi has been authorised by the FSA since 14 January 2005. The Firm currently holds the following permissions to undertake regulated activities under the category of insurance mediation:
  - (1) Advising (ex Pensions Transfers / Opt outs);
  - (2) Agreeing to carry on a regulated activity;
  - (3) Arranging deals in investments;
  - (4) Assisting in the administration of insurance;
  - (5) Dealing in investments as agent; and
  - (6) Making arrangements.

- 4.5. Accordingly, the Firm's activity is that of acting as an intermediary between Insurance Companies and Insurance Brokers in specific niche markets.

**The chronology of the issues concerned**

- 4.6. The parties involved in the events resulting in the current disciplinary proceedings against Xsavi have not been identified by name. These parties were not aware of the Firm's misconduct. Accordingly, it is not considered appropriate to identify those parties by name due to possible negative association and consequent impact on their business.
- 4.7. Accordingly, for the purposes of this notice the parties are referred to as follows:
- An intermediary engaged by Xsavi -- 'A'
  - An intermediary believed by Xsavi and Mr Allan to hold underwriting authority from insurer E --- 'B'
  - An intermediary with business connections in the travel industry -- 'C'
  - A travel industry firm --- 'D'
  - An insurer -- 'E'
  - A second insurer -- 'X'
  - A third insurer --- 'Y'
- 4.8. With the advent of regulation by the FSA of the conduct of general insurance business, Mr. Allan decided that it would be beneficial for Xsavi to use a U.K.- based insurance provider as a replacement for the overseas provider to afford greater protection to policyholders than would have been the case if business had continued to be placed with the overseas provider. Therefore in September 2004 Xsavi employed a company (to be referred to as "A") as an agent to search for a suitable provider.
- 4.9. In November 2004, "A" identified a firm (to be referred to as "B") who, it appeared held an authority from an insurance company (to be referred to as "E") which would

be suitable for Xsavi's needs. Negotiations commenced between Xsavi and "B", through the agent "A", with the intention of organising a business arrangement whereby "B" would be the underwriter for travel insurance organised by Xsavi.

4.10. For a significant proportion of its business Xsavi dealt with a particular broker (to be referred to as "C") that acted as the intermediary between Xsavi and a series of firms in the travel industry, to facilitate the sale of travel insurance policies. On 15 December 2004 Mr Allan informed the Managing Director of "C", by telephone, that he had concluded arrangements with "B" for the underwriting by "B" on behalf of "E" of various travel insurance schemes. Negotiations between Xsavi and "B" were, however, still on-going regarding the business arrangement between the two.

4.11. On 20 December 2004, Mr Allan signed an Insurance Cover Note as

*"Xsavi"* (rubber stamp in capital letters) – followed by Mr Allan's signature

Underneath the rubber stamp appeared the words *"Managing Director for the "B" Group Plc"*.

4.12. On the same date, 20 December 2004, Mr Allan provided the Managing Director of "C" with the cover note he had signed (purportedly underwritten by "B"). However, Xsavi and "B" had not reached a formal agreement at that stage, although negotiations were continuing.

4.13. On 22 December 2004, there was an exchange of communications between "C" and Xsavi regarding the wording of a Proposal Form which included the words – "Arranged by Xsavi Limited. Underwritten by "B" Group Plc."

4.14. On the 5 January 2005 personnel from "B" visited Xsavi to complete an audit of the firm's processes and procedures, as part of their process of considering entering into business arrangements with Xsavi.

4.15. Xsavi was authorised by the FSA on 14 January 2005.

4.16. Between 5 January 2005 and 3 February 2005 arrangements between Xsavi and "C" for the issue of travel insurance purportedly underwritten by "B" continued to be made.

- 4.17. In January "B" had provided Xsavi with an agency application form from "E", prompting Xsavi to extend its Professional Indemnity Insurance to accommodate "E's" requirements.
- 4.18. From the beginning of February 2005 with the knowledge of Xsavi, "C" started to place travel insurance business with a variety of travel industry firms. However, "B" had still not, at that stage, completed a written contract with Xsavi. Therefore the travel insurance policies that were sold to consumers did not have an underwriter in place, effectively leaving the consumer without any protection.
- 4.19. On 7 February 2005, and again on 9 February 2005, the agent "A" contacted Mr Allan requesting further information, which was necessary before the arrangement with "B" could be formalised.
- 4.20. In the middle of February the Managing Director of "C" approached another travel company (to be referred to as "D") as he was aware that "D" was looking for a new insurer as it had put a "stop sale" on its previous insurer having discovered that the insurance was not being underwritten. As such, "D" was particularly cautious not to find itself in a similar position with a new insurer.
- 4.21. Firm "D" required proof that the provider "B" was underwriting the insurance cover because it had been unable to verify, via the FSA website, that the company was authorised to provide insurance cover.
- 4.22. "D" contacted the Managing Director of "C" on 18 February 2005 who confirmed in a telephone conversation that Xsavi was the broker acting on behalf of "B". On the same date he faxed over to "D" the cover note provided to him by Mr Allan on the 20 December 2004, which clearly showed the insurance cover as "arranged by Xsavi and underwritten by "B" Plc."
- 4.23. "D" was still not happy with the information provided and spoke directly to Mr Allan on 18 February. Mr Allan provided verbal reassurance that "B" was the insurer and that Xsavi was acting as an underwriting agent for "B" with its authorisation. Mr Allan further explained that the reason that "D" was unable to find the relevant information on the FSA's website was that "B" was acting on behalf of the underlying insurer, who is referred to as "E".



- 4.24. In light of this further information “D” confirmed that it would place its business through “C” however it requested that further information be provided which included:
- (1) Confirmation from “B” that Xsavi was acting with its authorisation; and
  - (2) Confirmation that “E” was ultimately underwriting the product.
- 4.25. Negotiations between Xsavi and "B" through "A" were still continuing, however, "A" & "B" were not aware that policies were already being sold.
- 4.26. In the period 18 - 23 February 2005 "D" made several attempts, without success, to clarify the position with Xsavi and with “C”. A meeting was arranged at “D’s” offices on the 23 February to discuss “D’s” concerns. However, Mr Allan failed to attend this meeting as he was attempting to finalise negotiations with "B"..
- 4.27. Accordingly, on 24 February 2005 "D" contacted the underlying insurer “E” and discovered that "E" was not, in fact, underwriting the travel insurance that had been arranged by Xsavi.
- 4.28. On the 25 February 2005 Mr Allan notified the FSA of the misdemeanour for which he accepted responsibility.
- 4.29. Action was taken immediately by Xsavi and “C” to place the affected policies with other insurance providers. “C” placed all the business except "D's" business with its existing insurer who had given notice that it intended to stop taking new business from the end of February 2005. “C” with the assistance of Xsavi made separate arrangements for "D's" policies to be covered. Therefore no policyholders were left without insurance cover.
- 4.30. The FSA commenced an investigation of the matters referred to above. During the course of the investigation a further contravention by Xsavi was discovered in respect of a separate insurer, to be identified as “X”.

Xsavi :-

- (1) Placed “X” on cover for schemes without “X’s” authority;

- (2) Sub-brokered the business without the permission / knowledge of “X” – this can cause difficulties as there is no contractual relationship between the sub-broker and the insurer;
  - (3) Failed to communicate the cancellation of the scheme by “X” to the sub-brokers – resulting in the sub-brokers continuing to sell travel insurance underwritten by “X” after the cancellation date; and
  - (4) Failed to communicate to the sub-brokers the terms and conditions (e.g age limits) imposed by “X” to whom the travel insurance could be sold – this resulted in the sub-brokers selling insurance to consumers who did not meet “X’s” criteria.
- 4.31. As a result of the contraventions identified in relation to “X” an unidentifiable number of consumers were potentially left without travel insurance.
- 4.32. The FSA identified a further insurer who will be referred to as “Y” with whom Xsavi had an agency agreement under which travel insurance had been sold to consumers. The FSA contacted “Y” who confirmed that it had terminated its agency agreement with Xsavi with effect from the 4 July 2005 as it had come to “Y’s” attention that Xsavi, amongst other things, had exceeded its authority by sub-brokering the business when it did not have the permission of “Y” to do so.
- 4.33. In the case of the two insurance firms “X” and “Y” difficulties subsequently arose where the sub-broker refused to pass on premiums to the insurer and these are currently the subject of legal disputes.
- 4.34. Under cover of a letter dated 15 September 2005 Mr Allan notified the FSA that Xsavi was insolvent. A meeting of creditors took place on the 6 October 2005 at which time an administrative receiver was appointed.

## **5. RELEVANT GUIDANCE ON SANCTION**

- 5.1. In exercising its power to cancel Xsavi's Part IV permission, the FSA must have regard to guidance published in the Enforcement section of the FSA Handbook ("ENF"). The relevant considerations in relation to the action specified above are set out below.

**ENF 5.5 – The FSA's policy on exercising its power to cancel a Part IV permission**

- 5.2. Pursuant to ENF 5.5.2, ENF 3.3.2 provides examples of the circumstances in which the FSA will consider cancelling a Part IV permission, including where it appears to the FSA that the authorised person is failing, or is likely to fail, to satisfy the threshold conditions in relation to one or more, or all, of the regulated activities for which the authorised person has Part IV permission.

**Guidance concerning the relevant Threshold Conditions**

**Threshold Condition 4: Adequate resources (paragraph 5, Schedule 6 to the Act)**

- 5.3. The FSA must have regard to the guidance set out in the Threshold Condition section of the FSA's Handbook ("COND").
- 5.4. COND 2.4.1(1) 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.

***Facts and Matters Relied on***

- 5.5. At a creditors meeting on the 6 October 2005, Xsavi was placed into administrative receivership. Therefore Xsavi has inadequate resources and does not meet threshold condition 4.

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

- 5.6. COND 2.5.1 reproduces the relevant statutory provision that the person concerned must satisfy the FSA that it is a fit and proper person having regard to all the circumstances, including, among other things, the need to ensure that its affairs are conducted soundly and prudently.
- 5.7. COND 2.5.4(2)(a) requires 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.

- 5.8. In making its assessment COND 2.5.4(4) states that the FSA will consider the circumstances of each firm on a case-by-case basis.
- 5.9. Pursuant to COND 2.5.6(4) in determining whether Xsavi satisfies threshold condition 5 in respect of conducting its business with integrity and in compliance with proper standards, the FSA may consider whether the firm has contravened provisions of the Act, the regulatory system or the FSA's Rules (which include the Principles).

### **The Principles**

- 5.10. In considering whether Xsavi meets threshold condition 5 the FSA has had regard to the guidance published in the Principles for Businesses section of the FSA Handbook ("PRIN").
- 5.11. PRIN 1.1.2 provides that the Principles are a general statement of the fundamental obligations of firms under the regulatory system. They derive their authority from the FSA's rule-making powers as set out in the Act and reflect the regulatory objectives.
- 5.12. PRIN 1.1.4 provides that, in substance, the Principles express the main dimensions of the "fit and proper" standard set for firms in threshold condition 5 (Suitability) although they do not derive their authority from that standard or exhaust its implications.
- 5.13. PRIN 1.1.7 provides that breaching a Principle makes a firm liable to disciplinary action.

### ***Facts and Matters relied on***

#### **Principle 1 (Integrity)**

- 5.14. By virtue of Principle 1 the Firm was required to conduct its business with integrity. It is clear from the circumstances of this case that the Firm failed to conduct its business with integrity.
- 5.15. By misrepresenting that Xsavi had the authority to bind the insurer identified as "B" when it did not, and knowingly allowing the broker identified as "C" to sell the travel

insurance policies via travel agencies to consumers without any underwriting in place, the Firm demonstrated a lack of integrity. Whether or not Xsavi genuinely believed that a deal would be agreed in the near future, it should not have informed "C" that the deal had been done, when it had not been finalised.

- 5.16. This misrepresentation occurred when Mr Allan produced a cover note signed by Xsavi, purportedly acting on behalf of "B". Upon receipt of the cover note "C" started to identify potential travel industry firms who might be interested in selling the travel insurance policies to the customers and started placing business in February 2005. In the period 1 – 25 February 2005 approximately 2,000 cover notes were issued to consumers. The misrepresentation was made without the knowledge of "A" and "B".
- 5.17. Xsavi also demonstrated a lack of integrity in its dealings with the two insurers "X" and "Y". In each instance Xsavi had an agency agreement, the terms of which were binding on Xsavi. By exceeding its authority the Firm exposed consumers to the risk that their insurance was not covered as it fell outside of the scheme agreed with the insurer.
- 5.18. In so doing, the Firm placed both itself and its market counter parties in a difficult situation – having to find alternative insurance cover for policies already issued, which could have had a serious impact on their reputation and subsequently their business, through no fault of their own.

#### Principle 2 (Skill, care and diligence)

- 5.19. By virtue of FSA Principle 2 the Firm was required to conduct its business with due skill, care and diligence. For the reasons set out at 4.6 – 4.34 above Xsavi would appear to be in breach of Principle 2.

#### Principle 3 (Management and Control)

- 5.20. By virtue of Principle 3 the Firm was required to put adequate risk management systems in place. The FSA Handbook section dealing with Senior Management Systems and Controls requires firms to take reasonable care to establish and maintain such systems and controls as are appropriate to its business (SYSC 3.1.1). The nature and extent of the systems and controls that a firm will need to maintain will depend on a variety of factors including:

- (a) The nature, scale and complexity of its business;
- (b) The volume and size of its transactions; and
- (c) The degree of risk associated with its operation.

5.21. Mr Allan was responsible for the major controlled functions of the business and did not have a proper system of management and control in place. This is likely to be due in part to the size and nature of the Firm's business. However, the FSA does not consider this to be an excuse for the failure. It is important that all firms, whatever their size, put in place appropriate systems and controls for their business.

5.22. The FSA places great importance on the existence of adequate systems and controls to ensure not only compliance with the regulatory rules and standards, but also, that the risk of misconduct by firms is limited.

#### Principle 6 (Customers' interests)

5.23. By virtue of FSA Principle 6 the Firm was required to pay due regard to the interests of its customers and treat them fairly. The protection of consumers is one of the four regulatory objectives embodied in the Act. A breach of this Principle is viewed as particularly serious.

5.24. By misrepresenting that Xsavi was acting with the authority of "B" it did so with the intention that the brokers, initially "C", would start to distribute the travel insurance via travel industry firms to consumers. Therefore, Xsavi knowingly facilitated the sale of the travel policies to consumers at a time when there was no underwriter in place.

5.25. In the period 1 – 25 February, clients of "C" sold 2,000 policies. More could have been sold were it not for the fact that "D" identified on 24 February 2005 that Xsavi did not have underwriting for the insurance in place.

5.26. Consumers who purchase insurance do so to have peace of mind in case of a misadventure or other unforeseen problem. The actions of Xsavi left approximately 2,000 consumers, who believed they were covered, without the benefit of travel insurance, which could have had serious consequences.

- 5.27. Fortunately the problem was discovered at an early stage and reported by Xsavi to the FSA. Due to the action of Xsavi and “C” alternative arrangements for insurance cover were put in place. Accordingly, the impact on consumers was limited. Had the situation been allowed to continue it could have been much more serious as consumers could have made claims on their policies that could not be paid, which could potentially have had serious consequences for the reputation of the travel insurance industry.
- 5.28. By exceeding its authority under the terms of its agency agreements with “X” and “Y” an unidentifiable number of consumers were potentially left without insurance cover. Again, it was with the assistance of others that alternative insurance cover was arranged to ensure that no consumers were adversely affected.

### **Conclusion**

- 5.29. The facts and matters described above lead the FSA, having regard to its regulatory objectives, to the conclusion that Xsavi, in breaching the Principles as stated above, has demonstrated that it is not a fit and proper person because it has failed to conduct its business with integrity and in compliance with proper standards. This failure is material in relation to the regulated activities for which Xsavi has permission and Xsavi therefore fails to satisfy threshold condition 5 (Suitability). Accordingly, the FSA must take steps to cancel Xsavi’s Part IV permission.

## **6. DECISION MAKER**

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

## **7. IMPORTANT**

- 7.1. This Final Notice is given to Xsavi in accordance with section 390 of the Act.

### **Third Party rights**

- 7.2. The FSA has given a copy of this notice to Ian Allan.

**Publicity**

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

**FSA Contacts**

- 7.5. For more information concerning this matter generally, you should contact John Tutt (direct line: 020 7066 1240 fax: 020 7066 1241) or Boura Tomlinson at the FSA (direct line: 020 7066 5528 fax: 020 7066 5529).

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**Jonathan Phelan**

FSA Enforcement Division