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## **FIRST SUPERVISORY NOTICE**

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To: **Abbey Brokers Limited**  
Of: **339 Lower Addiscombe Road**  
**Croydon**  
**Surrey**  
**CR0 6RG**

FSA Reference Number: **402415**

Dated: **27 July 2010**

**TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (the “FSA”) has taken the following action**

### **1. ACTION**

1.1. For the reasons listed below and pursuant to section 45 of the Financial Services and Markets Act 2000 (the “Act”), the FSA has varied the permission granted to Abbey Brokers Limited (“ABL”), pursuant to Part IV of the Act (“ABL’s Part IV permission”) by removing all regulated activities with immediate effect. Accordingly, ABL’s Part IV permission no longer includes the following regulated activities:

- (1) Advising on investments (except on pension transfers and pension opt-outs);
- (2) Advising on regulated mortgage contracts;
- (3) Agreeing to carry on a regulated activity;
- (4) Arranging (bringing about) deals in investments;
- (5) Arranging (bringing about) regulated mortgage contracts;
- (6) Making arrangements with a view to regulated mortgage contracts;
- (7) Making arrangements with a view to transactions in investments.

1.2. The FSA has further decided to vary ABL's permission by including the following requirements, namely that:

- (1) within 14 days ABL must advise in writing all clients for its regulated activities that it is no longer permitted by the FSA to carry on regulated activities;
- (2) by the expiry of the 14 day period, provide the FSA with a copy of the written advice sent to all its clients pursuant to (i) above, together with a list of all clients.

## **2. REASONS FOR ACTION**

### **Summary**

2.1. The FSA has concluded, on the basis of the facts and matters described below, that ABL is failing and will continue to fail to satisfy the threshold conditions set out in Part 1 of Schedule 6 to the Act (the "Threshold Conditions") in that, in the opinion of the FSA, ABL's resources are not adequate in relation to the regulated activities it has permission to carry on.

2.2. The FSA also considers, on the basis of those facts and matters, that it is necessary, in order to protect the interests of consumers, for the action specified above to take immediate effect.

### **Relevant statutory provisions**

2.3. The FSA's regulatory objectives established in section 2(2) of the Act include the protection of consumers.

2.4. The FSA is authorised by section 45 of the Act to exercise the following powers:

- to vary an authorised person's permission where it appears to the FSA that such person is failing to satisfy the Threshold Conditions;
- to vary such a permission by removing a regulated activity from those for which the permission is given; and
- to include any provision in the permission as varied that could be included if a fresh permission were being given in response to an application under section 40 of the Act, including the imposition pursuant to section 43 of the Act of such requirements as the FSA considers appropriate.

2.5. Section 53(3) of the Act allows such variations to take effect immediately if the FSA reasonably considers that it is necessary for the variations to take effect immediately.

2.6. Paragraph 4(1) of Schedule 6 to the Act sets out Threshold Condition 4, which states:

“The resources of the person concerned must, in the opinion of the Authority, be adequate in relation to the regulated activities that he seeks to carry on, or carries on.”

### **Relevant Handbook provisions**

- 2.7. In exercising its power to vary a Part IV permission, the FSA must have regard to relevant provisions in the FSA Handbook of Rules and Guidance (the “Handbook”). The main considerations relevant to the action specified are set out below.

### ***Relevant Principle***

- 2.8. Principle 4 (Financial prudence) requires a firm to maintain adequate financial resources as laid out as in the Principles for Businesses (the “Principles”) in the FSA Handbook.
- 2.9. Principle 11 (Relations with regulators) requires a firm to deal with its regulator in an open and co-operative way and to disclose to the FSA appropriately anything relating to the firm of which the FSA would reasonably expect notice

### ***Relevant Rules***

- 2.10. FSA Rule MIPRU 4.2.1R in the Prudential Sourcebook for Mortgage and Home Finance Firms and General Insurance Intermediaries (“MIPRU”) which forms part of the Handbook, requires that:

“A *firm* must at all times ensure that it is able to meet its liabilities as they fall due.”

- 2.11. FSA Rule IPRU(INV) 2.2.1R(1) in the Interim Prudential Sourcebook for Investment Businesses (“IPRU(INV)”) which forms part of the FSA Handbook of Rules and Guidance, requires that:

“A *firm* must be able to meet its liabilities as they fall due.”

### **Guidance concerning the relevant Threshold Condition**

- 2.12. Guidance on Threshold Condition 4 is set out in Chapter 2.4 of the Part of the FSA Handbook entitled Threshold Conditions (“COND”).

Guidance concerning - Threshold Condition 4: Adequate resources (paragraph 4, Schedule 6 to the Act)

- 2.13. COND 2.4.1UK(1) reproduces the relevant statutory provision 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.
- 2.14. COND 2.4.1UK(2) permits the FSA, when forming its opinion as to whether the resources of an authorised person are adequate in relation to the regulated activities

that he carries on, to have regard to the provision he makes in respect of liabilities (including contingent and future liabilities).

- 2.15. COND 2.4.4G(3) states that the FSA only takes into account relevant matters which are material in relation to the regulated activities for which the authorised person has permission.

### **Relevant regulatory provisions**

- 2.16. The FSA's policy in relation to the use of its enforcement powers is set out in the Enforcement Guide ("EG").
- 2.17. EG 8.1(1) reflects the provisions of section 45 of the Act that the FSA may use its own-initiative power to vary or cancel the permission of an authorised firm where a firm is failing or is likely to fail to satisfy the Threshold Conditions.
- 2.18. EG 8.1B provides that the FSA will have regard to its regulatory objectives and the range of regulatory tools that are available to it, when it considers how it should deal with a concern about a firm.
- 2.19. EG 8.3 provides that the FSA will exercise its formal powers under section 45 of the Act, where the FSA considers it is appropriate to ensure a firm meets its regulatory requirements. EG 8.3(1) specifies that the FSA may consider it appropriate to exercise its powers where it has serious concerns about a firm or about the way its business is being or has been conducted
- 2.20. EG 8.5 provides that the circumstances in which the FSA will consider varying a firm's Part IV permission include those where the FSA has serious concerns about the firm or about the way its business is being or has been conducted.
- 2.21. EG 8.5(1)(a) specifies the circumstances in which the FSA will consider exercising its own-initiative power. This includes where the firm appears to be failing, or appears likely to fail to satisfy the threshold conditions relating to one or more of its regulated activities because for instance the firm's material and financial resources appear to be inadequate for the scale or type of regulated activity it is carrying on.
- 2.22. EG 8.9 includes among the factors which will determine whether the urgent exercise of the FSA's own-initiative power is an appropriate response, the extent of any loss or risk of loss or other adverse effect on consumers and the steps the authorised person has taken or is taking to address the issue.

### **Facts and matters relied on**

- 2.23. ABL became authorised by the FSA on 5 November 2004 to carry on regulated home finance business and designated investment business.
- 2.24. The latest financial information provided by ABL to the FSA, as reported in its Retail Mediation Activities Return (RMAR) for the period ended 30 May 2010, showed that at that date ABL had a balance sheet position of net liabilities of £20,461.

- 2.25. An action was brought against ABL and other parties by two former clients (the “claimants”). The claimants alleged that ABL had acted in breach of its duties as a fiduciary by causing monies advanced for mortgage purposes to be paid into the account of a separate party for the benefit of one of the other defendants. On 22 June 2010, the High Court (Chancery Division) concluded that ABL was liable to repay the sums paid into that account and for breach of fiduciary duty owed to the claimants. The Court therefore ordered that ABL pay the claimants £1,459,443 plus interest of £13,736 and additional interest of £2,080, by 6 July 2010. The defendants, including ABL, were also ordered to pay the Claimants’ costs of £265,000 by 13 July 2010.
- 2.26. ABL has failed to meet its liabilities as they have fallen due. In particular, ABL has failed to comply with the order and has not made any payments to the claimants. In addition, a freezing injunction in favour of the claimants was made against the defendants including ABL on 22 June 2010. Under the injunction, ABL may not dispose of its assets until all ABL’s liabilities arising out of the judgment have been paid in full.
- 2.27. ABL has confirmed to the FSA that it cannot pay the amounts due to the claimants. ABL failed to notify the FSA at any stage of the claim being made against it, or the Court judgment made on 22 June 2010 or the subsequent orders.

### **Conclusions**

- 2.28. The facts and matters described above lead the FSA, having regard to its regulatory objectives, to the following conclusions:
- (a) by failing to meet its liabilities as they have fallen due, ABL is in breach of MIPRU 4.2.1R and IPRU(INV) 2.2.1R(1), which require ABL to be able to meet its liabilities as they fall due;
  - (b) in failing to notify the FSA of the claim, the judgment or the orders, ABL did not deal co-operatively with the FSA in breach of Principle 11;
  - (c) in failing to meet its liabilities as they have fallen due and in being prevented by injunction from being able to dispose of its assets, ABL has not maintained adequate resources in breach of Principle 4. That failing is material in relation to the regulated activities for which ABL has permission and it is therefore failing to satisfy Threshold Condition 4: Adequate Resources;
  - (d) the risk of loss or other adverse effect on consumers, and to confidence in the market, by ABL’s failing, which is a material breach of a requirement imposed upon it by the FSA's rules, causes the FSA to have very serious concerns about ABL such that the exercise of the FSA’s own-initiative power to vary its Part IV permission with immediate effect is an appropriate response to those concerns; and

- (e) specifically, the variation of ABL's Part IV permission should take immediate effect to address the FSA's serious concern that any further liabilities ABL incurs will not be met.

### **3. DECISION MAKER**

- 3.1. The decision which gave rise to the obligation to give this Supervisory Notice was made by the Chairman of the Regulatory Decisions Committee.

### **4. IMPORTANT**

- 4.1. This Supervisory Notice is given to ABL in accordance with section 53(4) of the Act and is served on ABL at its principal place of business last notified to the FSA. The following statutory rights are important.

#### **The Tribunal**

- 4.2. ABL has the right to refer the matter to which this Supervisory Notice relates to the Upper Tribunal (the "Tribunal"). The Tax and Chancery Chamber is the part of the Upper Tribunal which, amongst other things, hears references arising from decisions of the FSA. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, ABL has 28 days from the date on which this Supervisory Notice is given to it to refer the matter to the Tribunal.
- 4.3. A reference to the Tribunal is made by way of a reference notice (Form FTC3) signed by ABL (or on ABL's behalf) and filed with a copy of this Supervisory Notice. The Tribunal's contact details are:

The Upper Tribunal, Tax and Chancery Chamber, 45 Bedford Square, London WC1B 3DN (telephone: 020 7612 9700; email: [financeandtaxappeals@tribunals.gsi.gov.uk](mailto:financeandtaxappeals@tribunals.gsi.gov.uk)).

- 4.4. Further details are contained in "Making a Reference to the UPPER TRIBUNAL (Tax and Chancery Chamber)" which is available from the Tribunal website:

<http://www.tribunals.gov.uk/financeandtax/FormsGuidance.htm>

- 4.5. ABL should note that a copy of the reference notice (Form FTC3) must also be sent to the FSA at the same time as filing a reference with the Tribunal. A copy of the reference notice should be sent to Wilma Amarteifio at the FSA, 25 The North Colonnade, Canary Wharf, London E14 5HS.

#### **Representations**

- 4.6. ABL has the right to make written and oral representations to the FSA, whether or not it refers this matter to the Tribunal. If ABL wishes to make written representations, it must do so by 30 August 2010 or such later date as may be permitted by the FSA. Written representations should be made to the Regulatory Decisions Committee and sent to Husayn Rahman, Regulatory Decisions Committee Professional Support Services. The Regulatory Decisions Committee Professional Support Services' address is: 25 The North Colonnade, Canary Wharf, London E14 5HS. If ABL wishes

to make oral representations, it should inform Husayn Rahman in writing of its intention to do so by 9 August 2010. If ABL does not inform the FSA by 9 August 2010, it will not, other than in exceptional circumstances, be able to make oral representations.

#### **Confidentiality and publicity**

- 4.7. ABL should note that this Supervisory Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining advice on its contents). ABL should also note that section 391 of the Act requires the FSA when the Supervisory Notice takes effect, to publish such information about the matter as it considers appropriate.

#### **FSA contacts**

- 4.8. If ABL has any questions regarding the procedures of the Regulatory Decisions Committee, it should contact Husayn Rahman, RDC Professional Support Services (direct line: 020 7066 1072).
- 4.9. For more information concerning this matter generally, ABL should contact Wilma Amarteifio at the FSA (direct line: 020 7066 7452 / fax: 020 7066 7453).

**Tim Herrington**  
**Chairman, Regulatory Decisions Committee**