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## **FIRST SUPERVISORY NOTICE**

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To: **Amerindo Advisors (UK) Limited**  
Of: **43 Upper Grosvenor Street**  
**London**  
**W1K 2NJ**

Dated: **3 June 2005**

**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**

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

- (a) advising (except pension transfers and opt-outs);
- (b) agreeing to carry on a regulated activity.

## 2. REASONS FOR ACTION

### Summary

The FSA has concluded, on the basis of the facts and matters described below, that Amerindo is failing to satisfy the threshold conditions set out in Schedule 6 to the Act (“the threshold conditions”) in that Amerindo does not have a competent and prudent management.

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

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

By section 45 of the Act, the FSA is authorised:

- 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 permission by removing a regulated activity from those for which the permission is given.

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

### Relevant Guidance

In exercising its power to vary a Part IV permission, the FSA must have regard to guidance published in the FSA Handbook. The main considerations in relation to the action specified above are set out below.

#### **ENF 3.5 - The FSA’s policy for exercising its own-initiative power to vary Part IV permission**

Paragraph 3.5.2 requires the FSA to have regard to its regulatory objectives and the range of regulatory tools that are available to it.

Paragraph 3.5.8 provides that the circumstances in which the FSA will consider exercising its power include where the FSA has serious concerns that the authorised person has breached requirements imposed on it by or under the Act (including Principles and rules) and the breaches are material in number or individual seriousness.

Paragraph 3.5.13 includes, among the factors which will determine whether the urgent exercise of the FSA’s own-initiative power is an appropriate response to serious concerns, the extent of any loss or risk of loss or other adverse effect on consumers.

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

### **COND 2.5 - Threshold condition 5: Suitability (paragraph 5, Schedule 6 to the Act)**

Paragraph 2.5.1 reproduces the relevant 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, among other things the need to ensure that his affairs are conducted soundly and prudently.

Paragraph 2.5.4(2)(b) 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 has, or will have, a competent and prudent management.

Paragraph 2.5.4(3) requires the FSA only to take into account relevant matters which are significant in the context of the suitability of the firm.

Paragraph 2.5.7(1) permits the FSA, when forming its opinion as to whether an authorised person has a competent and prudent management, to have regard to relevant matters, including whether the authorised person has a governing body made up of individuals with an appropriate range of skills and experience to understand, operate and manage the firm's regulated activities, in determining whether a firm satisfies Threshold Condition 5.

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

Amerindo is an investment adviser whose two directors, Gary Alan Tanaka and Alberto William Vilar, occupy all governing functions at the Firm.

Mr Tanaka and Mr Vilar have been arrested and are in police custody in the United States of America.

### **Conclusions**

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 the conclusion that:

- Amerindo's governing body is currently unavailable to carry on the management of the Firm;
- by virtue of the unavailability of its governing body, Amerindo fails to satisfy the FSA that it has a competent and prudent management;
- that failure is significant in the context of the suitability of Amerindo, and Amerindo therefore fails to satisfy the FSA that it is a fit and proper person having regard to all the circumstances;
- Amerindo is therefore failing to satisfy the threshold conditions in relation to the regulated activities which Amerindo has permission to conduct;
- the risk of loss to consumers arising from Amerindo's circumstances, causes the FSA to have very serious concerns about Amerindo such that the exercise of the FSA's own-initiative power to vary Amerindo's Part IV permission with immediate effect is an appropriate response to those concerns.

### **3. DECISION MAKER**

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

### **4. IMPORTANT**

This Supervisory Notice is given to you in accordance with section 53(4) of the Act. The following statutory rights are important.

#### **The Tribunal**

You may refer this matter to the Financial Services and Markets Tribunal ("the Tribunal"). Under section 133 of the Act, you have 28 days from the date you were given this Supervisory Notice to refer the matter to the Tribunal or such other period as specified in the Tribunal Rules or as the Tribunal may allow. A reference to the Tribunal is made by way of a written notice signed by you and filed with a copy of this notice. The Tribunal's address is: 15-19 Bedford Avenue, London WC1B 3AS (telephone 020 7612 9700). The detailed procedures for making a reference to the Tribunal are contained in section 133 of the Act and the Tribunal Rules.

You should note that the Tribunal Rules provide that at the same time as filing a reference notice with the Tribunal, you must send a copy of the notice to the FSA. Any copy notice should be sent to John Kirby, at the FSA, 9<sup>th</sup> Floor, 25 The North Colonnade, Canary Wharf, London E14 5HS.

#### **Representations**

You have the right to make written and oral representations to the FSA (whether or not you refer this matter to the Tribunal). If you wish to make written representations you must do so by 3 July 2005 or such later date as may be permitted by the FSA. Written representations should be made to the Regulatory Decisions Committee and sent to Brian Whitbread, Head of Regulatory Decisions Committee Secretariat, 25 The North Colonnade, Canary Wharf, London E14 5HS. If you wish to make oral representations, you should inform Mr Whitbread not less than 5 business days before 3 July 2005.

#### **Confidentiality and publicity**

You 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). You 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**

If you have any questions regarding the procedures of the Regulatory Decisions Committee, you should contact Brian Whitbread, Head of the Regulatory Decisions Committee Secretariat (direct line: 020 7066 3202/fax: 020 7066 3203).

For more information concerning this matter generally, you should contact John Kirby at the FSA (direct line: 020 7066 1458/fax: 020 7066 1459).

Tim Herrington, Chairman, Regulatory Decisions Committee.