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## **FIRST SUPERVISORY NOTICE**

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**To: David Morgan Hilling trading as David Morgan Finance**

**Of: 364 Hoylake Road  
Wirral  
CH46 6DF**

**FSA Reference  
Number: 304023**

**Dated: 9 September 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 decided to vary the permission granted to you, David Morgan Hilling trading as David Morgan Finance, pursuant to Part IV of the Act ("your Part IV permission") by removing all regulated activities with immediate effect. Accordingly, your Part IV permission no longer includes the following regulated activities:

- (a) advising on investments (excluding pension transfers and opt outs);
- (b) advising on regulated mortgage contracts;
- (c) agreeing to carry on a regulated activity;
- (d) arranging (bringing about) deals in investments;
- (e) arranging (bringing about) regulated mortgage contracts;

(f) making arrangements with a view to transactions in investments; and

(g) making arrangements with a view to regulated mortgage contracts.

1.2 The FSA has further decided to vary your Part IV permission by including the following requirements, namely that within 14 days of the date of this Notice you must:

(i) notify in writing all clients for your regulated activities, that you are no longer permitted by the FSA to carry on any regulated activities; and

(ii) provide the FSA with a copy of the written notice sent in accordance with (i) above, together with a list of all clients to whom the notice has been sent.

## **2. REASONS FOR ACTION**

### **Summary**

2.1 The FSA has concluded, on the basis of the facts and matters described below, that, by failing to notify the FSA:

(1) that you had decided to cease to participate in the day to day management of the firm of which you are the authorised sole trader principal; and

(2) of any current contact details;

you are in breach of Principle 11 of the FSA's Principles for Businesses (the "Principles") and you are failing to satisfy the FSA that you are conducting your business in compliance with proper standards.

2.2 These failings, which are significant in the context of your suitability, lead the FSA to conclude that you are not conducting your business soundly and prudently and in compliance with proper standards and that you are not a fit and proper person, and that you are therefore failing to satisfy the Threshold Conditions in relation to the regulated activities in your Part IV permission.

2.3 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**

2.4 The FSA's regulatory objectives, established in section 2(2) of the Act, include the protection of consumers and market confidence.

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

- to vary an authorised person's permission, where it is desirable to exercise that power in order to protect the interests of consumers; 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.
- 2.6 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.
- 2.7 Paragraph 5 of Schedule 6 to the Act sets out Threshold Condition 5, which states:
- “The person concerned must satisfy the Authority that he is a fit and proper person with regard to all the circumstances, including –
- ...
- (c) the need to ensure that his affairs are conducted soundly and prudently.”

### **Relevant Handbook Provisions**

- 2.8 In exercising its power to vary a Part IV permission, the FSA must have regard to guidance published in the FSA Handbook of rules and guidance (the “FSA Handbook”). The relevant main considerations in relation to the action specified above are set out below.

### **Relevant Principle**

- 2.9 Principle 11 (Relations with regulators) requires that a firm must deal with its regulator in an open and co-operative way, and must disclose to the FSA appropriately anything relating to the firm of which the FSA would reasonably expect notice.

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

- 2.10 Guidance on Threshold Condition 5 is set out in Chapter 2.5 of the Part of the FSA Handbook entitled Threshold Conditions (“COND”).

### **Guidance concerning - Threshold Condition 5: Suitability (paragraph 5, Schedule 6 to the Act)**

- 2.11 COND 2.5.1UK 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.
- 2.12 COND 2.5.4G(2)(a) states that the FSA, when forming its opinion as to whether an firm is conducting its affairs soundly and prudently, will have regard to relevant matters, including whether it conducts its business with integrity and in compliance with proper standards.

- 2.13 COND 2.5.4G(3) states that the FSA will take into account relevant matters only to the extent that they are significant in the context of the suitability of the firm.
- 2.14 COND 2.5.6G permits the FSA, when forming its opinion as to whether a firm is conducting its business with integrity and in compliance with proper standards, to have regard to relevant matters, including whether:
- the firm has been open and co-operative in all its dealings with the FSA and is ready and willing to comply with the requirements and standards under the regulatory system and other legal obligations; and
  - the firm has contravened, among other things, the requirements of the regulatory system, which include the Threshold Conditions, the FSA Principles and other rules.

### **Relevant regulatory provisions**

- 2.15 The FSA's policy in relation to the use of its enforcement powers is set out in the Enforcement Guide ("EG").
- 2.16 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.

### Varying a firm's Part IV permission on the FSA's own initiative

- 2.17 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.
- 2.18 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.
- 2.19 EG 8.5 provides examples of the circumstances in which the FSA will consider exercising its power, including where the firm appears to be failing, or appears to be likely to fail, to satisfy the threshold conditions because, for instance, the firm appears not to be a fit and proper person to carry on a regulated activity because it has not been managed competently and prudently and has not exercised due skill, care and diligence in carrying on one or more, or all, of its regulated activities (EG 8.5(1)(b)(ii)).
- 2.20 EG 8.8 sets out a non-exhaustive list of factors the FSA will consider in exercising its own-initiative power as a matter of urgency. EG 8.8(4) specifies that the FSA will consider urgent own-initiative action if there are circumstances

suggesting a serious problem within a firm or with a firm's controllers that calls into question the firm's ability to continue to meet the threshold conditions.

- 2.21 EG 8.9 sets out the factors which will determine whether the urgent exercise of the FSA's own-initiative power is an appropriate response to serious concerns, including: the extent of any risk of consumer loss or other adverse effect on consumers (EG 8.9(1)) and the firm's conduct, including whether the firm brought the issue promptly to the FSA's attention (EG 8.9(8)(b)).

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

- 2.22 You are a sole trader who was authorised by the FSA on 31 October 2004 to carry on regulated mortgage business and who from 14 January 2005 was also permitted to conduct insurance mediation business.
- 2.23 The FSA has been informed by an individual working at your firm that you have had no contact or involvement with the firm since May 2008. You failed to notify the FSA that you had decided to cease to be involved in the day to day management of the firm of which you are the authorised sole trader principal, meaning that your permission is effectively being used to conduct regulated activities by individuals who are neither authorised, nor approved by the FSA to carry on governing functions.
- 2.24 You have also failed to provide the FSA with any current, valid contact details.

#### **Conclusions**

- 2.25 The facts and matters described above lead the FSA, having regard to its regulatory objectives which include the protection of consumers, to the following conclusions:
- you failed to notify the FSA that you ceased to participate in the day to day management of the firm for which you are the sole trader principal, or of any current contact details;
  - by virtue of that failing you are in breach of Principle 11 and are failing to satisfy the FSA that you are conducting your business soundly and prudently and in compliance with proper standards;
  - that failing is material in relation to the regulated activities for which you have permission and you are therefore failing to satisfy Threshold Condition 5;
  - the risk of loss, or other adverse effects on consumers, and to confidence in the market, causes the FSA to have very serious concerns about you such that the exercise of the FSA's own-initiative power to vary your Part IV permission with immediate effect is an appropriate response to those concerns; and
  - specifically the immediate variation of your Part IV permission is desirable in order to protect the interests of consumers or potential consumers.

### **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 you in accordance with section 53(4) and in accordance with section 53(5) of the Act, and is being served on you at your principal place of business last notified to the FSA. The following statutory rights are important.

#### **The Tribunal**

- 4.2 You have 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, you have 28 days from the date on which this Supervisory Notice is given to you 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 you 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 You 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 Martin Badcock at the FSA, 25 The North Colonnade, Canary Wharf, London E14 5HS.

#### **Representations**

- 4.6 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 13 October 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 Lynn Cheesman, 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 you wish to make oral representations, you should inform Lynn Cheesman in writing of your intention to do so by 20 September 2010. If you do not inform the FSA by 20

September 2010, you will not, other than in exceptional circumstances, be able to make oral representations.

### **Confidentiality and publicity**

- 4.7 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 (and this Notice has immediate effect), to publish such information about the matter as it considers appropriate.

### **FSA contacts**

- 4.8 If you have any questions regarding the procedures of the Regulatory Decisions Committee, you should contact Lynn Cheesman (direct line: 020 7066 3192) or Jackie Noonan (direct line: 020 7066 3074), of the RDC Professional Support Services.
- 4.9 For more information concerning this matter generally, you should contact Martin Badcock at the FSA (direct line: 020 7066 1560 / fax: 020 7066 1561).

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