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**FIRST SUPERVISORY NOTICE**

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To: Griffiths McAlister Insurance Brokers Limited

Of: The Old School House  
14 Mill Road  
Burgess Hill  
West Sussex  
RH15 8DR

Date: 19 March 2009

**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 Griffiths McAlister Insurance Brokers Limited (“the Firm”), pursuant to Part IV of the Act (“the Firm’s Permission”) by removing all regulated activities with immediate effect. Accordingly, the Firm’s Permission no longer includes the following regulated activities:
- (1) dealing in investments as agent;
  - (2) arranging deals in investments;
  - (3) making arrangements;

- (4) advising (ex Pension Transfers/Opt Outs);
  - (5) agreeing to carry on a regulated activity; and
  - (6) assisting in administration of insurance.
- 1.2. The FSA has further, pursuant to section 43 of the Act, decided to vary the Firm's Permission by including the following requirements, namely that within 14 days the Firm must:
- (1) notify in writing all customers under the Firm's regulated activities that the Firm is no longer permitted by the FSA to carry on regulated activities; and
  - (2) provide the FSA with a copy of the written notification sent pursuant to (1) above, together with a list of all customers to whom such notification has been sent.
- 1.3. The FSA has further, pursuant to Section 45 and Section 48 of the Act, decided to vary the Firm's Permission by imposing a requirement, pursuant to Section 43 of the Act, such that the Firm's assets (or any assets belonging to the Firm's customers but held by the Firm to its order) held by any institution may not, so long as the requirement is in force, be released, without written authority from the FSA.

## **2. REASONS FOR ACTION**

- 2.1. The FSA has serious concerns, on the basis of the facts and matters described below, that:
- (1) the Firm has failed to arrange adequate protection for clients' assets when the Firm were responsible for them in breach of Principle 10 of the FSA's Principles for Businesses;
  - (2) the Firm has failed to deal with the FSA in an open and cooperative way, and failed to disclose to the FSA appropriately matters of which the FSA would reasonably expect notice in breach of Principle 11 of the FSA's Principles for Businesses;
  - (3) the Firm has failed to separate client money from that of the Firm's own. This has allowed client money to potentially be used on the Firm's own account and not that of customers in breach of 7.3.1R of the Client Assets sourcebook ("CASS") which is part of the FSA Handbook;
  - (4) the Firm has failed to introduce adequate organisational arrangements to minimise the risk of the loss or diminution of client money in breach of CASS 7.3.2R; and
  - (5) this demonstrates that the Firm is failing, and will continue to fail, to satisfy the threshold conditions set out in Schedule 6 to the Act ("the Threshold Conditions") in that the FSA is not satisfied that the Firm is a fit and proper person having regard to all the circumstances (Threshold Condition 5 – Suitability).

2.2. The FSA considers that it is necessary that the variation take immediate effect, in order to preserve market confidence, to protect consumers and to prevent the risk of the Firm's business being used for the purpose of financial crime.

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

3.1. Annex 1 below sets out the relevant statutory powers, regulatory provisions and policy relied upon.

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

4.1. The Firm became authorised on 14 January 2005, and continues to be authorised, to carry on the following regulated activities:

- (1) dealing in investments as agent;
- (2) arranging deals in investments;
- (3) making arrangements;
- (4) advising (ex Pension Transfers/Opt Outs);
- (5) agreeing to carry on a regulated activity; and
- (6) assisting in administration of insurance.

4.2. The Firm is an insurance broker with one director according to the register at Companies House. The Firm has two directors, according to FSA records, who each hold Controlled Functions CF1 (Director), CF8 (Apportionment and Oversight), CF11 (Money Laundering Reporting) and CF28 (Systems and Controls). In addition, one of these directors holds CF3 (Chief Executive) and the other holds CF29 (Significant Management).

4.3. The Firm was the subject of an advert placed in the London Gazette following a winding up petition issued against it by HM Revenue and Customs ("HMRC").

4.4. HMRC, and subsequently the FSA's Small Firms and Contact Division ("SFCD"), found that the Firm had fallen significantly behind with its company accounts and had not filed the appropriate corporation tax returns stating tax due.

#### *Capital adequacy requirements*

4.5. The Firm failed to submit annual accounts to Companies House for the period covering 2005 to 2007, until January 2009. The Firm has failed to submit annual accounts to Companies House covering any period since 2007. The Firm has submitted a Retail Mediation Activities Return ("RMAR") to the FSA every six months. There are inconsistencies between figures in the Firm's annual accounts submitted to Companies House for 2006 and 2007 and figures in the Firm's RMARs for the same period. The Firm has failed to provide any evidence that the RMARs are accurate upon request. Further RMARs for September 2008 and March 2009 have not been submitted.

- 4.6. The Firm recently deposited £40,000 into a bank account in order to pay the monies owed to HMRC, despite the Firm's RMARs stating that the Firm had capital of £49,930. The FSA is concerned about the level of capital held by the Firm as the circumstances of this deposit suggest there were insufficient funds in the Firm's accounts to pay the monies owed to HMRC without this deposit being made. The FSA is concerned that if the Firm's RMARs were accurate this deposit would not have been required to pay the monies to HMRC given the capital supposedly in the Firm's account.
- 4.7. The FSA has serious concerns that the Firm is not meeting its capital adequacy requirements based on these facts.

*Use of a non client money bank account for client money*

- 4.8. The Firm is required, pursuant to CASS 1.2.2R and CASS 5.3.2R to hold client money as a trustee. The Firm is further required, pursuant to CASS 5.5.3R and CASS 5.5.5R, to hold client money separate from that of its own in a client money bank account.
- 4.9. The Firm uses at least three bank accounts, two of which have been used for client money. The Firm has failed to provide evidence that both bank accounts it uses for client money were set up as client money accounts on a statutory trust basis. The Firm has only provided evidence that one bank account has been set up in the correct manner.
- 4.10. The Firm has failed to provide evidence that the second bank account has been set up on a statutory trust basis. The Firm has also failed to provide confirmation that it has stopped using this account for client money. The FSA has serious concerns that the Firm has breached CASS 7.3.1R by using a non client money bank account for client money, thereby putting client money at risk in breach of Principle 10.

*Client money reconciliations*

- 4.11. CASS 5.5.63R requires client money reconciliations to be carried out every 25 business days, and reconciliation against the bank statement to be carried out no later than 10 business days after that.
- 4.12. The FSA has serious concerns that the Firm has failed to reconcile the Firm's client money account against the Firm's bank statements within the time period set out in paragraph 4.11 above.
- 4.13. The FSA has been unable to reconcile the Firm's client money account with bank statements received.

*Client money audit*

- 4.14. Pursuant to paragraph 6(1) of Schedule 1 of the Act the FSA set out regulatory processes as part of its Handbook of rules and guidance, which include the Supervision Manual (“SUP”). The FSA has serious concerns that the Firm has breached SUP 3.10.4R and 3.10.6R by failing to carry out an independent client money audit within the prescribed time limits. The Firm appointed a third party to carry out an independent client money audit for the first time since 14 January 2005 in February 2009.

*Co-operation with the FSA*

- 4.15. The Firm failed to inform the FSA about a winding up petition against the Firm. The Firm also failed to inform the FSA that the Firm was issued with a summons relating to this order in a timely manner. These are matters the FSA should have been informed of pursuant to SUP 15.3.1R.
- 4.16. The Firm has failed to appropriately answer correspondence from the FSA. In particular, full responses from the Firm to requests made by the FSA were not received on various occasions, including in response to a request for information under s.165 of the Act, in breach of Principle 11.
- 4.17. The Firm also submitted RMARs over a period of four years but has failed to provide any information, upon request, to confirm the accuracy of these returns, in breach of Principle 11. As noted in paragraph 4.5 above, the FSA is concerned about inconsistencies in information between the Firm’s annual accounts for 2006 and 2007, and its RMARs for the same period.

**5. ANALYSIS OF CONCERNS**

- 5.1. The FSA has serious concerns about the Firm, including the way in which its business is being or appears to have been conducted for the reasons set out below. Accordingly, the FSA is concerned that the Firm poses a serious risk to consumers.
- 5.2. By failing to use a client money bank account for client money, it appears that the Firm has breached CASS 7.3.1R, thereby putting client money at risk and failing to arrange adequate protection for clients' assets when the Firm was responsible for them in breach of Principle 10;
- 5.3. By failing to carry out the required client money reconciliations in the relevant time period it appears that the Firm has breached CASS 5.5.63R;
- 5.4. By failing to carry out an independent client audit within the prescribed time limits it appears that the Firm has breached SUP 3.10.4R and 3.10.6R;
- 5.5. By failing to inform the FSA of the winding up petition issued by HMRC, it appears that the Firm has breached SUP15.3.1R;
- 5.6. By failing to appropriately answer correspondence and provide information requested by the FSA, it appears that the Firm has failed to deal with the FSA in an open and co-operative way, in breach of Principle 11.

5.7. By failing to ensure client money was held appropriately, it appears that the Firm has failed to comply with the proper standards and failed to act with due skill, care and diligence, and has breached Threshold Condition 5.

## **6. CONCLUSIONS**

6.1. The facts and matters described above lead the FSA, having regard to its regulatory objectives, to the following conclusions:

- (1) the above matters are so serious as to demonstrate that the Firm appears not to be a fit and proper person to be authorised to conduct regulated activities, having regard to the need to ensure that the Firm's affairs are conducted soundly and prudently;
- (2) it appears that the Firm therefore fails to satisfy Threshold Condition 5 (Suitability), and the FSA is entitled to vary the Firm's Permission to remove all regulated activities and to include the requirements set out at paragraph 1.2 above; and
- (3) that the variation of the Firm's Permission should take immediate effect to address the FSA's serious concern about the risk of customer detriment; and
- (4) that it is necessary to impose a requirement on the Firm's assets to address the FSA's serious concern that the Firm has not been handling client money appropriately.

## **7. DECISION MAKER**

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

## **8. IMPORTANT**

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

### **The Tribunal**

8.2. The Firm may refer this matter to the Financial Services and Markets Tribunal ("the Tribunal"). Under section 133 of the Act, the Firm has 28 days from the date it was sent 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 the Firm 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.

8.3. The Firm should note that the Tribunal Rules provide that at the same time as filing a reference notice with the Tribunal, the Firm must send a copy of the notice to the FSA. Any copy notice should be sent to Catherine Harris at the FSA, 4th Floor, 25 The North Colonnade, Canary Wharf, London E14 5HS.

## **Representations**

- 8.4. The Firm has the right to make written and oral representations to the FSA (whether or not the Firm refers this matter to the Tribunal). If the Firm wishes to make written representations the Firm must do so by **[date]** or such later date as may be permitted by the FSA. Written representations should be made to the Regulatory Decisions Committee and sent to Jackie Noonan, 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 the Firm wishes to make oral representations, the Firm should inform Jackie Noonan not less than 5 business days before **[date]**.

## **Confidentiality and publicity**

- 8.5. The Firm 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). The Firm 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**

- 8.6. If the Firm has any questions regarding the procedures of the Regulatory Decisions Committee, the Firm should contact Jackie Noonan of RDC Professional Support Services (direct line: 020 70663074/fax: 020 70661015).
- 8.7. For more information concerning this matter generally, the Firm should contact Catherine Harris of the FSA (direct line: 020 7066 4872).

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**Tim Herrington**

**Chairman, Regulatory Decisions Committee**

## Annex 1

### 1. Statutory provisions

- 1.1. The FSA's regulatory objectives established in section 2(2) of the Act include the reduction of financial crime, protection of consumers and the preservation of market confidence.
- 1.2. By section 45 of the Act, the FSA is authorised:
  - (1) *to vary an authorised person's permission, where it appears to the FSA that the authorised person is failing, or is likely to fail, to satisfy the Threshold Conditions or that it is desirable to vary the permission in order to protect the interests of consumers or potential consumers;*
  - (2) *to vary the permission by removing a regulated activity from those for which the permission is given; and*
  - (3) *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.*
- 1.3. By section 48(1)(b) of the Act, the FSA can vary an authorised person's Part IV permission so as to alter an assets requirement imposed on him or impose such a requirement on him.
- 1.4. Section 48(3) states that an "Assets requirement" means a requirement under section 43 of the Act:
  - (1) *prohibiting the disposal of, or other dealing with, any of a party's assets (whether in the United Kingdom or elsewhere) or restricting such disposals or dealings; or*
  - (2) *that all or any of a party's assets, or all or any assets belonging to consumers but held a party or to his order, must be transferred to and held by a trustee approved by the Authority.*
- 1.5. 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.
- 1.6. Section 41 of the Act states that "the Threshold Conditions", in relation to a regulated activity, means the conditions set out in Schedule 6 to the Act.
- 1.7. Threshold Condition 5 in Schedule 6 states that an authorised person must satisfy the FSA that he is a fit and proper person having regard to all the circumstances, including his connection with any person, the nature of any regulated activity that he carries on or seeks to carry on, and the need to ensure that his affairs are conducted soundly and prudently.



## **2. Principles for Businesses**

2.1. The FSA's Principles for Businesses 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 FSA's regulatory objectives. The FSA considers that the following Principles are relevant to the Firm's conduct:

(1) Principle 10:

*"A firm must arrange adequate protection for clients' assets when it is responsible for them."*

(2) Principle 11:

*"A firm must deal with its regulators in an open and cooperative way, and must disclose to the FSA appropriately anything relating to the firm of which the FSA would reasonably expect notice."*

## **3. Handbook provisions**

3.1. FSA Rule 15.3.15R in the Supervision Manual ("SUP"), which is part of the FSA Handbook, requires that:

"A firm must notify the FSA immediately if:

(1) *civil proceedings are brought against the firm and the amount of the claim is significant in relation to the firm's financial resources or its reputation; or*

...

(3) *disciplinary measures or sanctions have been imposed on the firm by any statutory or regulatory authority, professional organisation or trade body (other than the FSA) or the firm becomes aware that one of those bodies has started an investigation into its affairs..."*

3.2. SUP 3.10.4R states that an auditor of a firm must submit a report addressed to the FSA, signed in his capacity as auditor, which:

(1) states the matters set out in SUP 3.10.5 R; or

(2) if the firm claims not to hold client money or custody assets, states whether anything has come to the auditor's attention that causes him to believe that the firm held client money or custody assets during the period covered by the report.

3.3. SUP 3.10.6 states that the period covered by a report under SUP 3.10.4 R must end not more than 53 weeks after the period covered by the previous report on such matters, or, if none, after the firm is authorised or becomes a firm to which SUP 3.10 applies.

- 3.4. CASS 1.2.2 states that CASS applies to every firm, except as provided for in CASS 1.2.3 R, with respect to the carrying on of:
- (1) *all regulated activities except to the extent that a provision of CASS provides for a narrower application; and*
  - (2) *unregulated activities to the extent specified in any provision of CASS.*
- 3.5. CASS 5.3.2R states that a firm (other than a firm acting in accordance with CASS 5.4) receives and holds client money as trustee (or in Scotland as agent) on the following terms:
- (1) *for the purposes of and on the terms of CASS 5.3, CASS 5.5 and the client money (insurance) distribution rules;*
  - (2) *subject to (4), for the clients (other than clients which are insurance undertakings when acting as such) for whom that money is held, according to their respective interests in it;*
  - (3) *after all valid claims in (2) have been met, for clients which are insurance undertakings according to their respective interests in it;*
  - (4) *on the failure of the firm, for the payment of the costs properly attributable to the distribution of the client money in accordance with (2) and (3); and*
  - (5) *after all valid claims and costs under (2) to (4) have been met, for the firm itself.*
- 3.6. CASS 5.3.3G states:
- (1) *A firm which holds client money can discharge its obligation to ensure adequate protection for its clients in respect of such money by complying with CASS 5.3 which provides for such money to be held by the firm on the terms of a trust imposed by the rules.*
  - (2) *The trust imposed by CASS 5.3 is limited to a trust in respect of client money which a firm receives and holds. The consequential and supplementary requirements in CASS 5.5 are designed to secure the proper segregation and maintenance of adequate client money balances. In particular, CASS 5.5 does not permit a firm to use client money balances to provide credit for clients (or potential clients) such that, for example, their premium obligations may be met in advance of the premium being remitted to the firm. A firm wishing to provide credit for clients may however do so out of its own funds.*
- 3.7. CASS 5.5.3R requires that a firm must, except to the extent permitted by CASS 5.5, hold client money separate from the firm's money.
- 3.8. CASS 5.5.5R requires that a firm must segregate client money by either:
- (1) *paying it as soon as is practicable into a client bank account; or*

(2) *paying it out in accordance with CASS 5.5.80R.*

3.9. CASS 5.5.63R requires that:

(1) *A firm must, as often as is necessary to ensure the accuracy of its records and at least at intervals of not more than 25 business days:*

(a) *check whether its client money resource, as determined by CASS 5.5.65 R on the previous business day, was at least equal to the client money requirement, as determined by CASS 5.5.66 R or CASS 5.5.68 R, as at the close of business on that day; and*

(b) *ensure that:*

(i) *any shortfall is paid into a client bank account by the close of business on the day the calculation is performed; or*

(ii) *any excess is withdrawn within the same time period unless CASS 5.5.9 R or CASS 5.5.10 R applies to the extent that the firm is satisfied on reasonable grounds that it is prudent to maintain a positive margin to ensure the calculation in (a) is satisfied having regard to any unreconciled items in its business ledgers as at the date on which the calculations are performed; and*

(c) *include in any calculation of its client money requirement (whether calculated in accordance with CASS 5.5.66 R or CASS 5.5.68 R) any amounts attributable to client money received by its appointed representatives, field representatives or other agents and which, as at the date of calculation, it is required to segregate in accordance with CASS 5.5.19 R.*

(2) *A firm must within ten business days of the calculation in (a) reconcile the balance on each client bank account as recorded by the firm with the balance on that account as set out in the statement or other form of confirmation used by the bank with which that account is held.*

3.10. CASS 5.5.76R requires that a firm must notify the FSA immediately if it is unable to, or does not, perform the calculation required by CASS 5.5.63R(1).

3.11. CASS 7.3.1R requires that a firm must, when holding client money, make adequate arrangements to safeguard the client's rights and prevent the use of client money for its own account.

3.12. CASS 7.3.2R requires that a firm must introduce adequate organisational arrangements to minimise the risk of the loss or diminution of client money, or of rights in connection with client money, as a result of misuse of client money, fraud, poor administration, inadequate record-keeping or negligence.

## Capital Resources

- 3.13. MIPRU 4.2.2R requires that a firm must at all times maintain capital resources equal to or in excess of its relevant capital resources requirement.
- 3.14. MIPRU 4.2.11R(1) states that, if a firm carrying on insurance mediation activity or home finance mediation activity (and no other regulated activity) does not hold client money or other client assets in relation to these activities, its capital resources requirement is the higher of:
- (a) £5,000; and
  - (b) 2.5% of the annual income from its insurance mediation activity or home finance mediation activity (or both).
- 3.15. MIPRU 4.2.11R(2) states that, if a firm carrying on insurance mediation activity or home finance mediation activity (and no other regulated activity) holds client money or other client assets in relation to these activities, its capital resources requirement is the higher of:
- (a) £10,000; and
  - (b) 5% of the annual income from its insurance mediation activity or home finance mediation activity (or both).

## **4. Guidance on Threshold Conditions**

- 4.1. The part of the FSA Handbook entitled Threshold Conditions ("COND") contains guidance on the required standards to meet Threshold Condition 5.
- 4.2. 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 the firm:
- (a) conducts, or will conduct, its business with integrity and in compliance with proper standards;
  - (b) has, or will have, a competent and prudent management; and
  - (c) can demonstrate that it conducts, or will conduct, its affairs with the exercise of due skill, care and diligence.

## **5. The FSA's policy on exercising its own-initiative power to vary a Part IV permission**

- 5.1. The FSA's policy on exercising its power to vary a Part IV permission on its own initiative is set out in Chapter 8 of the Enforcement Guide ("EG").
- 5.2. EG 8.5 states that the FSA will consider varying a firm's Part IV permission in support of its enforcement function in circumstances where it has serious concerns about a firm, or about the way its business is being or has been conducted. EG 8.5

states that an example of such circumstances is where the firm appears not to be a fit and proper person to carry on a regulated activity, because, for instance, it has not conducted its business in compliance with high standards, which may include putting itself at risk of being used for the purposes of financial crime or being otherwise involved in such crime.

- 5.3. Paragraph 8.6 of EG states that the FSA may impose a variation of permission so that it takes effect immediately or on a specified date if it reasonably considers it necessary for the variation to take effect immediately (or on the date specified), having regard to the ground on which it is exercising its own-initiative power.
- 5.4. Paragraph 8.7 of EG indicates that the FSA will consider exercising its own initiative power as a matter of urgency where:
  - (1) *the information available to it indicates serious concerns about the firm or its business that need to be addressed immediately; and*
  - (2) *circumstances indicate that it is appropriate to use statutory powers immediately to require and/or prohibit certain actions by the firm in order to ensure the firm addresses these concerns.*
- 5.5. Paragraph 8.8 of EG gives examples of situations that will give rise to the serious concerns mentioned in paragraph 8.7. These include: information indicating that a firm's conduct has put it at risk of being used for the purposes of financial crime, or of being otherwise involved in crime; information indicating significant loss, risk of loss or other adverse effects for consumers, where action is necessary to protect their interests; and 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.
- 5.6. 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 to serious concerns, the extent to which customers' assets appear to be at risk, or the risk that the firm's business may be used or has been used to facilitate financial crime.