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## **FIRST SUPERVISORY NOTICE**

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**To:** **Jahan & Associates Limited**

**FSA Reference  
Number:** **470097**

**Of:** **260 Somerville Road  
Birmingham  
B10 9DX**

**Dated:** **9 April 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 Jahan & Associates Limited (“Jahan”), pursuant to Part IV of the Act (“Jahan’s Part IV permission”) by removing all regulated activities with immediate effect. Accordingly, Jahan’s Part IV permission no longer includes the following regulated activities:

- (a) agreeing to carry on a regulated activity;
- (b) arranging (bringing about) deals in investments;
- (c) arranging (bringing about) regulated mortgage contracts;
- (d) making arrangements with a view to transactions in investments; and
- (e) making arrangements with a view to regulated mortgage contracts.

1.2 The FSA has further decided to vary Jahan's Part IV permission by including the following requirements, namely that within 14 days it must:

- (i) advise in writing all clients for its regulated activities that it does not have Professional Indemnity Insurance ("PII") in place and that it is no longer permitted by the FSA to carry on regulated activities; and
- (ii) provide the FSA with a copy of the written advice sent to all clients for its regulated activities pursuant to (i) above, together with a list of all clients to whom such advice 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 Jahan is failing to satisfy the Threshold Conditions set out in Schedule 6 to the Act (the "Threshold Conditions") specifically, in the opinion of the FSA, Jahan's resources are not adequate in relation to the regulated activities it has permission to carry on. Further, Jahan has not satisfied the FSA that it has competent and prudent management, in that it has not demonstrated that it is being managed by the person approved by the FSA.

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 a variation to take effect immediately if the FSA reasonably considers that it is necessary for the variation to take effect immediately.

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

“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.”

- 2.7 Paragraph 5 of Schedule 6 to the Act sets out Threshold Condition 5 which provides that:

“The person concerned must satisfy the Authority that he is a fit and proper person having 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 relevant provisions in the FSA Handbook of Rules and Guidance (the “FSA Handbook”). The main provisions relevant to the proposed action are set out below.

### ***Relevant Principles***

- 2.9 Principle 4 (Financial prudence) of the FSA’s Principles for Businesses (the “Principles”) requires a firm to maintain adequate financial resources.
- 2.10 Principle 11 (Relations with regulators) requires a firm to deal with the FSA in an open and co-operative way.

### ***Relevant Rules and Guidance***

- 2.11 MIPRU 3.2.1R (the “PII Rule”) requires that: “A *firm* must take out and maintain professional indemnity insurance that is at least equal to the requirements of this section [MIPRU 3.2]”.
- 2.12 The guidance set out in Chapter 10 of the FSA’s Supervision Manual (“SUP”), states that a firm will have one or more approved persons in place responsible for directing its affairs.

### **Guidance concerning the relevant threshold conditions**

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

- 2.13 Guidance on Threshold Condition 4 is set out in Chapter 2.4 of the Part of the FSA Handbook entitled Threshold Conditions (“COND”).
- 2.14 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.

- 2.15 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).
- 2.16 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.

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

- 2.17 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.
- 2.18 COND 2.5.4G(2)(a) states that the FSA, when forming its opinion as to whether an authorised person 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.
- 2.19 COND 2.5.4G(3) states that the FSA will only take into account relevant matters which are significant in the context of the suitability of the firm.
- 2.20 COND 2.5.6G states that the FSA, when forming its opinion as to whether an authorised person is conducting its business with integrity and in compliance with proper standards, will 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
  - the firm has contravened, among other things, the requirements of the regulatory system, which includes the threshold conditions and the Principles and other rules.
- 2.21 COND 2.5.7G(1) states that the FSA, when forming its opinion as to whether an authorised person is conducting its business competently and prudently, and exercising due skill, care and diligence, will have regard to relevant matters, including whether:
- “the *governing body* of the *firm* is made up of individuals with an appropriate range of skills and experience to understand, operate and manage the *firm's regulated activities*;”

**Other relevant regulatory provisions**

- 2.22 The FSA’s policy in relation to its enforcement powers is set out in the Enforcement Guide (“EG”), certain provisions of which are summarised below.

- 2.23 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

- 2.24 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.
- 2.25 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.
- 2.26 EG 8.5 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. EG 8.5(1)(a) specifies that the FSA will consider exercising its own-initiative variation power where a firm's financial resources appear inadequate, for example where it has failed to maintain PII. EG 8.5(1)(b)(ii) specifies that the FSA will also consider exercising that power where a 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.
- 2.27 EG 8.9(1) 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.

**Facts and matters relied on**

- 2.28 Jahan became authorised on 7 August 2007 to carry on regulated home finance business and insurance mediation business.
- 2.29 Jahan has failed to satisfy the FSA that it maintains current PII, despite having had reasonable opportunities to do so.
- 2.30 Jahan has also failed to satisfy the FSA that it is being managed by the person approved by the FSA to act as director, and that it is not being managed by a person or persons who have no such FSA approval, despite having had reasonable opportunities to do so.

**Conclusions**

- 2.31 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:
- by failing to satisfy the FSA that Jahan has effected compliant PII or otherwise satisfy the FSA that Jahan has adequate resources, it is failing to make adequate provision in respect of its liabilities, including contingent and future

liabilities, in breach of Principle 4. That failing is material in relation to the regulated activities for which Jahan has permission and it therefore fails to satisfy Threshold Condition 4 (Adequate Resources);

- by failing to satisfy the FSA that Jahan is being managed by FSA approved individuals, it is failing to demonstrate that it has a competent and prudent management. That failing is material in relation to the regulated activities for which Jahan has permission and it therefore fails to satisfy Threshold Condition 5 (Suitability);
- by failing to respond adequately, or at all, to FSA requests for information about its PII policy and management of the firm, Jahan has not been open and co-operative in all its dealings with the FSA and is in breach of Principle 11. It has failed to satisfy the FSA that it is ready and willing and organised to comply with the requirements and standards under the regulatory system;
- the risk of loss or other adverse effect on consumers by Jahan's failings, which are material breaches of requirements imposed upon Jahan, causes the FSA to have very serious concerns about Jahan such that the exercise of the FSA's own-initiative power to vary Jahan's Part IV permission with immediate effect is an appropriate response to those concerns; and
- specifically, the variation of Jahan's Part IV permission should take immediate effect to address the FSA's serious concerns that claims for which Jahan is uninsured might arise from new business and that Jahan is being managed by a person or persons who may not be fit and proper to do so.

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

#### **The Tribunal**

- 4.2 Jahan may refer this matter to the Financial Services and Markets Tribunal (the "Tribunal"). Under section 133 of the Act, Jahan 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 Jahan 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.

- 4.3 Jahan should note that the Tribunal Rules provide that at the same time as filing a reference notice with the Tribunal, Jahan must send a copy of the notice to the FSA. Any copy notice should be sent to Josie Durham at the FSA, 4<sup>th</sup> Floor, 25 The North Colonnade, Canary Wharf, London E14 5HS.

### **Representations**

- 4.4 Jahan has the right to make written and oral representations to the FSA. If Jahan wishes to make written representations it must do by 13 May 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 address of the Regulatory Decisions Committee Professional Support Services is 25 The North Colonnade, Canary Wharf, London E14 5HS. If Jahan wishes to make oral representations, please inform us in writing of its intention to do so by 20 April 2010. If Jahan does not notify us by 20 April 2010, it will not, other than in exceptional circumstances, be able to make oral representations.

### **Confidentiality and publicity**

- 4.5 Jahan 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). Jahan 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**

- 4.6 If Jahan has any questions regarding the procedures of the Regulatory Decisions Committee, it should contact Husayn Rahman (direct line: 0207 066 1072).
- 4.7 For more information concerning this matter generally, Jahan should contact Josie Durham at the FSA (direct line: 0207 066 4102/fax 0207 066 4103).

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