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## **FIRST SUPERVISORY NOTICE**

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To: **Millom & District Credit Union Limited**

Of: **3 Market Square  
Millom  
Cumbria  
LA18 4HZ**

FSA Reference  
Number: **213723**

Dated: **16 November 2012**

### **ACTION**

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 Millom & District Credit Union Limited ("Millom"), pursuant to Part IV of the Act ("Millom's Part IV permission"), by removing its only regulated activity with immediate effect. Accordingly, Millom's Part IV permission no longer includes the regulated activity of accepting deposits.
2. The FSA has further varied Millom's Part IV permission, pursuant to section 43 of the Act, by including the following requirements with immediate effect, namely that Millom must not:
  - (a) make new loans, or make further advances in relation to, or otherwise vary the terms of, any existing loans;
  - (b) redeem any members' shares;
  - (c) repay any deposits;
  - (d) effect any share to loan transfers; or

- (e) without the consent of the FSA, make any payment or otherwise dispose of, deal with or diminish the value of any of its assets, except the payment of expenses incurred in the ordinary course of Millom's business.
- 3. For the avoidance of doubt, the expenses referred to in paragraph 2(e) above do not include gifts, or payments of unusual or significant amounts to Millom's employees or officers or any persons connected to them.
- 4. The FSA has also varied Millom's Part IV permission by including the following requirements, namely that within 14 days of this First Supervisory Notice, Millom must:
  - (a) advise in writing all members of Millom that it is no longer permitted by the FSA to carry on accepting deposits, and is subject to the other restrictions placed upon it by the FSA; and
  - (b) provide the FSA with a copy of the written advice sent to all members pursuant to 4(a) above, together with a list of all members to whom such advice has been sent.

## **REASONS FOR ACTION**

- 5. On the basis of the facts and matters described below, Millom is failing and is likely to continue to fail to satisfy the threshold conditions set out in Schedule 6 to the Act (the "Threshold Conditions"). Millom is failing to satisfy Threshold Condition 5 (Suitability) in that, in the opinion of the FSA, it has not satisfied the FSA that Millom is a fit and proper person having regard to all the circumstances, including the need to ensure that its affairs are conducted soundly and prudently and in compliance with proper standards because it has failed to provide audited financial information and regulatory returns to the FSA. Millom has also failed to comply with Principle 11 (Relations with regulators), of the FSA's Principles for Businesses (the "Principles"), under which firms must co-operate with the FSA because it has failed to reply adequately to communications from the FSA.

## **FACTS AND MATTERS RELIED ON**

- 6. Millom is a Credit Union. In its annual return for the period ended 30 September 2010, Millom reported that it had 627 members and 53 juvenile depositors.
- 7. Millom has failed to submit the annual return ("Form CY") and audited accounts for the year ended 30 September 2011, despite repeated requests and warnings from the FSA. The Form CY and audited accounts should have been submitted to the FSA by 30 April 2012.

## **FAILINGS**

- 8. The regulatory provisions relevant to this First Supervisory Notice are set out in the Annex.
- 9. From the facts and matters described above, the FSA having regard to its regulatory objectives, has identified that:

- in breach of SUP 16.3.13R, SUP 16.12.5R, SUP 16.12.7R and CREDS 8.2.6R, Millom has failed to submit the Form CY and audited accounts for the year ended 30 September 2011;
- by failing to submit the Form CY and audited accounts for the year ended 30 September 2011, despite repeated requests for such information from the FSA, Millom has failed to comply with Principle 11 (Relations with regulators), and is failing to satisfy the FSA that it is conducting its business soundly and prudently, and in compliance with proper standards;
- these failures are material in relation to the regulated activity for which Millom has had permission, and it therefore fails to satisfy Threshold Condition 5 (Suitability); and
- the risk of loss or other adverse effect on consumers because of Millom's failings, causes the FSA to have serious concerns about Millom, such that the exercise of the FSA's own-initiative powers to vary Millom's Part IV permission with immediate effect, is an appropriate response to those concerns.

## **PROCEDURAL MATTERS**

10. The decision which gave rise to the obligation to give this First Supervisory Notice was made by the Acting Chairman of the Regulatory Decisions Committee.
11. This First Supervisory Notice is given to Millom under section 53(4) and in accordance with section 53(5) of the Act, and is being served on Millom at its place of business last notified to the FSA. The following statutory rights are important.

### **The Tribunal**

12. Millom has the right to refer the matter to which this First 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, Millom has 28 days from the date on which this First Supervisory Notice is given to Millom to refer the matter to the Tribunal.

13. A reference to the Tribunal can be made by way of a reference notice (Form FTC3), signed by Millom and filed with a copy of this First 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)).

14. 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.justice.gov.uk/forms/hmcts/tax-and-chancery-upper-tribunal>
15. Millom 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 Stephanie Prowse at the FSA, 25 The North Colonnade, Canary Wharf, London E14 5HS.

### **Representations**

16. Millom has the right to make written and oral representations to the FSA (whether or not it refers this matter to the Tribunal). If Millom wishes to make written representations it must do so by 20 December 2012 or such later date as may be permitted by the FSA. Written representations should be made to the Regulatory Decisions Committee and sent to Jane Hendley, 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 Millom wishes to make oral representations, it should inform the FSA of its intention to do so by 27 November 2012. If Millom does not notify the FSA by 27 November 2012, it will not, other than in exceptional circumstances, be able to make oral representations.

### **Publicity**

17. Millom should note that section 391 of the Act requires the FSA when the First Supervisory Notice takes effect (and this First Supervisory Notice takes immediate effect), to publish such information about the matter as it considers appropriate.

### **FSA contacts**

18. For more information concerning this matter generally, Millom should contact Stephanie Prowse at the FSA (direct line: 020 7066 9404 / fax: 020 7066 9405).
19. If Millom has any questions regarding the procedures of the Regulatory Decisions Committee, it should contact Jane Hendley (direct line: 020 7066 3200).

**Andrew Long**

**Acting Chairman, Regulatory Decisions Committee**

**ANNEX TO THE FIRST SUPERVISORY NOTICE ISSUED BY THE FINANCIAL SERVICES AUTHORITY TO MILLOM & DISTRICT CREDIT UNION LIMITED ON 16 NOVEMBER 2012**

**RELEVANT STATUTORY PROVISIONS**

1. The FSA's regulatory objectives established in section 2(2) of the Act include the protection of consumers and the preservation of market confidence.
2. The FSA is authorised by section 43 of the Act to include such requirements to an authorised person's Part IV permission as it considers appropriate.
3. 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 an authorised person's permission where it is desirable to do so to meet any of its regulatory objectives; 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.
4. Section 43(3) of the Act permits a requirement to extend to activities which are not regulated activities.
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.
6. 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**

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 provisions relevant to the action specified above are set out below.

### ***Relevant Principle***

8. 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***

9. SUP 16.3.13R requires credit unions to submit reports to the FSA by no later than the due date specified for that report.
10. SUP 16.12.5R requires credit unions to submit reports to the FSA in accordance with, and in the same format as, the forms contained in SUP 16 Annex 14R. Specifically, SUP 16.12.7R includes a requirement that credit unions submit extended financial data annually, seven months after the financial year end.
11. CREDS 8.2.6R requires that every credit union must send to the FSA a copy of its audited accounts which must be for the period ending on the credit union's most recent financial year end and accompany the annual return submitted to the FSA under SUP 16.12.5R, unless they have been submitted already.

### ***Relevant Guidance***

12. Guidance on the Threshold Conditions is set out in the part of the Handbook entitled Threshold Conditions ("COND"), and Guidance on the application of the Threshold Conditions to Credit Unions is set out in CREDS.

#### ***Guidance concerning the Threshold Conditions for Credit Unions – CREDS 10***

13. CREDS 10.1.3G states that the Threshold Conditions must be met on a continuing basis by credit unions, and states that failure to meet one of the conditions is sufficient grounds for the exercise by the FSA of its powers.
14. CREDS 10.1.3G also states that the FSA must be satisfied that a credit union is "fit and proper" to be authorised and permitted to carry on regulated activities.

#### ***Guidance concerning Threshold Condition 5: Suitability (paragraph 5, Schedule 6 to the Act) – COND 2.5***

15. COND 2.5.2G(1) states that the firm must satisfy the FSA that it is "fit and proper" to have Part IV permission. COND 2.5.2G(2) states that the FSA to take into consideration anything that could influence a firm's continuing ability to satisfy the Threshold Condition relating to suitability, when forming its opinion as to whether the firm is a fit and proper person.
16. COND 2.5.6G(1) states that the FSA will take into account whether the firm has been open and co-operative in its dealings with the FSA and is ready, willing and organised to comply with the requirements and standards under the regulatory system. Such requirements include the obligation to submit financial returns.

## **OTHER RELEVANT REGULATORY PROVISIONS**

17. The FSA's policy in relation to the use of its enforcement powers is set out in the Enforcement Guide (EG).
18. 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.
19. 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.

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

20. 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.
21. 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.
22. EG 8.10 provides that when varying a Part IV permission at its own-initiative under its section 45 power, the FSA may include in the Part IV permission as varied any limitation or restriction which it could have imposed if a fresh permission were being given in response to an application under section 40 of the Act.
23. EG 8.12 provides examples of requirements that the FSA may consider including in a firm's Part IV permission when exercising its own-initiative power. These include imposing a requirement that prohibits the disposal of, or other dealing with, any of the firm's assets or restricts those disposals or dealings.