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**SECOND SUPERVISORY NOTICE**

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To: **Omagis Capital Limited**

Address: **17a-19 Harcourt Street  
London  
W1H 4HF**

FSA Reference  
Number: **197231**

Dated: **19 April 2011**

**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 having taken into account the written representations made by Omagis Capital Limited ("Omagis") on 07 February 2011 pursuant to section 45 and 53 of the Financial Services and Markets Act 2000 (the "Act"), the FSA has decided not to rescind the variation of the permission granted to Omagis pursuant to Part IV of the Act ("Omagis' Part IV permission"). By First Supervisory Notice dated 03 February 2011, the FSA varied Omagis' Part IV permission by removing all its regulated activities with immediate effect. Accordingly, Omagis' Part IV permission no longer includes the following regulated activities:

- (a) advising on investments (except on pension transfers and pension opt outs);
- (b) agreeing to carry on a regulated activity;
- (c) arranging (bringing about) deals in investments;
- (d) arranging safeguarding and administration of assets;
- (e) dealing in investments as agent; and
- (f) making arrangements with a view to transaction in investments.

- 1.2. The First Supervisory Notice further varied Omagis' Part IV permission by including the following requirements, namely that within 14 days of the First Supervisory Notice Omagis must:
- (a) notify in writing all clients for its regulated activities that it is no longer permitted by the FSA to carry on regulated activities; and
  - (b) provide the FSA with a copy of the written notification sent to all clients for its regulated activities pursuant to (a) above, together with a list of all clients to whom such notification has been sent.

## **2. REASONS FOR THE ACTION**

### **Summary**

- 2.1. The FSA has concluded, on the basis of the facts and matters described below, that Omagis is failing to satisfy the threshold conditions set out in Schedule 6 to the Act (the "Threshold Conditions"). In the opinion of the FSA, Omagis has failed to deal with the FSA in an open and co-operative way, in unreasonably failing to:
- (a) make payment to a skilled person, which has been requested by the FSA on numerous occasions. As a consequence, the skilled person has been unable to deliver the interim and final skilled person's reports. Omagis has therefore failed to comply with a Requirement Notice sent to it on 28 July 2010 under section 166 of the Act; and
  - (b) provide information to the FSA despite being requested to do so on several occasions, and respond substantively to communications from 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.

## **3. STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND GUIDANCE**

### **Relevant statutory provisions**

- 3.1. The FSA's regulatory objectives established in section 2(2) of the Act include the protection of consumers.
- 3.2. 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.

- 3.3. 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.
- 3.4. 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**

- 3.5. 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***

- 3.6. 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 and Guidance***

- 3.7. The FSA’s policy in relation to reports by skilled persons is set out in the Supervision Manual ("SUP") (which is part of the Handbook) at SUP 5. A firm’s duties in respect of the skilled persons are set out at SUP 5.5.
- 3.8. SUP 5.5.9R states that a firm must provide all reasonable assistance to any skilled person appointed to provide a report under section 166 of the Act (Reports by skilled persons).
- 3.9. SUP 5.5.12G states that, in complying with Principle 11, a firm is expected to take reasonable steps to ensure that a skilled person delivers a report in accordance with the terms of his appointment.

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

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

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

- 3.11. 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.
- 3.12. COND 2.5.4G(2)(a) states that the FSA, when forming its opinion as to whether a 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.
- 3.13. 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.
- 3.14. 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.

**Other relevant regulatory provisions**

- 3.15. 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.
- 3.16. 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

- 3.17. 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.
- 3.18. 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 the way its business is being or has been conducted.
- 3.19. 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. One example of which is 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)).

3.20. 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)).

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

4.1. Omagis was authorised by the FSA from 01 December 2001 to carry on designated investment business.

4.2. Omagis has failed to:

- make payment of an initial fee of £7,500 by the due date of 13 September 2010, or at all, to a skilled person. The failure to make payment to a skilled person has meant that deadlines for the delivery of an interim skilled person's report (due by 22 October 2010) and a final skilled person's report (due by 13 December 2010), pursuant to a Requirement Notice sent to Omagis on 28 July 2010 under section 166 of the Act, have not been met;
- respond to requests from both the skilled person and the FSA to make payment to the skilled person;
- provide information to the FSA despite being requested to do so on several occasions; and
- respond substantively to communications from the FSA.

#### **5. REPRESENTATIONS, FINDINGS AND CONCLUSIONS**

##### **Representations**

5.1. Omagis denied that it had failed to deal with the FSA in an open and co-operative way. Omagis stated that it does not have sufficient funds to pay for a skilled persons report at present and has been unsuccessful in trying to generate funds to pay for a skilled persons report.

5.2. Omagis accepted that it has not made payment to a skilled person which has meant that a skilled person has been unable to undertake the skilled persons report and deliver it to the FSA. Omagis also accepted that its lack of funds has impacted on its ability to provide information to the FSA

5.3. Omagis submitted that it is not carrying on business pending completion of a skilled persons report and that once a skilled persons report has been prepared Omagis will put forward a new business plan for its operations. Omagis further submitted that it does not have any clients at present and does not pose any risk to the public.

## **Findings**

- 5.4. The FSA notes that Omagis has:
- 5.4.1. accepted that it has not made payment to a skilled person which has meant that a skilled person has been unable to undertake the skilled persons report and deliver it to the FSA; and
  - 5.4.2. denied that it failed to deal with the FSA in an open and co-operative way but accepted that its lack of funds has impacted on its ability to provide information to the FSA.
- 5.5. The FSA finds that Omagis is not in a position to make payment to a skilled person and there is no verifiable evidence to suggest when Omagis will be in a position to make said payment to a skilled person.
- 5.6. Accordingly:
- 5.6.1. Omagis' submissions that it has been unsuccessful in trying to generate funds to pay for a skilled persons report and is not carrying on business pending completion of a skilled persons report do not affect the findings in paragraph 5.5 above; and
  - 5.6.2. the FSA finds that there is no basis to rescind the First Supervisory Notice.

## **Conclusions**

- 5.7. 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:
- in failing to make payment to a skilled person and failing to respond to requests made by that skilled person to do so, which has meant that a skilled person has been unable to undertake the skilled persons review and deliver it to the FSA by the deadlines or at all, Omagis has breached SUP 5.5.9R and failed to act in accordance with the standards set in SUP 5.5.12G;
  - by not responding to requests by the FSA to make payment to the skilled person, in failing to provide information to the FSA despite being requested to do so on several occasions, and in not responding substantively to FSA communications, Omagis has failed to deal co-operatively with the FSA in breach of Principle 11;
  - Omagis is therefore failing to satisfy Threshold Condition 5 (Suitability), as it has failed to ensure that its affairs are conducted soundly and prudently, and in compliance with proper standards;
  - as the skilled person's review would have identified if customers had suffered loss, whether that loss was caused by unsuitable advice, and calculated any redress payable to the customers, the FSA considers that Omagis' actions in causing this review not to be undertaken means there is a risk of loss and/or other adverse effect on Omagis' customers and to confidence in the market. The FSA therefore has very serious concerns about Omagis such that the exercise of the FSA's own-

initiative power to vary its Part IV permission with immediate effect is an appropriate response to those concerns; and

- specifically the variation of Omagis' Part IV permission effected by the First Supervisory Notice should be maintained in order to protect the interests of consumers or potential consumers.

## **6. DECISION MAKER**

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

## **7. IMPORTANT**

- 7.1. This Supervisory Notice is given to Omagis under section 53(4) and in accordance with section 53(5) of the Act, and is being served on Omagis at its principal place of business last notified to the FSA. The following statutory rights are important.

### **The Tribunal**

- 7.2. Omagis has 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, Omagis has 28 days from the date on which this Supervisory Notice is given to Omagis to refer the matter to the Tribunal.
- 7.3. A reference to the Tribunal can be made by way of a reference notice (Form FTC3) signed by Omagis 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)).

- 7.4. 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>

- 7.5. Omagis 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 Craig Drury at the FSA, 25 The North Colonnade, Canary Wharf, London E14 5HS.

### **Confidentiality and publicity**

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

### **FSA contacts**

- 7.7. If Omagis has any questions regarding the procedures of the Regulatory Decisions Committee, it should contact Ben Wright (direct line: 020 7066 3194).
- 7.8. For more information concerning this matter generally, Omagis should contact Craig Drury at the FSA (direct line: 020 7066 8460 / fax: 020 7066 8461).

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