Financial Services Authority

SECOND SUPERVISORY NOTICE

To: **Wills & Co Stockbrokers Limited**

FRN: 126232

Of: **33 Queen Street**
London EC4R 1AP

Date: **1 December 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, having taken into account your written representations dated 17 October and 27 November 2009 and the external consultants' reports dated 18 August and 30 October 2009, the oral representations made on 23 and 28 July, 19 August and 30 November 2009 and pursuant to section 45(1)(c) of the Financial

Services and Markets Act 2000 ("the Act"), the FSA has decided not to rescind the variation of permission granted to Wills & Co Stockbrokers Limited ("Wills & Co"/ "the Firm") as effected by the First Supervisory Notice dated 22 July 2009 and as amended and supplemented by subsequent Notices and correspondence. Accordingly, your permission has been varied to remove the regulated activity of advising on investments (except on Pension transfers and Opt Outs) with the result that the Firm will not be able to advise retail clients on the purchase of securities.

1.2 Paragraph 1.1 of this notice will take effect on 4 December 2009.

1.3 The FSA has further decided, pursuant to section 43 of the Act, to vary the Firm's Part IV permission by including the following requirements. The FSA requires that, by close of business on 11 December 2009, the Firm:

- sends a letter on its headed notepaper by first class post and/or electronically to each of its customers in a form approved by the FSA prior to its dispatch. The purpose of this requirement is to ensure that the Firm promptly and formally notifies its customers in writing of the fact that the Firm is no longer permitted by the FSA to advise on investments (except on Pension Transfers and Opt Outs) and advises its clients of the steps they might wish to consider taking in consequence of this; and
- provides the FSA with copies of the said letter together with a list of all customers to whom and the date(s) on which it was sent.

2. REASONS FOR ACTION

Summary

2.1. The FSA has concluded that it is desirable to exercise its power under section 45(1)(c) of the Act in order to protect the interests of consumers and potential consumers of Wills & Co. The FSA has reached this conclusion as it has serious concerns that Wills & Co has breached Principles 3, 6, 7 and 9 of the FSA's Principles for Businesses ("the Principles").

2.2 The FSA has serious concerns that Wills & Co has breached Principle 3 (Management and control) of the Principles by failing to establish and maintain robust systems and

controls that were appropriate for the business of recommending higher risk securities, including the failure to establish and implement a suitably comprehensive compliance monitoring programme. This failure was also identified in a Final Notice dated 31 October 2007 (the "Final Notice").

2.3 The FSA has serious concerns that Wills & Co has breached Principle 6 (Customers' interests) of the Principles by failing to pay due regard to the interests of its customers and treat them fairly.

2.4 The FSA has serious concerns that Wills & Co has breached Principle 7 (Communications with clients) of the Principles by failing to take reasonable steps to ensure customers understood the nature of the risks involved and by not paying due regard to the information needs of its customers, communicating information in a manner which was not clear, fair and not misleading. This failure was also identified in the Final Notice.

2.5 The FSA has serious concerns that Wills & Co has breached Principle 9 (Customers: relationships of trust) of the Principles by failing to give due consideration to the suitability of its recommendations for customers.

2.6 The FSA considers in light of these facts and matters, that it is necessary, in support of the FSA's consumer protection objective, for the action specified above to take effect on 4 December 2009.

3. RELEVANT STATUTORY PROVISIONS AND OTHER REGULATORY PROVISIONS

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

3.2 Section 45(2) of the Act provides the power to vary a Part IV permission in any of the ways mentioned in section 44(1). Section 44(1) of the Act states that the FSA may vary an authorised person's Part IV permission in a variety of ways, including by removing one or more regulated activities from those for which the permission was given or varying the description of a regulated activity from an authorised person's Part IV permission.

3.3 Section 45(1)(c) of the Act provides that the FSA may vary an authorised person's permission if it appears to the FSA that it is desirable to exercise that power in order to protect the interests of consumers or potential consumers.

The FSA's policy for exercising its own-initiative power to vary a Part IV permission

3.4 The FSA's policy for exercising its own initiative power to vary a Part IV permission is set out in Chapter 8 of the Enforcement Guide ("EG"). The main considerations in relation to the action specified above are set out below.

3.5 Paragraph 8.2 of EG states that, when it considers how it should deal with a concern about a firm, the FSA will proceed on the basis that a firm (together with its directors and senior management) is primarily responsible for ensuring the firm conducts its business in compliance with the Act, the Principles and other rules.

3.6 Where the FSA considers that it cannot rely on a firm taking effective action, or if the firm fails to comply with the FSA's reasonable request for it to take remedial steps, paragraph 8.4 of EG provides that the FSA will consider exercising its formal powers under section 45 of the Act to vary a firm's permission.

3.7 Paragraph 8.5 of EG states that circumstances in which the FSA will consider varying a firm's Part IV permission in support of its enforcement function include those where it has serious concerns about a firm, or about the way its business is being or has been conducted. Such circumstances include where it appears that the interests of consumers are at risk because the firm appears to have breached any of Principles 6 – 10 of the Principles to such an extent that it is desirable that limitations, restrictions, or prohibitions are placed on the firm's regulated activity (EG 8.5(2)).

Relevant Principles

3.8 Principle 3 states that a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

3.9 Principle 6 states that a firm must pay due regard to the interest of its customers and treat them fairly.

3.10 Principle 7 states that a firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

3.11 Principle 9 states that a firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment.

4. FACTS AND MATTERS RELIED ON

Background

4.1. Wills & Co is a stockbroking firm based in the City of London. It specialises in recommending to retail customers, and dealing in, "small cap" securities that have been admitted to trading on the AIM and PLUS markets. The Firm makes recommendations and sales to its clients primarily by telephone.

4.2 Wills & Co became authorised by the FSA on 1 December 2001.

4.3 Wills & Co executed 1060 trades between 17 January 2009 and 17 March 2009, involving 578 clients and totalling £3,589,670.

4.4 The Firm was fined £49,000 (£70,000 before discount for early settlement) by the FSA in October 2007 in relation to its small cap securities business on the basis of failures in its sales practices, the information provided to its customers and its systems and controls. The case was settled at an early stage and, as part of the settlement, the Firm agreed to comply with various undertakings relating to remedial action at the Firm (the "Undertakings"). The Final Notice setting out the Firm's failures was issued on 31 October 2007. In December 2007, the Firm confirmed that it had complied with the Undertakings and stated that its monitoring procedures were now robust and satisfied the FSA's Principles and Rules.

4.5 The FSA visited the Firm in May 2008 in order to establish, inter alia, whether the Firm had rectified the failures identified in the Final Notice and had implemented the remedial actions required. As part of the work during and following the visit, the FSA reviewed 21 transactions which had been conducted by the Firm after 1 November

2007 and concluded that the Firm had failed to take adequate and appropriate steps to address the issues identified in the Final Notice. The FSA reported its concerns to the Firm in a visit report on 18 June 2008, setting out the FSA's continued concerns with the Firm's selling practices and the Firm's failure to provide satisfactory evidence that adequate steps had been taken to strengthen systems and controls and change the selling practices.

4.6 In November 2008, the Firm was referred to the Enforcement Division of the FSA. Investigators were appointed on 12 November 2008 (the "Investigators"). As part of the investigation, the Investigators reviewed a sample of 19 advisory trades made by the Firm between 17 January 2009 and 17 March 2009 (three of which had been reviewed by the Firm's internal compliance monitoring function). The Investigators have serious concerns that, although Wills & Co has improved its processes and procedures in some respects (see paragraph 4.36 below), the Firm continues to demonstrate the same, or similar, failures for which it was disciplined in October 2007. Concerns, of varying degrees of seriousness, have been identified in all 19 trades reviewed.

4.7 In order to explain the background of this matter and put the issues in context, we set out below the details of the facts and matters relied upon. It is however noted that some of the issues are of historic significance as they have been addressed by the actions of the Firm, since the issue of the First Supervisory Notice.

Unacceptable sales practices

4.8 The Investigators have identified unacceptable sales practises in all of the 19 transactions reviewed. Some of those practices are the same as, or similar to, those failures which were highlighted in the Final Notice. These are set out at paragraphs 4.9 to 4.16 below.

4.9 A general risk warning was given in 16 of the 19 transactions; in those 3 in which it was not given, the adviser had attempted to give it but the client had indicated that they did not wish to hear it. However, in 8 of the 19 transactions the general risk warning was given (or attempted) only after the sale had been agreed by the customer. In 4 of the 19 transactions the general risk warning was undermined by the adviser.

In addition, such risk warnings were fairly limited, referring only to the fact that the stock was a penny share, that it was high risk and/or that the value of the stock could go down or up and/or that the customer could make or lose money on the investment. In none of the 19 transactions was the client informed during the sales call that they could lose all the capital they had invested in the stock. Although the Firm's Terms of Business state that all equity investments involve the risk of losing all or part of the investment, where positive statements have been made regarding a share, this must be balanced by the provision of the risks of the stock, which would include the risk of losing the entire investment.

4.10 In 18 of the 19 transactions, no stock specific risk warnings were given to the customer, with the result that there was no, or little, balance in the recommendation. In the one transaction where stock specific risks were given, they were given only in response to a specific question from the client and the risks were then immediately dismissed by the adviser. The Investigators have reviewed the admission to trading (on AIM or PLUS) documents relating to three of the stocks sold in these transactions and have determined that those documents set out in detail the risk factors involved in investing in those companies. These documents would, or should, have been known to Wills & Co as they were publicly available. However, none of the risk factors listed in those documents were mentioned to customers by Wills & Co's advisers in the sales calls we reviewed.

4.11 In 8 of the 19 transactions, the adviser did not communicate clearly the mark up received by Wills & Co on the securities being sold (i.e. the difference between the price at which Wills & Co took the principal position in the securities being sold and the price at which the transaction was executed for the customer). In those cases where the adviser did clearly disclose the mark up, this disclosure was made only after the customer had agreed to purchase the stock. As a result, customers may not have been aware of the nature and extent of the mark up on the stocks being recommended to them and, therefore, the amount of money which Wills & Co was making on the transaction. The Investigators did not have details of the mark ups on all of the stocks sold in the 19 transactions. However, on the basis of the information given to clients in those calls where the mark up was communicated clearly, the

Investigators have calculated that the mark ups on those stocks ranged from 2.9% to 173%, with all but three of the calls showing mark ups of 70% or more;

4.12 Wills & Co recommends that clients should not invest more than 10% of their total personal assets in high risk stocks. In 4 of the 19 transactions, it was apparent from the sales calls that the client had exceeded this limit. (The position is unclear in relation to the other transactions reviewed, although it appears from the sales calls that the 10% limit had not been exceeded in 2 of the 19 transactions). In one of the four transactions in which it was apparent that the 10% limit had been exceeded, the client had been allowed to invest 26% of his net liquid assets in high risk stocks and the adviser told the client, "*as this is the last investment you're putting into AIM I'm comfortable to keep us there*". In three of the four transactions, the customer was not advised that he had exceeded the 10% limit until after he had agreed to purchase the recommended securities and, in the fourth transaction, the adviser was only told that he exceeded the limit when he brought the issue up himself during the sales call.

4.13 In 8 of the 19 transactions, the adviser gave an unbalanced account of the past performance of the stock, with no indication that past performance was not a reliable indicator of future results. .

4.14 In 15 of the 19 transactions, the adviser made unsubstantiated comments about the future performance of the stock being recommended. In 8 of those 15 transactions, the adviser gave specific but unsubstantiated projections for the share price.

4.15 In 6 of the 19 transactions, the adviser made comparisons between the stock being recommended and other stocks; in 4 of those 6 transactions, the adviser mentioned the past performance of other stocks the Firm had previously sold to customers, thereby giving the impression that the stock being recommended would, or could, perform as well as those stocks.

4.16 In 15 of the 19 transactions, the adviser informed the client that the transaction was "commission free", that there was no commission payable by the client or that there was "minimal commission". One client was told that he would not be charged commission because it was his first transaction. Such statements may have led

customers to believe that there were no additional charges or fees for the transaction, particularly in those nine transactions where the nature and extent of the mark up on the securities was also not communicated clearly (see paragraph 4.10 above). Such statements may also have been misleading in that they may have given the impression that the adviser was making an exception for the client in not charging him commission, when in fact the Firm did not charge a routine "commission" charge on small cap purchases but instead charged a £15 compliance charge and made money via its principal position in the stocks. Although the adviser did sometimes mention the £15 compliance charge (in 14 of the 19 trades) and the fact that stamp duty of 0.5% was payable (in 5 of the 19 trades), and a Commission Schedule attached to the Firm's Terms of Business listed stamp duty and compliance charges, the position in relation to commission should have been made clear given that disclosure of commission and the compliance charge were issues specifically raised in the Final Notice.

4.17 The above failures indicate that the Firm is not paying due regard to the information needs of its clients and is not communicating information to them in a way which is clear, fair and not misleading, in breach of Principle 7.

4.18 These, or similar, issues had all been identified in the Final Notice. The Firm's sales practices have not therefore improved significantly in these areas since the Final Notice was issued, notwithstanding the Firm's assurances in December 2007 that remedial action had been undertaken.

Failing to give due consideration to the suitability of its recommendations

4.19 In all of the 19 transactions reviewed by the FSA, there was a risk that the recommendation may not have been suitable for the client involved.

4.20 In none of the 19 transactions did the adviser seek to obtain up-to-date personal and financial information about the customer before making the recommendation. There was therefore a risk that the recommendation was not suitable for the client. Although in 12 of the 19 transactions a Client Information Form ("CIF") had been completed and sent to the client within 3 months of the date of the recommendation, in some

cases a much longer period of time had elapsed. For instance, in two cases, almost 3 years had elapsed since a recorded CIF update, in one case 12 months had elapsed since a recorded CIF update and in 3 cases 5 months had elapsed since a recorded CIF update. In one case, there was no CIF on file for the client. The Firm's Terms of Business state that it is the client's responsibility to inform the Firm of facts material to their circumstances and that the client agrees to update all information supplied on a continuous basis. However, it was the Firm's responsibility to ensure that each and every recommendation was suitable for the client. The Firm should not have assumed that, if the client had not given the Firm notice of a change of circumstances, such change had not in fact occurred, particularly if it had been some time since the last CIF was updated.

4.21 This is an additional failure to those identified in the Final Notice.

4.22 The Firm's practice of selling high risk shares to clients in volumes which exceeded the Firm's recommended limit of 10% of the customer's total personal assets (see paragraph 4.11 above) also indicates that customers may have been sold shares in volumes which were not suitable for them.

4.23 These failures indicate that the Firm is not taking reasonable care to ensure the suitability of its advice for its customers, who are entitled to rely upon its judgment, in breach of Principle 9.

Placing undue pressure on customers

4.24 In some of the 19 transactions reviewed, advisers applied undue pressure on customers to make investment decisions. This put customers at risk of detriment as there was a risk that the securities may not have been suitable for their needs. Customers were also put at risk of detriment as they were pressured to make higher risk investment decisions quickly and without time to consider the risks of the securities and whether they wanted to invest.

4.25 For instance, in 6 of the 19 transactions, the client had indicated that they did not want to make the specific investment and, in 5 of the 19 transactions, the client had

indicated that they did not want to make the type of investment, but the adviser persisted with the recommendation.

4.26 In 4 of the 19 transactions the adviser suggested that the client was running out of time in which to purchase the stock, either because the Firm's allocation was running out or because the price of the recommended stock was about to move up, the implication being that the customer should buy now before the price moved up even further or the stock ran out. Although the FSA did not have enough information to verify whether the Firm's allocation was in fact running out, or whether the price was in fact about to move up, the time pressure imposed on the customer may have meant that the customer did not have enough time to consider whether the investment was suitable for them and/or whether they wanted to invest.

4.27 In 10 of the 19 transactions the adviser persuaded the customer either to purchase more shares than the customer had initially stated he wanted to purchase or to spend more than he had initially stated he wanted to spend (in 3 of those 10 transactions, the client had initially indicated that they did not want to purchase any shares at all).

4.28 This is an additional failure to those identified in the Final Notice and indicates that the Firm is not paying due regard to the interests of its customers and treating them fairly, in breach of Principle 6.

Normal Market Size

4.29 In all of those trades where the adviser informed the customer of the Normal Market Size ("NMS") for the recommended share (9 of the 19 transactions), the size of the trade significantly exceeded the Normal Market Size. For instance, one customer was sold 125,000 shares when the NMS was 3,000 and another customer was sold 125,000 shares when the NMS was 2,000. The FSA does not have sufficient information to indicate whether the NMS was exceeded in respect of the other transactions reviewed as the NMS was not communicated to the customer on the sales calls (with the exception of one customer, who was told that there was no NMS).

4.30 The implication of the NMS being exceeded was that it might impact on the liquidity/future selling price of the shares. In none of the trades where the NMS was given and exceeded did the adviser fully explain the implications of this to the customer during the sales call. In 6 of the 9 transactions where the NMS was given (and exceeded), the customer was told that they may need to sell their shares in more than one block and/or that they might not get the indicated price, but the adviser did not put any emphasis on this being a particular difficulty and/or did not present it clearly and/or immediately undermined it. In two sales calls, the customer was told that NMS does not apply on the PLUS market, when this is not in fact the case.

4.31 This is an additional failure to those identified in the Final Notice. The Firm's failure to communicate clearly to customers the implications of them purchasing shares in an amount that significantly exceeds the NMS indicates that the Firm is not treating its customers fairly. It also indicates that the Firm is not paying due regard to the information needs of its clients and is not communicating information to them in a way which is clear, fair and not misleading, in breach of Principle 7.

Inadequate compliance monitoring arrangements and controls

4.32 The Investigators reviewed materials relating to the Firm's compliance monitoring function. They also reviewed three transactions which had been reviewed by the Firm's internal compliance monitoring function (see paragraph 4.6 above). The Investigators' review of the three trades identified that, in all three trades, the monitoring team had failed to identify certain concerns or issues which the Investigators consider should have been followed up with the adviser. The Investigators identified concerns in all three transactions even though the Firm's compliance monitoring function had not identified any issues in two of the three trades reviewed and had identified only a limited number of issues in the third trade reviewed.

4.33 This indicates that call monitoring by the Firm is not comprehensive and that the Firm's compliance function is continuing to fail to identify that clients are not being provided with appropriate information about the stocks being recommended. The failure of the Firm's compliance monitoring team to identify the issues set out above

is particularly concerning given that many of these issues were similar to, or the same as, those which had been identified in the Final Notice. The following concerns in particular were highlighted in the Final Notice but do not appear to have been picked up as part of the Firm's compliance monitoring process:

(1) lack of stock specific risk warnings;

(2) undermining of general risk warning;

(3) unclear and unbalanced statements about past performance;

(4) misleading and unbalanced statements about future performance;

(5) unsupported and unbalanced comparisons with other stocks; and

(6) failure to clearly explain the mark-up or providing such explanation only after the transaction had been agreed.

4.34 The proportion of sales calls which are reviewed by the Firm's compliance monitoring team are also inadequate. The compliance monitoring team reviews, on average, three calls for each dealer per month, although the number of calls monitored can be increased to six or eight depending on the dealer's risk status. In relation to trainee dealers, the Firm monitors six calls per month for the first three months of dealing.

4.35 These levels of monitoring are inadequate given the nature of the Firm's sales process, the volume of monthly small cap sales, the high risk nature of the stocks sold and the fact that issues relating to sales calls had been the subject of FSA disciplinary action. The Final Notice in 2007 had identified that it was inadequate for the Firm to be monitoring only five sales per month for each trainee adviser and three sales per month for each adviser it had classified as competent, on the basis that the number of transactions reviewed was not proportionate to the overall volume of monthly small cap securities sales. It appears that the Firm has not significantly increased the level of call monitoring since then.

4.36 This concern has not therefore been adequately addressed by the Firm in the period since the Final Notice was issued and the Firm is continuing to fail to monitor sufficient levels of sales calls for each adviser.

4.37 There have been some improvements to the Firm's compliance monitoring procedures since the date of the Final Notice. For instance, the extent and scope of the compliance monitoring is now more risk based as the Firm now undertakes increased monitoring of individual advisers who have been identified as posing particular risk to the business. The Firm has also now introduced a system whereby advisers can be penalised for breaches by the withdrawal of commissions.

4.38 However, notwithstanding these improvements, the Firm has failed to establish and implement adequate monitoring processes to cover its small cap business to ensure compliance with the FSA's regulatory requirements. This failure indicates that the Firm is not taking reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems, in breach of Principle 3.

Representations

4.39 Wills & Co made representations to the FSA in writing on 17 October and 27 November 2009, submitted reports by external consultants dated 18 August and 30 October 2009 and orally at meetings on 23 and 28 July, 19 August and 30 November 2009.

4.40 Given the passage of time since the issue of the First and Further First Supervisory Notices, the Firm's representations on how they proposed to deal with the issues raised in those Notices are largely historic and not directly relevant for the purposes of the FSA's assessment of the current issues. In reaching its decision the FSA has taken account of the steps taken by the Firm to address the historic position. Summarised below are the representations relevant to the FSA's consideration of the current outstanding issues as well as those matters which are appropriate to be taken into account in considering the full circumstances of the case.

4.41 The Firm acknowledged that it had failed in its regulatory obligations in the past but as a result of the FSA's action, has now fully addressed those matters. Overall, the Firm argued that the alleged regulatory failings as set out in this Notice have all been satisfactorily addressed.

4.42 External consultants who had been engaged in compliance with the requirements of the First and Further First Supervisory Notices produced reports setting out details of their assessment of compliance monitoring and staff competence. The external consultants report challenged the compliance failings identified by the FSA and responded in detail to those concerns, in particular as set out in the Further First Supervisory Notice and other supporting material prepared by the FSA. In relation to the 19 historical trades referred to in this Notice, external consultant's report acknowledged that, although there were compliance failings in respect of each transaction, in the majority of cases, there was insufficient evidence to conclude that the sales made were unsuitable.

4.43 The Firm represented that each of the FSA's allegations had been adequately addressed and no further work was required in relation to those matters. On the basis of external consultant's report, procedural enhancements and robust compliance monitoring have been implemented, resulting in nine brokers currently being considered competent to effect securities transactions on the AIM and four suspended from trading on the AIM, having failed to demonstrate sustained improvement. Those four brokers are currently undergoing re-training. It was represented that further compliance staff will need to be recruited including a senior appointment of a Compliance Director.

4.44 It was represented that external consultants had made an important contribution to the compliance monitoring arrangements at the Firm and had significantly improved them. If those arrangements are maintained by the Firm, it would help to identify future lapses in broker competence and the likely potential risk and detriment to consumers. In the current climate at the Firm, it was deemed necessary for the Firm to retain the services of an external consultant to assist it with the compliance issues highlighted by the FSA. External consultants concluded that the Firm would not be

able to comply with its regulatory requirements without that assistance. Accordingly, it had been agreed that external consultants would remain to assist the Firm for the foreseeable future.

4.45 In the light of the above, it was represented that the FSA's reasons for issuing the First and Further First Supervisory Notices had, without exception been adequately addressed. Furthermore, the FSA had not evidentially challenged the Firm's representations on this point. Nothing outstanding therefore remained to be considered and the Firm now posed little risk to consumers. It was argued that in fact many of the Firm's policies and procedures were over and above the standard required by the FSA. The Firm challenged the FSA's unwillingness to acknowledge that the deficiencies identified in the First and Further First Supervisory Notices had been addressed.

4.46 Given that all the outstanding issues had been remedied, it was argued that the FSA should discontinue this action. This representation was made even though the Firm acknowledged that further issues had been raised by external consultants in their report as well as by he FSA in relation to compliance, culture, capital adequacy, systems and controls and the corporate governance of the Firm. It was argued that as these matters were not referred to directly in the First or Further First Supervisory Notices they are outside the remit of the FSA's consideration for the purposes of this matter.

4.47 The Firm accepted that it had an ongoing regulatory relationship with the FSA but did not consider the further issues referred to above impacted in a negative way on its obligations. The Firm also argued that these further issues should not be taken into account by the FSA in coming to its decision. It represented that having taken steps to address all of the FSA's concerns a set out in this Notice, the Firm is now operating in an overwhelmingly compliant manner. It is not a risk to consumers and should not be put out of business.

5. CONCLUSIONS

5.1. As a result of the facts and matters set out above and having taken account of the full circumstances of the case, the FSA has decided not to rescind the variation of permission granted to Wills & Co as effected by the First and Further First Supervisory Notices.

5.2 The FSA has serious concerns that Wills & Co continues to pose a risk to consumers. The Firm has acknowledged that at the commencement of this matter it suffered serious deficiencies in complying with its regulatory obligations. However, despite the extensive assistance and support given by external consultants and the considerable period of time given to the Firm to address the issues, serious concerns remain outstanding.

5.3 Those regulatory deficiencies have been acknowledged by external consultants whose report concludes that the Firm is currently unable to meet its regulatory obligations without the long term assistance of external consultants. Without any acceptable proposals for the Firm to manage those matters currently the responsibility of external consultants, the Firm is failing in its management of the systems and controls of the Firm.

5.4 While the FSA accepts that it is permissible to delegate certain day to day roles, it is not permissible to delegate responsibility for those functions. The FSA notes that overall responsibility remains with the Board of Directors but the FSA has serious concerns that the Board is operating without adequate resources. The Firm's business model is such that it requires strong and effective senior management to work alongside its compliance consultants.

5.5 The FSA also does not accept the Firm's representations that it has addressed all of the FSA's concerns as set out in this Notice. Significant concerns remain as to the Firm's sales practices. The Firm was not able to satisfy the FSA that the review undertaken by external consultants provided a complete picture of the suitability or otherwise of the transactions for those particular customers or that compliance monitoring arrangements or controls were adequate.

5.5 Accordingly, the FSA has serious concerns that Wills & Co:

(1) failed to establish and maintain robust systems and controls that were appropriate for the business of recommending higher risk securities, including the failure to establish and implement a suitably comprehensive compliance monitoring programme, in breach of Principle 3;

(2) failed to pay due regard to the interest of its customers and treat them fairly, in breach of Principle 6;

(3) failed to take reasonable steps to ensure customers understood the nature of the risks involved and failed to pay due regard to the information needs of its customers, communicating information in a manner which was not clear, fair and not misleading, in breach of Principle 7; and

(4) failed to give due consideration to the suitability of its recommendations for customers, in breach of Principle 9.

5.6 The FSA considers that the Firm's sales practices pose an ongoing risk to consumers.

5.7 In support of the FSA's consumer protection objective, the exercise of the FSA's own-initiative power to vary Wills & Co's permission, with effect from the dates specified in paragraphs 1.2 and 1.3 above, is an appropriate and proportional response to these concerns.

5.8 The FSA notes that heightened risks attach to trading in small cap shares on the AIM and PLUS markets, including the general lack of liquidity and marketing of stocks. Accordingly, stringent controls are essential to protect consumers. Those controls are lacking in Wills & Co, requiring the FSA to use its powers to take this action.

6. DECISION MAKER

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

7. IMPORTANT

7.1. This Second Supervisory Notice is given to you in accordance with section 53 of the Act. The following statutory rights are important.

The Tribunal

7.2. You may refer this matter to the Financial Services and Markets Tribunal ("the Tribunal"). Under section 133 of the Act, you have 28 days from the date you were 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 you 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.

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

Access to evidence

7.4. Section 394 of the Act does not apply to this Supervisory Notice.

Third party rights

7.5. There are no third party rights.

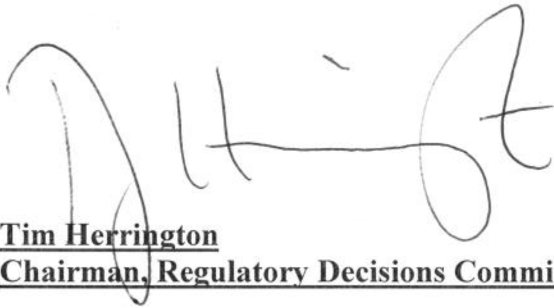
Confidentiality and publicity

7.6. 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, to publish such information about the matter as it considers appropriate.

FSA contacts

7.7. If you have any questions regarding the procedures of the Regulatory Decisions Committee, you should contact Michelle Broadhurst (direct line: 020 7066 2724), Regulatory Decisions Committee Professional Support Services.

7.8. For more information concerning this matter generally, you should contact Suzanne Burt at the FSA (direct line: 020 7066 1062).



Tim Herrington
Chairman, Regulatory Decisions Committee