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**FIRST SUPERVISORY NOTICE**

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**To:** **Professional Construction Risks Limited**

**Reference Number:** **715977**

**Address:** **PCR House  
Unit 2  
Ebdon Bow  
Ebdon Road  
Weston-super-Mare  
Avon  
BS22 9NZ**

**Date:** **11 December 2020**

**1 ACTION**

1.1 For the reasons given in this First Supervisory Notice, and pursuant to section 55L(3)(a) of the Financial Services and Markets Act 2000 ("the Act"), the Financial Conduct Authority ("the Authority") has decided to impose the following requirements on Professional Construction Risks Limited ("the Firm") with immediate effect.

- (1) The Firm must not, without the prior written consent of the Authority, carry out any regulated activity or any business activity that is carried on in connection with a regulated activity.
- (2) Subject to sub-paragraphs (8)(i) and (ii) and paragraphs 1.3 and 1.4 below, the Firm must not, without the prior written consent of the Authority, in any way dispose of, withdraw, transfer, deal with or diminish the value of any of its own assets, and any funds it holds for, or to the order of, its customers (whether in the United Kingdom or elsewhere).
- (3) The Firm must ensure that client money is appropriately ringfenced in a designated client money account or accounts. For the avoidance of doubt, if this requires a transfer between accounts, this must be done with the prior written consent of the Authority.

- (4) By 5pm on 13 December 2020 the Firm must display, in a prominent place on its website ([www.professionalconstructionrisks.co.uk](http://www.professionalconstructionrisks.co.uk)) a notice setting out the terms and effects of these Requirements in a form to be agreed in advance with the Authority.
  - (5) The Firm must identify all loan, or other financing, applications it has made in the name of customers or other third parties without the relevant customer's or third party's consent and provide a list of those applications to the Authority by 5pm on 15 December 2020.
  - (6) Within three working days of making the notification referred to in paragraph 1.1(5), the Firm must write to all customers and third parties in the name of whom loans have been identified, in accordance with paragraph 1.1(5), informing them, in a form and by a method to be agreed in advance with the Authority, that a loan or other financing application has been made in their name.
  - (7) By 15 December 2020 the Firm must notify in writing any insurance undertaking, with which the Firm has, at any time, had an active terms of business agreement, of the imposition and effect of these Requirements in a form to be agreed in advance with the Authority.
  - (8) The Firm must, by 17 December 2020:
    - (i) Return to any customers any insurance premiums paid by them, which the Firm has not paid to the relevant insurer;
    - (ii) Pay to any customer any claims monies owing to them that the Firm has received from an insurer and has not paid to the customer;
    - (iii) Notify the Authority in writing of the names and addresses of each customer to which a return of premium or claims monies has been paid or is owing pursuant to sub-paragraphs (i) and (ii).
  - (9) By 18 December 2020, the Firm must provide written confirmation to the Authority that it is in compliance with these Requirements.
  - (10) The Firm must secure all books and records and preserve all information and systems relating to regulated activities, and must retain these in a form and at a location within the United Kingdom, to be notified to the Authority in writing by 15 December 2020, such that they can be provided to the Authority, or to a person named by the Authority, promptly on its request.
- 1.2 For the avoidance of doubt, the requirement at paragraph 1.1(2) above is an assets requirement within the meaning of section 55P of the Act.
- 1.3 Paragraph 1.1(2) does not apply to:
- (1) Monetary payments or the disposal of assets made by the Firm in the ordinary course of business, where:
    - (i) The payment or disposal is not connected to the carrying out of a regulated activity; and

- (ii) the payment or disposal amounts to no more than £500 (five hundred pounds sterling), whether as a single transaction or a combination of related transactions; or
  - (2) Monetary payments or the disposal of assets made by the Firm pursuant to the terms of its Company Voluntary Arrangement dated 3 January 2020.
- 1.4 For the purposes of paragraph 1.3, the following payments would not be regarded as payments made in the ordinary course of business:
- (1) Payments to the Firm’s controllers, shareholders, directors, officers or any connected persons.
  - (2) The making of any capital distribution.
  - (3) The making of any gift or loan by the Firm to any party.
  - (4) Payments made as part of any financial restructuring or reorganisation of its business, or from the sale of any part of the Firm’s business (whether share or asset based).
- 1.5 These Requirements shall take immediate effect and remain in force unless and until varied or cancelled by the Authority (either on the application of the Firm or of the Authority’s own volition).

## **2 REASONS FOR ACTION**

### **Summary**

- 2.1 The Authority has serious concerns arising from the fact that the Firm appears to have made an application for a loan in the name of one of its customers, without having authority to do so and without making arrangements for the customer to receive the benefit of loan funds. Absent the customer obtaining the benefit of the loan funds, it is inferred that the Firm benefitted from receipt of the loan funds.
- 2.2 On the basis of the facts and matters set out below the Authority considers that the imposition of these requirements is desirable in order to advance its consumer protection and integrity objectives.
- 2.3 In addition, it appears to the Authority, on the basis of the facts and matters set out below, that the Firm is failing, or is likely to fail, to satisfy the suitability Threshold Condition set out at paragraph 2E to Schedule 6 of the Act. This requires that a firm must be a fit and proper person having regards to all the circumstances, including the need to ensure that its affairs are conducted in an appropriate manner, that its business is being managed in a sound and prudent manner and the need to minimise the extent to which any business carried on by it can be used for a purpose connected to financial crime.

## **3 DEFINITIONS**

- 3.1 The definitions below are used in this First Supervisory Notice:
- “the Act” means the Financial Services and Markets Act 2000;
- “the Authority” means the Financial Conduct Authority;

“the Firm” means Professional Construction Risks Limited;

“Handbook” means the Authority’s online handbook of rules and guidance (as in force from time to time);

“the RDC” means the Authority’s Regulatory Decisions Committee of the Authority (see further at paragraph 6.1 below);

“Requirements” means the requirements set out at paragraph 1.1 of this First Supervisory Notice; and

“Tribunal” means the Upper Tribunal (Tax and Chancery Chamber).

#### **4 FACTS AND MATTERS**

4.1 The Firm is a general insurance intermediary that primarily sells commercial insurance for the construction industry in the south-west of England. It has been authorised by the Authority since June 2016. It holds the following permissions:

- (1) Arranging (bringing about) deals in investments;
- (2) Making arrangements with a view to transactions in investments; and
- (3) Agreeing to carry on a regulated activity.

4.2 The Firm also has permission to hold client money.

4.3 The Firm is the subject of a Company Voluntary Arrangement, which took effect on 3 January 2020.

4.4 Between 25 October 2019 and 7 February 2020, the Firm had an agreement with Company A by which Company A provided premium finance services to the Firm. Company A provides finance to policyholders to allow them to pay their insurance premium in instalments. In June 2020, the Authority became aware of concerns relating to a loan account that the Firm had arranged with Company A pursuant to the agreement between Company A and the Firm.

4.5 Company A opened a loan account in November 2019 for one of the Firm’s customers (“Customer A”). Company A had received an application form from the Firm for this loan, which was in the sum of £4,975.72. On request from Company A, the Firm provided it with policyholder details for a credit check to be conducted. The details provided were for a partner in Customer A.

4.6 Company A approved the loan in the name of Customer A and paid funds to a bank account. The details of this account were provided to Company A by the Firm. Company A paid an additional advance of £2,899.85 to the same account in December 2019, following Company A’s approval of the Firm’s application purportedly on behalf of Customer A for funding for a mid-term policy adjustment.

4.7 Company A produced a welcome letter, a credit agreement and an EU Pre-Contractual Consumer Information Form on the opening of the loan account. These documents were sent to an email address that the Firm had provided to Company A, representing that this email address belonged to Customer A. Following notification of the mid-term adjustment to the policy, Company A also sent a mid-

term adjustment letter to the same email address. Customer A did not receive these documents as the email address did not belong to it.

- 4.8 Three loan instalments were paid to Company A in December 2019 and January and February 2020. These instalments were not paid by Customer A, but were instead paid from an account held by another recently incorporated company, which shares a common director, and shares or shared common ownership, with the Firm. No further instalments were paid; this led to Company A initiating enquiries into this account.
- 4.9 Although Company A opened a loan account for Customer A at the Firm's request, Customer A had in fact paid the annual premium in full in November 2019. This payment was made to the Firm's account. Customer A did not ask the Firm to take out a loan on its behalf or authorise the Firm to provide its details to Company A for the purpose of arranging a loan. Customer A did not receive the benefit of either tranche of the loan funds advanced by Company A. Absent Customer A obtaining the benefit of the loan, it is inferred that the Firm benefitted.

## **5 CONCLUSION**

- 5.1 The regulatory provisions relevant to this First Supervisory Notice are set out in the Annex.
- 5.2 The Authority has concluded, in the light of the matters set out above, that it is appropriate to exercise its own-initiative power under section 55L(3)(a) of the Act by imposing the Requirements on the Firm, for the reasons set out below.

### **Analysis of failings and risks**

#### Consumer Protection

- 5.3 The Authority considers it is desirable to impose the Requirements in order to advance its operational objective of securing an appropriate degree of protection for consumers. This is on the basis that the Firm appears to have purported to apply for a premium finance loan account on behalf of a customer when, in fact, it had no authority to do so and did not intend to arrange for its customer to receive the benefit of funds advanced.
- 5.4 While Customer A, in whose name the loan account was opened, had the benefit of insurance cover, it had already paid in full for that cover at the beginning of the policy period, and a record of the first credit check and the later missed payment would be recorded on its credit file. This is likely to affect adversely Customer A's future applications for credit, even if only temporarily, thus exposing the customer to a risk of financial loss.
- 5.5 Without the imposition of the Requirements, there is a risk that the Firm will continue to expose consumers to the risk of harm, particularly in the form of financial loss resulting from inaccurate and adverse credit records.

#### Integrity of the UK financial system

- 5.6 The Authority considers it is desirable to impose the Requirements in order to

advance its operational objective of protecting and enhancing the integrity of the UK financial system. This is on the basis that the Firm appears to have acted dishonestly by representing to Company A that it was applying for a loan on behalf of Customer A.

- 5.7 Without the imposition of the Requirement there is a risk that the Firm will continue to act in a dishonest manner, which would undermine the integrity of the UK financial system.

#### Suitability Threshold Condition

- 5.8 It appears to the Authority that the Firm is failing, or is likely to fail, to satisfy the suitability threshold condition that a firm must be a fit and proper person having regard to all the circumstances, including the need to ensure that its affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers and the integrity of the UK financial system and whether its business is being, or is to be, managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner. This is on the basis that the Firm appears to have acted without honesty and integrity and not in accordance with proper standards, in that it appears to have provided false information to Company A in order to obtain financial gain.

#### Proportionality

- 5.9 The Authority considers it appropriate to take the action set out in this Notice without prior notice to the Firm. Due to the apparently dishonest nature of the Firm's conduct described above, the Authority considers there to be a risk that client money, as well as the Firm's monies owed to creditors, may be at risk of dissipation if the Firm were to be put on notice of an intention to take the action.
- 5.10 The Authority considers that the Requirements are a proportionate and appropriate means to address the risks, and are desirable in order to advance the Authority's operational objectives of consumer protection and the integrity of the UK financial system.

#### Timing and duration of the Requirements

- 5.11 The Authority considers it is necessary to impose the Requirements with immediate effect given the seriousness of the risks and the need to protect consumers and the integrity of the UK financial system.
- 5.12 The Authority considers that it is necessary for the Requirements to remain in place unless and until revoked, whether on the application of the Firm or on the Authority's own initiative.

## **6 PROCEDURAL MATTERS**

- 6.1 The following paragraphs are important.

#### Decision-maker

- 6.2 The decision which gave rise to the obligation to give this First Supervisory Notice was made by a Deputy Chair of the RDC. The RDC is a committee of the Authority which takes certain decisions on behalf of the Authority. The members of the RDC are separate from the Authority staff involved in conducting investigations and

recommending action against firms and individuals. Further information about the RDC can be found on the Authority's website: <https://www.fca.org.uk/about/committees/regulatory-decisions-committee-rdc>.

- 6.3 This First Supervisory Notice is given under section 55Y(4) and in accordance with section 55Y(5) of the Act. Section 394 of the Act does not apply to this First Supervisory Notice.

#### Representations

- 6.4 The Firm has the right to make representations to the Authority (whether or not it refers this matter to the Tribunal). The deadline for providing written representations is 31 December 2020 or such later date as may be permitted by the Authority. The address for doing so is:

Jack Williams  
Decision-Making Committees Secretariat  
The Financial Conduct Authority  
12 Endeavour Square  
London  
E20 1JN  
Email: [DMCScaseinbox@fca.org.uk](mailto:DMCScaseinbox@fca.org.uk)

- 6.5 The Authority must be informed in writing of any intention to make oral representations by 31 December 2020. If the Authority is not notified by this date, the Firm will not, other than in exceptional circumstances, be able to make oral representations.

#### The Tribunal

- 6.6 The Firm has the right to refer the matter to which this First Supervisory Notice relates to the Tribunal, which considers references arising from decisions of the Authority. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Firm has 28 days from the date on which this First Supervisory Notice is given to it to refer the matter to the Tribunal.
- 6.7 A reference to the Tribunal can be made by way of a reference notice (Form FTC3) signed by the Firm and filed with a copy of this First Supervisory Notice. The Tribunal's contact details are: Upper Tribunal (Tax and Chancery Chamber), 5<sup>th</sup> Floor, Rolls Building, Fetter Lane, London EC4A 1NL (telephone: 020 7612 9700; email: [financeandtaxappeals@hmcts.gsi.gov.uk](mailto:financeandtaxappeals@hmcts.gsi.gov.uk)).
- 6.8 Further details are contained in "Making a Reference to the Upper Tribunal (Tax and Chancery Chamber)" which is available from the Tribunal website: <http://formfinder.hmctsformfinder.justice.gov.uk/t400-eng.pdf>
- 6.9 A copy of the reference notice (Form FTC3) must also be sent to Zsuzsa Elek at The Financial Conduct Authority, 12 Endeavour Square, London, E20 1JN at the same time as a reference is filed with the Tribunal.

#### Confidentiality and publicity

- 6.10 The Firm should note that this First Supervisory Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining legal advice on its contents).

6.11 The Firm should note that section 391(5) of the Act requires the Authority, when this First Supervisory Notice takes effect (and this First Supervisory Notice takes immediate effect), to publish such information about the matter to which the notice relates as it considers appropriate.

Authority contacts

6.12 For more information concerning this matter generally, contact Zsuzsa Elek, Enforcement and Market Oversight Division at the Authority (direct line: (020) 7066 8460 or email: [zsuzsa.elek@fca.org.uk](mailto:zsuzsa.elek@fca.org.uk)).

6.13 Any questions regarding the procedures of the RDC should be directed to Jack Williams of the Decision-Making Committees Secretariat ([DMCScaseinboxsecretariat@fca.org.uk](mailto:DMCScaseinboxsecretariat@fca.org.uk)).



**John A. Hull**  
**Deputy Chair, Regulatory Decisions Committee**

## **Annex**

### **RELEVANT STATUTORY PROVISIONS**

1. The Authority's operational objectives, established in section 1B of the Act, include securing an appropriate degree of protection for consumers, and protecting and enhancing the integrity of the UK financial system.
2. Section 55L of the Act allows the Authority to impose a new requirement on an authorised person if it appears to the Authority that the authorised person is failing, or likely to fail to satisfy the Threshold Conditions (section 55L(2)(a)), or it is desirable to exercise the power in order to advance one or more of the Authority's operational objectives (section 55L(2)(c)).
3. Section 55N of the Act allows a requirement to be imposed under section 55L of the Act so as to require the person concerned to take specified action (section 55N(1)(a)), or to refrain from taking specified action (section 55N(1)(b)).
4. Section 55P of the Act allows a requirement to be imposed under section 55L of the Act prohibiting the disposal of, or other dealing with, any of an authorised person's assets (whether in the UK or elsewhere), or restricting such disposals or dealings. Such a requirement is referred to in section 55P as an "assets requirement".
5. Section 55Y(3) of the Act allows a requirement to take effect immediately (or on a specified date) only if the Authority, having regard to the ground on which it is exercising its own-initiative power, reasonably considers that it is necessary for the requirement to take effect immediately (or on that date).
6. Section 391 of the Act provides:  
" ...  
(5) When a supervisory notice takes effect, the [Authority] must publish such information about the matter to which the notice relates as it considers appropriate.  
...  
(6) The [Authority] may not publish information under this section if in its opinion, publication of the information would be -  
(a) unfair to the person with respect to whom the action was taken (or proposed to be taken),  
(b) prejudicial to the interests of consumers, or  
(c) detrimental to the stability of the UK financial system.  
...  
(7) Information is to be published under this section in such manner as the [Authority] considers appropriate."

### **RELEVANT REGULATORY PROVISIONS**

#### **The Enforcement Guide**

7. The Authority's approach in relation to its enforcement powers is set out in Chapter 8 of the Enforcement Guide (EG), certain provisions of which are summarised below.

8. EG 8.1.1 reflects the provisions of section 55L of the Act by stating that the Authority may use its own-initiative power to impose requirements on an authorised person where, amongst other factors, the person is failing or is likely to fail to satisfy the threshold conditions for which the Authority is responsible (EG 8.1.1(1)), or it is desirable to exercise the power in order to advance one or more of its operational objectives (EG 8.1.1(3)).
9. EG 8.2.1 states that when the Authority considers how it should deal with a concern about a firm, it will have regard to its statutory objectives and the range of regulatory tools that are available to it. It will also have regard to the principle that a restriction imposed on a firm should be proportionate to the objectives the Authority is seeking to achieve (EG 8.2.1(2)).
10. EG 8.2.3 states that in the course of its supervision and monitoring of a firm or as part of an enforcement action, the Authority may make it clear that it expects the firm to take certain steps to meet regulatory requirements. In the vast majority of cases the Authority will seek to agree with a firm those steps the firm must take to address the Authority's concerns. However, where the Authority considers it appropriate to do so, it will exercise its formal powers under section 55L of the Act to impose a requirement to ensure such requirements are met. This may include where, amongst other factors, the Authority has serious concerns about a firm, or about the way its business is being or has been conducted (EG 8.2.3(1)), or is concerned that the consequences of a firm not taking the desired steps may be serious (EG 8.2.3(2)).
11. EG 8.3.1 states that the Authority may impose a requirement so that it takes effect immediately or on a specified date if it reasonably considers it necessary for the requirement to take effect immediately (or on the date specified), having regard to the ground on which it is exercising its own-initiative powers.
12. EG 8.3.2 states that the Authority 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.
13. EG 8.3.3 states that it is not possible to provide an exhaustive list of the situations that will give rise to such serious concerns, but they are likely to include one or more of four listed characteristics, which include: 1) information indicating significant loss, risk of loss or other adverse effects for consumers, where action is necessary to protect their interests; 2) 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.
14. EG 8.3.4 states that the Authority will consider the full circumstances of each case when it decides whether an imposition of a requirement is appropriate and sets out a non-exhaustive list of factors the Authority may consider, which include:
  - (1) The extent of any loss, or risk of loss, or other adverse effect on consumers. The more serious the loss or potential loss or other adverse effect, the more likely it is that the Authority's urgent exercise of own-initiative powers will be appropriate, to protect the consumers' interests.
  - (2) The extent to which customer assets appear to be at risk. Urgent exercise of the Authority's own-initiative power may be appropriate where the

information available to the Authority suggests that customer assets held by, or to the order of, the firm may be at risk.

- (4) The seriousness of any suspected breach of the requirements of the legislation or the rules and the steps that need to be taken to correct that breach.
- (7) The risk that the firm's conduct or business presents to the financial system and to confidence in the financial system.
- (9) The impact that the use of the Authority's own-initiative powers will have on the firm's business and on its customers. The Authority will need to be satisfied that the impact of any use of the own-initiative power is likely to be proportionate to the concerns being addressed, in the context of the overall aim of achieving its statutory objectives.

#### The Threshold Conditions ("COND")

- 15. COND 2.5.1A states that a firm must be a fit and proper person, having regard to all the circumstances, including –
  - (a) the firm's connection with any person;
  - (b) the nature (including the complexity) of any regulated activity that the firm carries on or seeks to carry on;
  - (c) The need to ensure that the firm's affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers and the integrity of the UK financial system;
  - (d) Whether the firm has complied and is complying with requirements imposed by the Authority in the exercise of its functions, or requests made by the Authority, relating to the provision of information to the Authority and, where the firm has complied or is so complying, the manner of that compliance;
  - (e) Whether those who manage the firm's affairs have adequate skills and experience and act with probity;
  - (f) Whether the firm's business is being, or is to be, managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner; and
  - (g) The need to minimise the extent to which it is possible for the business carried on by the firm, or to be carried on by the firm, to be used for a purpose connected with financial crime.
- 16. COND 2.5.4G provides examples of the kind of general considerations to which the Authority may have regard when assessing whether a firm will satisfy, and continue to satisfy, the Suitability Threshold Condition including, but not limited to, whether the firm:
  - (a) conducts, or will conduct, its business with integrity and in compliance with proper standards.