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**FIRST SUPERVISORY NOTICE**

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**To: SK8 Financial Services Limited**

**Of: 248 Finney Lane  
Heald Green  
Cheadle  
Cheshire  
SK8 3DY**

**Firm  
Reference  
Number: 230129**

**Dated: 10 December 2013**

**ACTION**

1. For the reasons given below and pursuant to section 55J of the Act, the Authority has decided to vary the permission granted to SK8 Financial Services Limited ("SK8") pursuant to Part 4A of the Act, by removing all regulated activities with immediate effect. Accordingly, SK8's Part 4A permission no longer includes the regulated activities of:
  - (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; and
  - (d) making arrangements with a view to transactions in investments.

2. The Authority has further decided to vary SK8's Part 4A permission by imposing a requirement, pursuant to sections 55L and 55N of the Act, such that SK8's assets (whether in the United Kingdom or elsewhere) held by any institution may not, so long as the requirement is in force, be released or spent without written consent from the Authority.
3. The Authority has further decided to vary SK8's Part 4A permission by imposing the following requirements, pursuant to section 55L of the Act, namely that SK8 must, within 14 days:
  - (a) notify in writing all clients for SK8's regulated activities that it is no longer permitted by the Authority to carry on regulated activities; and
  - (b) provide the Authority with a copy of the written notification sent to all clients for SK8's regulated activities pursuant to (a) above, together with a list of all clients to whom such notification has been sent.

### **REASONS FOR ACTION**

4. The Authority has concluded, on the facts and matters described below, that SK8 is failing and will continue to fail to satisfy the Threshold Conditions, in that, as of 28 November 2013, SK8 has no approved person performing the controlled function of director. SK8 is therefore failing to satisfy the appropriate resources Threshold Condition.
5. In addition, the Authority is not satisfied that SK8 is fit and proper, having regard to all the circumstances. SK8 has failed to satisfy the Authority that it is conducting its affairs in an appropriate manner, having regard in particular to the interests of consumers, and so is failing to satisfy the suitability Threshold Condition. This is because, in the opinion of the Authority, SK8's majority controller, Geoffrey Harold Arthur Fincher ("Mr Fincher"), who is, according to Companies House records, also the current sole director of SK8, lacks honesty and integrity.

### **DEFINITIONS**

6. The definitions below are used in this First Supervisory Notice:

"the Act" means the Financial Services and Markets Act 2000;

"the Authority" means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority;

"the Handbook" means the Authority's Handbook of rules and guidance;

"SK8's Part 4A permission" means SK8's permission pursuant to Part 4A of the Act;

"the Threshold Conditions" means the threshold conditions set out in Part 1B of Schedule 6 to the Act; and

"the Tribunal" means the Upper Tribunal (Tax and Chancery Chamber).

## **FACTS AND MATTERS RELIED ON**

7. SK8 was authorised by the Authority on 1 March 2004 to conduct designated investment business. From 1 March 2004, Mr Fincher was approved to perform the controlled functions of CF1 (Director), CF10 (Compliance Oversight) and CF11 (Money Laundering Reporting) in relation to SK8. From 1 November 2007, Mr Fincher also held the CF30 (Customer) controlled function at SK8.
8. On 28 November 2013, SK8 submitted to the Authority a Form C, which withdrew Mr Fincher's CF1, CF10, CF11 and CF30 approvals. According to Companies House records, Mr Fincher remains sole director of SK8. No other person at SK8 is approved to perform the CF1, CF10 or CF11 controlled functions.
9. Mr Fincher is one of two controllers of SK8 as he holds 70% of the issued shares at SK8, and the holder of the remaining issued shares is Mr Fincher's wife.
10. Prior to the authorisation of SK8, between 28 November 1991 and 1 June 2004, Mr Fincher was a CF7 (Sole Trader) Appointed Representative of Firm A and subsequently Firm B (as to which firms the Authority makes no criticism in this Notice), trading in the name of G Fincher & Company.
11. SK8 has never held regulatory permission to hold or control client money. Nor did Mr Fincher, trading as G Fincher and Company as the appointed representative of Firms A and B, ever hold such permission.

### **The Customers**

#### ***Customer A***

12. On 10 January 2002, Mr Fincher met with Customer A at Customer A's home. During that meeting, Customer A gave Mr Fincher two cheques made out to 'G Fincher' for the purposes of investment. This included a cheque for £35,000. Mr Fincher agreed with Customer A that that sum was to be invested in the best products on the market at that time.
13. On several occasions between 6 May 2003 and 30 September 2013, Customer A held further meetings at his home with Mr Fincher. On each such occasion, Mr Fincher provided Customer A with a handwritten note purporting to set out details of the investments made by Mr Fincher on Customer A's behalf. Those notes included details of the date, type and values of the purported investments. As well as a pension investment with Firm C, these listed purported investments with Firms D, E and F. Firms D and E have each confirmed that they have no record of any such investments. SK8's client record card for Customer A includes details of the investment with Firm C but not of any investments with Firms D, E or F. Customer A never received any documentation from Firms D, E or F relating to any investments with them, nor from SK8.
14. The handwritten notes provided by Mr Fincher to Customer A included references to withdrawals from the investments with Firms D and F in the total sum of £10,500 (£5,000 and £5,500), although the notes were inconsistent as to the dates of the withdrawals. Payments in those sums were made by two cheques from an account in the name of 'G Fincher and Co' to Customer A's account, although it is not clear whether these payments were in respect of such purported withdrawals.

### **Customers B and C**

15. At various times, Mr Fincher dealt with a mortgage and life insurance matters on behalf of Customers B and C, a married couple, and with pension investments for Customer B.
16. In 2007, Customer C met with Mr Fincher and her husband at her home. She gave Mr Fincher a cheque for £10,000 (or thereabouts) made out to 'G Fincher and Co'. Mr Fincher agreed with Customer C that that sum was to be invested in an appropriate investment company, and that he would search the market in order to find where best to place the money.
17. On or about 28 November 2007, Customer B met with Mr Fincher at his home. He gave Mr Fincher a cheque for £15,000 made out to 'G Fincher and Co'. Mr Fincher agreed with Customer B that that sum was to be invested in an appropriate investment company, and that he would search the market in order to find where best to place the money.
18. Mr Fincher paid that sum into an account in the name of 'G Fincher and Co' (an account controlled by Mr Fincher).
19. On or about 11 January 2010, Customer C met with Mr Fincher at her home. He provided her with a handwritten note purporting to set out details of the investments made by Mr Fincher on behalf of Customers B and C. That note included details of the date, type and values of the purported investments: for Customer C this consisted of an investment with Firm G valued at £9,218.42 and referring to a withdrawal in 2008 of £1,000; for Customer B the note listed an investment with Firm H valued at £13,655.81 and referred to a sum of £3,000 withdrawn in December 2009 and to a penalty for withdrawal in the first three years.
20. On or about 23 March 2010, Customer C again met with Mr Fincher at her home. He provided her with a further, similar handwritten note purporting to set out details of the investments made by Mr Fincher on behalf of Customers B and C. Customer C's investment with Firm G was valued at £7,330.33 and the note referred to withdrawals of £1,000 in 2008 and £2,000 in 2010; Customer B's investment with Firm H was valued at £10,758.42 and the note referred to two sums of £3,000 withdrawn in December 2009 and February 2010 respectively.
21. Firms G and H have each confirmed that they have no record of any such investments. SK8's client record card for Customers B and C includes details of various investments but not of any investments with Firms G or H. Customers B and C never received any documentation from Firms G or H relating to any investments with them, nor from SK8.
22. In 2009 and 2011, payments totalling £7,692.47 were made by two cheques from an account in the name of 'G Fincher and Co' to Customer C's account. It is not clear whether these were repayments in respect of the purported investment with Firm G. The Authority is unaware whether any other such payments were made.
23. In 2009 and 2011, payments totalling £11,248.49 were made by two cheques from an account in the name of 'G Fincher and Co' to Customer B's account. It is not clear whether these were repayments in respect of the purported investment

with Firm H. The Authority is unaware whether any other such payments were made.

### **Customers D and E**

24. On numerous occasions, Mr Fincher provided investment services for Customers D and E, a married couple. On or about 3 March 2008, Customer D gave Mr Fincher a cheque of that date payable to 'G Fincher and Co' in the sum of £7,000 which the Authority infers was for the purpose of investment. On or about 2 April 2008, Customer E gave Mr Fincher a cheque of that date payable to 'G Fincher and Co' in the sum of £10,000 which the Authority infers was for the purpose of investment. It appears that Mr Fincher wrote these cheques on Customer D's and Customer E's behalf, respectively, for their signature.
25. Mr Fincher paid those sums into an account in the name of 'G Fincher and Co'.
26. SK8's client record card for Customers D and E includes details of numerous investments, but not of any investments which appear to have been made with these sums. Mr Fincher later provided a relative of Customers D and E, who held a power of attorney for them, with a document dated 21 July 2011 consisting of a list of investments made on their behalf. This document does not list any investments which appear to correlate to the sums paid to Mr Fincher in March 2008 set out above.
27. Various sums have been repaid by Mr Fincher to the attorney on behalf of Customer D, but it is not clear whether any of these were in respect of the sums set out above.

### **Conclusion**

28. As set out above, Mr Fincher accepted sums from the Customers for investment when no firm represented by him was authorised to hold client monies, all or the majority of which he paid into a bank account controlled by him.
29. Mr Fincher failed to invest those sums, as agreed or at all, and provided false information to Customers A, B and C about purported investments which he claimed to have made with those sums. Information provided to the attorney of Customers D and E omitted any mention of the relevant sums.
30. Mr Fincher may have repaid some of the sums paid by the Customers to Mr Fincher, but the extent to which such sums paid by the Customers are outstanding is not clear.

### **FAILINGS**

31. The regulatory provisions relevant to this First Supervisory Notice are set out in the Annex.
32. From the facts and matters described above the Authority, having regard to its operational objectives, has reached the following conclusions:
  - SK8 currently has no approved persons in the role of director. SK8 therefore no longer satisfies the Authority that it has appropriate human resources, which is a failing that is material in relation to the regulated

activities for which it has had permission. SK8 is therefore in breach of the appropriate resources Threshold Condition;

- One of SK8's controllers, Mr Fincher, has acted with a lack of honesty and integrity by: (i) taking money from clients given to him for the purpose of investment, despite the fact that neither he, nor any firm he was representing (including SK8), had regulatory permission to hold or control client money; (ii) not using the monies given to him for the purpose of investment, for that purpose; and (iii) providing false and misleading documents and information to customers as to the existence, nature and value of purported investments. SK8 therefore no longer satisfies the Authority that it is fit and proper to conduct regulated activities, and therefore is in breach of the suitability Threshold Condition;
- The risk of loss or other adverse effect on consumers by SK8's failings set out above causes the Authority to have very serious concerns about SK8; and
- It is desirable to exercise the Authority's own initiative power to vary SK8's Part 4A permission with immediate effect to advance its operational objectives: specifically the objective of securing the appropriate degree of protection for consumers.

## **PROCEDURAL MATTERS**

### **Decision Maker**

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

34. This First Supervisory Notice is given to SK8 under section 55Y(4) and in accordance with section 55Y(5) of the Act, and is being served on SK8 at its place of business as last notified to the Authority. The following statutory rights are important.

### **The Tribunal**

35. SK8 has the right to refer the matter to which this First Supervisory Notice relates to the Tribunal. The Tax and Chancery Chamber is the part of the Tribunal which, amongst other things, hears references arising from decisions of the Authority. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, SK8 has 28 days from the date on which this First Supervisory Notice is given to it to refer the matter to the Tribunal.

36. A reference to the Tribunal can be made by way of a reference notice (Form FTC3) signed by SK8 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)).

37. 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>

38. SK8 should note that a copy of the reference notice (Form FTC3) must also be sent to the Authority at the same time as filing a reference with the Tribunal. A copy of the reference notice should be sent to Kathryn Willis at the Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS.

### **Representations**

39. SK8 has the right to make written and oral representations to the Authority (whether or not it refers this matter to the Tribunal). If SK8 wishes to make written representations it must do so by **27 December 2013** or such later date as may be permitted by the Authority. Written representations should be made to the Regulatory Decisions Committee and sent to Julie Jones, Regulatory Decisions Committee Professional Support Services. The Regulatory Decisions Committee Professional Support Services' address is: The Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS. If SK8 wishes to make oral representations, SK8 should inform the Authority of its intention to do so by **27 December 2013**. If SK8 does not notify the Authority by **27 December 2013**, it will not, other than in exceptional circumstances, be able to make oral representations.

### **Publicity**

40. SK8 should note that section 391 of the Act requires the Authority 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.

### **Contacts**

41. For more information concerning this matter generally, SK8 should contact Kathryn Willis at the Authority (direct line: 020 7066 2098).

42. If SK8 has any questions regarding the procedures of the Regulatory Decisions Committee, it should contact Julie Jones (direct line: 020 7066 1190).

**Andrew Long**  
**Chairman, Regulatory Decisions Committee**

## **ANNEX**

### **RELEVANT STATUTORY PROVISIONS**

1. The Authority's operational objectives established in section 1(B) of the Act include securing an appropriate degree of protection for consumers.
2. The Authority has the power under section 55J of the Act to :
  - vary an authorised person's permission where it appears to the Authority that such person is failing to satisfy the threshold conditions (section 55J(1)(a));
  - vary an authorised person's permission where it is desirable to do so to advance any of its operational objectives (section 55J(1)(c)(i));
  - vary such a permission by removing a regulated activity from those for which the permission is given (section 55J(2)(a)(ii)); and
  - 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 55A of the Act (section 55J(10)).
3. 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 where it is desirable to exercise the power in order to advance one or more of the Authority's operational objectives (section 55L(2)(c)).
4. 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 refrain from taking specified action (section 55N(1)(b)).
5. Section 55Y of the Act allows such a variation 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 variation to take effect immediately (or on that date).
6. Section 391 of the Act provides that:

“[...]”

  - (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...

- (7) Information is to be published under this section in such manner as the [Authority] considers appropriate.”
7. Paragraph 2D of Part 1B of Schedule 6 to the Act sets out the appropriate resources Threshold Condition which provides that:
- “(1) The resources of A must be appropriate in relation to the regulated activities that A carries on or seeks to carry on.”
8. Paragraph 2E to Schedule 6 to the Act states that:
- “A must be a fit and proper person having regard to all the circumstances, including-
- [...]
- (c) the need to ensure that A’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; and
- [...]
- (f) whether A’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”.

## **RELEVANT HANDBOOK PROVISIONS**

9. In exercising its power to vary a Part 4A permission, the Authority must have regard to guidance published in the Handbook. The relevant main considerations in relation to the action specified above are set out below.

### **Guidance concerning the relevant Threshold Conditions**

10. Guidance on the Threshold Conditions is set out in the part of the Handbook entitled Threshold Conditions (“COND”).

#### COND 2.4 – Appropriate resources: Paragraph 2D of Schedule 6 to the Act

11. COND 2.4.1AUK states that the resources of A (being a person carrying on, or seeking to carry on, regulated activities) must be appropriate in relation to the regulated activities that A carries on or seeks to carry on.
12. COND 2.4.1BG provides that paragraph 2D of Schedule 6 to the Act sets out the appropriate resources threshold condition for firms carrying on, or seeking to carry on regulated activities, which do not include a PRA regulated activity.
13. COND 2.4.2G(2) provides that ‘appropriate’ means sufficient in terms of quantity, quality and availability, and that ‘resources’ includes human resources.

#### COND 2.5 – Suitability: Paragraph 2E of Schedule 6 to the Act

14. COND 2.5.1AUK(1) reproduces the relevant statutory provision that the person concerned must satisfy the Authority that he is a fit and proper person having

regard to all the circumstances, including the firm's connection with any person, the need to ensure that his affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers; and also whether his business is being, or is to be, managed in such a way as to ensure that its affairs are conducted in a sound and prudent manner (COND 2.5.1AUK(1)(a)(c) and (f)).

15. COND 2.5.3G states that in certain circumstances, the Authority may consider that a firm is not suitable because of doubts over the individual or collective suitability of persons connected with the firm.
16. COND 2.5.4G(2)(a) states that the general considerations to which the Authority, when assessing whether a firm will satisfy, and continue to satisfy, the suitability threshold condition, may have regard include whether it conducts, or will conduct, its business with integrity and in compliance with proper standards.

### **OTHER RELEVANT REGULATORY PROVISIONS**

17. The Authority's policy in relation to its enforcement powers is set out in the Enforcement Guide (EG), certain provisions of which are summarised below.
18. EG 8.1 reflects the provisions of section 55J of the Act that the Authority 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 (EG 8.1(1)); or where it is desirable to exercise the power in order to advance one or more of its operational objectives (EG 8.1(3)).

#### Varying a firm's Part 4A permission on the Authority's own-initiative

19. EG 8.1B provides that the Authority will have regard to its statutory 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.
20. EG 8.3 provides that the Authority will exercise its formal powers under section 55J or 55L of the Act, where the Authority considers it is appropriate to ensure a firm meets its regulatory requirements. EG 8.3(1) specifies that the Authority 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.
21. EG 8.5(1) specifies that the Authority will consider exercising its own-initiative power under section 55J(1)(a) or 55L(2)(a) of the Act where the firm appears to be failing, or appears likely to fail, to satisfy the threshold conditions relating to one or more, or all, of its regulated activities, including because, for instance, it has not been managed soundly and prudently.

#### Use of the own-initiative powers in urgent cases

22. EG 8.6 states that the Authority may impose a variation of permission so that it takes effect immediately or on a specified date if it reasonably considers it necessary for the variation to take effect immediately (or on the date specified), having regard to the ground on which it is exercising its own-initiative powers.
23. EG 8.7 provides the circumstances in which the Authority will consider exercising its own initiative power as a matter of urgency, include where the information

available to it indicates serious concerns about the firm or its business that need to be addressed immediately (EG 8.7(1)).

24. EG 8.8 sets out a non-exhaustive list of factors the Authority will consider in exercising its own-initiative power as a matter of urgency. EG 8.8(1) specifies that the Authority will consider urgent own-initiative action if there is information indicating a significant loss, risk of loss or other adverse effects for consumers, where action is necessary to protect their interests.
25. EG 8.9 sets out the factors which will determine whether the urgent exercise of the Authority's own-initiative power is an appropriate response to serious concerns, including: the extent of any consumer loss or risk of consumer loss or other adverse effect on consumers (EG 8.9(1)) and the extent to which customer assets appear to be at risk (EG 8.9(2)).