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Dear Board,

FCA expectations for Investment-based crowdfunding platforms

Under our integrated regulatory structure across the whole of Supervision, Policy and Competition in the FCA, Investment-based crowdfunding (IBCF) is supervised by the Consumer Investments Directorate.

This letter outlines the harms to consumers and markets most likely to arise from Crowdfunding business models, and our strategy to address those harms. You should consider whether the risks of harm below are present in your firm and adopt strategies for mitigating them. In any future supervisory engagement with you, we will consider whether you, the Board, and Senior Managers, have taken appropriate action to ensure that consumers and markets are adequately protected from these harms.

We will increasingly use data, already provided through regulatory returns, but now supplemented by direct information requests and intelligence, to assist in identifying outlier firms that pose a heightened risk of harm, whether deliberately or not, and engage with them to mitigate any harm or potential harm.

Key areas of focus for IBCF firms

A number of significant developments have taken place since we last set out our strategy for Crowdfunding platforms. Most relevant for the portfolio was our publication of:

- [PS22/10: Strengthening our financial promotion rules for high-risk investments and firms approving financial promotions](#), which finalised our rules to strengthen the regime for how high-risk investments (HRIs) can be promoted;
- [PS23/11 Guidance on the trading venue perimeter](#), providing further clarity on when firms may be operating a multilateral system and hence require authorisation as a trading venue;
- [PS23/13](#) on introducing a gateway for firms who approve financial promotions; and
- [Engagement Paper 5](#) on the Public Offer Platform

PS22/10: Strengthening our financial promotion rules for high-risk investments and firms approving financial promotions

A key feature of PS22/10 was to improve the customer journey into high-risk investments through:

- strengthening risk warnings
- banning inducements to invest
- introducing positive frictions including a cooling-off period, and
- improving client categorisation and appropriateness testing

Following a review of the risk warnings of firms within the Peer-to-Peer and Investment-based Crowdfunding (IBCF) portfolios in December 2022 we found that the level of compliance was far below the standard we expect. This was reported in our [financial promotions quarterly data](#) for Q1 2023. As a result, we looked more deeply at how firms had implemented the remaining rules from 1 February 2023.

The findings of our review can be found [here](#) along with examples of good and poor practices that we found.

What we expect of you:

We expect all firms to review our findings, including our good and poor practices examples, and make any changes required to meet our expectations and improve consumer outcomes.

What we will do:

We will proactively engage with firms in the portfolio to ensure that the new rules in PS22/10 have been fully embedded. Where we find weaknesses or failings, that result in poor consumer outcomes, and where there has been the potential for harm, or actual harm to investors, we will be quick to intervene to protect consumers and ensure that redress is put in place.

An example of this is we recently wrote to all firms in the Crowdfunding portfolio regarding concerns that firms could be misusing the one off non-real time communications exemption (article 28 of the FSMA 2000 (Financial Promotion) Order 2005). We stated that we have come across instances where certain promotional information relating to an issuer's business is made available to retail investors upon request and treated as purportedly outside the scope of application of FCA rules.

It is our view that these 'restricted documents' do form part of the financial promotion and require appropriate due diligence. Moreover, it is clear that a firm's reliance on the exemption when the relevant conditions are not met, simply to avoid regulatory obligations owed to retail investors would breach the requirements of the Consumer Duty. We remain engaged with firms that indicated they do make use of this exemption to determine if they are using it correctly.

Trading Venue Perimeter Guidance

Our [Policy Statement 23/11](#) on the trading venue perimeter guidance acknowledges feedback from crowdfunding platforms in respect of operating a secondary market. In response to this feedback we intend to explore this issue further as part of our wider consideration of potential regulatory reforms in primary and secondary markets. In the meantime, we expect firms to operate in accordance with the guidance.

We also wrote to firms about the guidance to provide further clarity on when firms may be operating a multilateral system and hence require authorisation as a trading venue. We are currently assessing responses to this.

What we expect of you:

We expect all firms to monitor how they operate 'bulletin boards' and secondary markets to ensure that they do not cross the demarcation between these and a multilateral system.

What we will do:

From responses we have received to both letters it is clear that there are a number of different business models operating in the portfolio and we will continue to engage with firms to ensure they hold appropriate permissions.

Our supervisory approach is to better understand these individual business models in the portfolio to assess the degree of risk posed to investors and ensure firms have appropriate risk management frameworks in place to mitigate risks.

S.21 Approvals

On 12 September 2023, we published our policy statement [PS23/13](#) on introducing a gateway for firms who approve financial promotions. Firms should take all necessary advice to carefully consider whether they approve promotions in scope of this new gateway (the exemptions are set out at paragraph 1.33 in the policy statement).

Given the activity that an IBCF undertakes, it is likely that most crowdfunding platforms will need to apply at the gateway to approve financial promotions. This is because it is likely that they will be approving financial promotions that have been prepared by unauthorised persons and where the exemptions from the need to apply are not applicable.

What we expect from you:

Firms must submit an application for permission to approve financial promotions before 6 February 2024 to take advantage of the transitional arrangements. Firms applying by this time will be able to continue approving promotions until their application is determined, at which point their ability to approve promotions will be amended in line with the outcome of their application.

Should a firm decide to approve financial promotions in scope of the gateway in future (i.e. after the application period has closed), they can submit a Variation of Permission application for this in the usual way. However, they will not be able to approve financial promotions (other than within an exemption) until their application is determined.

What we will do:

Firms that do not apply to the gateway during this period cannot approve financial promotions (aside from where an exemption applies) from 7 February 2024.

We will continue to act assertively where we see the risk of harm to consumers from poor financial promotions.

In recent months we have intervened, using our own initiative powers, to prevent a firm from approving the content of any financial promotion for a qualifying cryptoasset for communication by an unauthorised person. In another recent case, again after supervisory intervention, a firm

placed voluntary restrictions on itself to not approve any financial promotion containing a qualifying cryptoasset.

Public Offer Platform

On 13th July, we published [Engagement Paper 5](#) on the Public Offer Platform, which will be of interest to operators of crowdfunding platforms. This regime will allow the FCA to set specific rules for types of public offers of securities that are not admitted to a public market. We are currently considering feedback to the Engagement Paper and will be consulting on draft rules later in the year. We welcome your continued engagement on this.

What we expect from you:

We are keen to make sure that this framework provides investors with sufficient information to assess the benefits and risks of investing in securities offered outside of public markets, and that platform operators undertake appropriate due diligence to prevent fraud.

What we will do:

Where possible, we will seek to draw on existing industry best practice and standards when developing rules, which are tailored to the risks of this activity for investors, while ensuring markets work well for businesses seeking funding.

Under the Public Offer Platform regime, we want to expand the opportunities available to retail investors, where they can invest with confidence, understand the risks they are taking and the regulatory protections that are provided. We do not want to restrict consumers if they want to invest, but we do want them to be able to access and identify investments that suit their circumstances and attitude to risk.

Consumer Duty

Most importantly we have introduced the [Consumer Duty](#) which came into effect in July 2023 and this will be a key focus for how we will supervise firms in the IBCF portfolio.

What we expect from you:

We expect you to have implemented the Consumer Duty in full, which requires you to put the needs of your consumers first and deliver good customer outcomes. Our supervisory focus aligns with the Consumer Duty outcomes, for example:

Consumer understanding: Firms need to ensure that investors fully understand all aspects of the investment they are making (e.g. its inherent illiquidity, risk of total capital loss, lack of FSCS protection) and are fully aware of the extent of due diligence undertaken by the platform

Products and services: Firms need to apply an appropriate level of due diligence in relation to the securities they distribute before marketing such securities to investors, to ensure an investor can select an investment with a risk profile that is aligned to their needs and avoiding foreseeable harm to them

Price and value: Fees and charges, to investors and fundraisers, need to be transparent and fair; firms need to have asked themselves how price and value outcomes apply to them, including what management information should be collected to assess their performance in this area

Consumer Support: Firms need to provide support that meets their consumer's needs, including those with characteristics of vulnerability, throughout the life of the product or service. Firms must review their communication systems, including complaints procedures and remove any unreasonable barriers, to make sure they align with expectations under the Consumer Duty

What we will do:

Applying the Consumer Duty will be a focus of our supervision strategy, and we will use it as a tool where we see the need to intervene assertively to prevent a harm arising or taking action where a harm has occurred.

Financial resilience

Data from submitted regulatory returns indicates financial resilience is a real issue facing firms in the Crowdfunding portfolio, with income streams being inconsistent or 'lumpy', putting firms' business models at risk of being financially unviable.

As part of our data-led strategy we will undertake greater scrutiny of firms' financial performance and ensure that firms take steps to strengthen capital and liquid resources where we see a need.

You will find it useful to review our [Wind-down planning guide](#) to familiarise yourself with what steps are needed to minimise any adverse impact on clients (investors and fundraisers), counterparties or the wider markets.

What we expect of you:

All firms need to identify absolute minimum levels of liquid and capital resources which, if breached, will trigger a wind-down. Liquid resources are critical for firms' survival and to help ensure that they can wind down in an orderly manner. Firms should monitor their financial health as part of appropriate systems and controls and maintain adequate financial resources at all times.

What we will do:

We will continue to ask firms for their wind-down plans through our supervisory work. Where we determine that a firm has not adequately prepared for an orderly wind-down, or where we think there are insufficient levels of capital or liquid resources, we will not hesitate to require an injection of capital and consider whether it is still appropriate to continue with new fundraises on behalf of issuers.

Next steps

As a Board you are responsible for the governance and oversight in ensuring your firm meets its regulatory requirements and expectations set out above. You should take all necessary actions to ensure that senior managers are accountable for delivering on this.

Should you have any queries please contact us on 0300 500 0597 which is the primary point of contact for your firm's interaction with the FCA. Further contact details can be found [here](#).

Yours sincerely,

Lucy Castledine

Director for Consumer Investments