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23 March 2021

Our Ref:

Your Ref:

Dear Gary

ALL Scheme Limited (the "Company") – Proposed Scheme of Arrangement pursuant to Part 26 of the Companies Act 2006 (the "Scheme")

- 1.1 We refer to the Company's application to the High Court of Justice of England and Wales for an order for permission to convene a meeting of certain of the Company's creditors for the purpose of considering and, if thought fit, approving (with or without modification) the Scheme. The convening hearing is, as we understand it, due to take place on Tuesday, 30 March 2021.
- 1.2 We are writing to the Company in view of this forthcoming hearing, specifically, to draw to the attention of the Company (and, in turn, the Court) the FCA's position in respect of the Scheme.
- 1.3 In summary, the FCA's position in respect of the Scheme is as follows:
 - (a) the FCA does not support the Scheme;
 - (b) on the basis of the information currently available to it, the FCA is not currently proposing to take any additional regulatory action that might otherwise prevent the Scheme from having substantial effect were it to be agreed by the requisite majority of creditors and sanctioned by the Court; and
 - (c) noting the FCA's consumer protection objective in securing an appropriate degree of protection for consumers (s.1C Financial Services and Markets Act 2000), the FCA has identified certain concerns with the Scheme which it would like to draw to the attention of the Company and, in turn, the Court.

- 1.4 We expand upon these aspects further below in sections 4 and 5.
- 1.5 On the basis of current information, the FCA does not intend to appear by counsel to make submissions in opposition to the Scheme. The FCA is aware that the Court has expressed concern in the past in relation to correspondence sent by creditors to the Court in relation to proposed schemes raising unparticularised or unsubstantiated grounds of objection to a scheme. However, the FCA considers that it is appropriate for it to provide this letter given:
- (a) its position as the relevant regulator for certain entities within the Group whose views may therefore be considered by the Court to be at least potentially relevant;
 - (b) the fact that the FCA's position may be relevant to the question of whether the Scheme can have substantive effect;
 - (c) the FCA's consumer protection function which the FCA considers means that it is appropriate that it should express relevant concerns in case scheme creditors, who are consumers, are not in a position to do so.
- 1.6 Please note that unless otherwise defined, capitalised terms have the meaning ascribed to them in the draft Scheme.

2. **THE FINANCIAL CONDUCT AUTHORITY'S ROLE**

- 2.1 The Company was incorporated on 6 January 2021 for the purposes of the Scheme and is a member of the Amigo group of companies under (and including) Holdings PLC (the "**Group**" or "**Amigo**"). Certain entities in the Group (including Amigo Loans Ltd) are authorised by The Financial Conduct Authority (the "**FCA**") to engage in certain regulated activities. As a result, the FCA is the conduct regulator of certain Group entities under the Financial Services and Markets Act 2000 ("**FSMA**").
- 2.2 Amigo first contacted the FCA in November 2020, to discuss its proposals in relation to the Scheme. Since that time, the FCA and Amigo, and their respective legal advisors Ashurst and Freshfields, have been engaged in regular discussions regarding the Company's proposals and the key aspects of the Scheme, including importantly, how customers (borrowers and guarantors, past or present) will be affected.
- 2.3 It is customary for regulated firms to request a "letter of non-objection" from the FCA in respect of any scheme of arrangement they intend to propose. Amigo initially requested a "letter of non-objection" in respect of the Scheme. Following initial feedback from the FCA on the Scheme, Amigo subsequently withdrew this request.

- 2.4 Nevertheless, as part of its usual supervisory functions, the FCA has considered and continues to assess the Scheme and its terms, as the Scheme has evolved.
- 2.5 At all times, the FCA has considered the Scheme by reference to the FCA's statutory objectives under FSMA, which for ease, are enclosed with this letter (Annex 1). As part of this, pursuant to the consumer protection objective, the FCA is duty-bound to seek to secure an appropriate degree of protection for consumers. In this case, ALL's business involved providing loans to persons likely to have experienced financial difficulties, many of whom may therefore be vulnerable persons. To give an indication of the nature of the loans offered, we note that ALL currently states on its website that the representative annual percentage rate in relation to the loans it offers is 49.9% APR (variable). It is therefore especially important that the Scheme is designed as simply as possible, is openly and clearly explained, and that it works as a customer might expect, i.e. to provide redress as intended.
- 2.6 The Company has provided to the FCA copies of the draft Scheme documentation, including the Scheme document, the Explanatory Statement and the Company's evidence in support of the Scheme. As appropriate, the FCA has also made formal requests of the Group to provide additional information and documents in relation to the proposed design, implementation, costs and likely outcome of the Scheme, particularly in relation to customers to whom redress may be payable.

3. **THE FCA'S APPROACH TO ASSESSING THE SCHEME**

- 3.1 The FCA's general approach to its evaluation of arrangements proposed by firms regulated by the FCA is enclosed with this letter (Annex 2). This approach includes the FCA's consideration as to whether the Company's Scheme proposal is compatible with FCA rules, including the FCA's Principles of Business (enclosed at Annex 3). In particular, the FCA assesses the compatibility of schemes of arrangement with Principle 6 (treating customers fairly), Principle 7 (customers' information needs) and Principle 8 (managing conflicts of interest).
- 3.2 The FCA's assessment of the Scheme is therefore distinct from, and potentially broader than, the Court's assessment of the Scheme (in considering whether to convene a meeting of the Company's creditors for the purpose of considering and, if thought fit, approving the Scheme, and to ultimately sanction the Scheme).
- 3.3 As part of its consideration to date, the FCA has had regard to:
- (a) information and documents provided by the Company (as above);
 - (b) the FCA's wider knowledge of the Company and its business; and

- (c) the FCA's experience of similar proposals and/or arrangements in respect of other regulated consumer credit businesses

(together, the "**Scheme Characteristics**").

4. **THE FCA'S ASSESSMENT OF THE SCHEME**

- 4.1 The FCA has completed its assessment of the Scheme Characteristics and does not support the Scheme. Taken as a whole, the FCA considers that the Scheme Characteristics may not be compatible with the FCA's rules, principles and strategic objectives. In particular, the FCA is concerned that:
 - (a) customers with valid redress claims stand to receive significantly less than the value of their claims; and
 - (b) the methodology for assessing claims does not produce outcomes with the same high standards of accuracy and fairness as would be available under the FCA's usual framework of complaint handling rules for firms or through recourse to the Financial Ombudsman Service.
- 4.2 However, the FCA recognises that these are ultimately matters for the FCA to assess and, in a given case, determine whether any action could or should be taken against any regulated entities within the Group as a result and that these concerns need to be balanced against the likely position should the Scheme not go ahead and the proportionality of it taking action in such circumstances.
- 4.3 As such, while the FCA continues to reserve its position should facts or circumstances change, the FCA confirms, on the basis of the information currently before it, that it does not presently anticipate taking any additional regulatory action that might specifically prevent the Scheme from having substantial effect (were the Scheme to be agreed by the requisite majority of creditors and sanctioned by the Court).
- 4.4 The FCA does not consider the outcome of its assessment of the Scheme should prevent the Company from seeking an order for permission to convene a meeting of the Company's creditors for the purpose of considering and, if thought fit, approving the Scheme. In this case the FCA considers these are matters for the Company to determine, the relevant creditors to vote on and the Court to assess.
- 4.5 Separately, the Company will be aware that in May 2020 the FCA launched an investigation into the issues underpinning the relevant redress claims from 1 November 2018 (i.e. the Group's creditworthiness assessment process, and the governance and oversight of this process). The scope of this investigation has subsequently been widened to include the Group's handling of complaints from the period since 20 May 2020 onwards.

5. **THE COURT'S ASSESSMENT OF THE SCHEME**

5.1 Notwithstanding the above, the FCA has also identified several issues which the FCA considers are relevant, or potentially relevant, to customers if and when they are asked to evaluate and vote on the Scheme, and to the Court when considering whether or not to sanction the Scheme.

5.2 The FCA recognises some of these concerns are matters for the Court to consider at any sanction, rather than convening, hearing, however the FCA is raising them now for completeness and because the FCA does not anticipate direct engagement with the Court during the Scheme process, should it proceed (although the FCA reserves its right to do so).

A. Contribution of other stakeholders

5.3 In circumstances where the Redress Creditors are anticipated to receive a very small fraction of their Redress Scheme Claims under the Scheme, the FCA is concerned by the fact that the claims of the Group's secured creditors, shareholders and other unsecured creditors will not be similarly compromised (or compromised at all) and indeed are expected to be kept whole.

5.4 The FCA notes that the Group's secured creditors (being the Bondholders and the Securitisation Creditors, as defined in the scheme documentation) will not, and the FCA understands have not been asked to, contribute any funds to be made available to meet Ascertained Redress Scheme Claims. Secured creditors are not subject to the Scheme and it is therefore anticipated that they will be repaid in full. It is not clear to the FCA whether secured creditors might themselves suffer a loss in an insolvency counterfactual. To the extent that they would, customers and in turn the Court may wish to consider whether the absence of any compromise of secured creditor rights affects the fairness of the compromise being put to customers.

5.5 The FCA also notes with particular concern that the Group's shareholders retain their full ownership stake in the Group despite not contributing any funds to be made available to meet Ascertained Redress Scheme Claims. The FCA also acknowledges that shareholders may indirectly contribute to the amounts available to Scheme Creditors by way of the Future Business Contribution. However, the FCA notes that the Future Business Contribution is made by Holdings PLC in an amount equal to just 15 per cent of its annual consolidated profits before tax over each of the four financial years between 1 April 2021 and 31 March 2025, and any such contribution is conditional and limited - and accordingly may not be made at all.

5.6 The FCA considers the absence of any shareholder compromise to be a material consideration for creditors and the Court in relation to the overall fairness of the Scheme.

B. Transparency of claims methodology

- 5.7 The FCA considers that the fact that the Company does not make any attempt to comprehensively explain to customers in the Scheme documentation the approach the Company is actually taking to adjudicate their claims (or provide customers with a means to ascertain this) is a material consideration for creditors and the Court in relation to the overall fairness of the Scheme. For example, the FCA is concerned that it will not be apparent to customers that the Company appears to have retained in its claims methodology an unfettered discretion to vary the Scheme payment threshold (initially set at £100): it is understood that where the proposed payment under the Scheme is below the threshold amount, it is intended that the claim to which it relates will be automatically upheld and not assessed for validity. This could have a material impact on the outcomes for Redress Creditors and, without disclosure, customers will not be aware of this.

C. Voting on the Scheme

- 5.8 The FCA notes that any customer who asserts they have a claim will be able to vote on the Scheme and that the value of their vote will be assessed (i) by reference to a set calculation based on the value of interest or costs paid by the borrower (or the full amount paid as guarantor) rather than the quantum of their claim and (ii) potentially irrespective of whether that customer actually has a Redress Scheme Claim. Each of these factors could create a significant incongruity between Redress Creditors and the customers who in fact voted on the Scheme; in other words, some customers may vote on the Scheme when they are not, in fact, Redress Creditors.
- 5.9 While the FCA acknowledges that the Company considers this to be the fairest approach to voting and one that has been used in other schemes of arrangement, the FCA is concerned that here the Company will be accepting claims for voting purposes at a point in time when it already knows (or is capable of knowing) that its own methodology for determining claims will later reject those same claims at the adjudication stage. The Company has not provided, in the FCA's view, a satisfactory explanation as to why the methodology could not be used to proactively determine the validity of claims for voting purposes (thereby mitigating, if not avoiding entirely, the current scenario in which customers without Redress Scheme Claims will be permitted to vote on the Scheme).

D. Equitable set-off

- 5.10 The FCA remains concerned about customers with outstanding loan balances and valid redress claims who do not engage with the Scheme at all within the requisite time periods, noting in consumer schemes of this nature response rates can be low. Those customers therefore lose their rights in return for no

compensation and are potentially worse off than they would be in an immediate insolvency counterfactual. This is because the effect of the Scheme will be to release any right those customers have to assert equitable set off rights in relation to their redress claims in respect of outstanding balances and will therefore be pursued for the full amount of their loan balance in future. By contrast, in any insolvency counterfactual, we anticipate such rights would be taken into account by any insolvency officeholder when adjudicating claims and considering the application of mandatory insolvency set off. In addition, even if not submitted to proof in the insolvency by the customers, we anticipate the existence of equitable set off rights would in practice prevent those customers from being pursued for their outstanding loan balances in an insolvency (up to the value of their redress claims), whether by the insolvency officeholder or any subsequent purchaser of the debt.

E. The Company as a special purpose vehicle

- 5.11 In order to effect the Scheme, the Group incorporated the Company to assume joint liability (by deed poll) for all liabilities capable of being claimed against ALL, AMSL or Holdings PLC under the Scheme solely for the purpose of proposing the Scheme.
- 5.12 The FCA acknowledges that such a structure (or similar) has been used in other schemes of arrangement that have been sanctioned by the Court and may in this case be considered necessary for the Company in order to overcome other contractual restrictions on the Group. However, the FCA remains concerned by the use of such a structure in this specific case. In particular, the FCA is concerned that customers – whom it should be noted are involuntary creditors of Amigo - may be confused by a scheme proposed by a company with which they have never contracted (or even heard of), but which they may now be owed redress by, and through which they will also release their claims against the other Amigo entities. In the context of the Scheme the FCA considers that the artificiality of the special purpose vehicle structure may unfairly override the legitimate interests of the Group's customers; the fact that the use of a special purpose vehicle may be necessary for the Group does not mean it is appropriate or fair for its customers.

6. **CONCLUSION**

- 6.1 The FCA's observations and comments above are referable to the position as we understand it to be, as at the close of business on 22 March 2021. To the extent that things have further evolved by the convening hearing on 30 March 2021 we would expect the Company to update the Court accordingly. The FCA will continue to liaise with the Company regarding the same and, if necessary, will write to the Company and/or the Court again in due course as things develop.

6.2 Please confirm that this letter will be brought to the attention of the Court in advance of the convening hearing on 30 March 2021.

Yours faithfully,

Costas Pittas
Head of Department, Retail Lending Division
Financial Conduct Authority

ANNEX 1:

The FCA's statutory objectives under FSMA 2000:

1. The FCA's strategic objective is: ensuring that relevant markets function well (see s.1B(2) FSMA 2000). 'Relevant markets' includes the markets for regulated financial services (see s. 1F FSMA 2000).
2. The FCA's operational objectives are the consumer protection objective; the integrity objective and the competition objective (s.1B(3) FSMA 2000).
3. The FCA's consumer protection objective is securing an appropriate degree of protection for consumers (s.1C FSMA 2000). In considering what degree of protection for consumers may be appropriate the FCA must have regard to:
 - a. the differing degrees of risk involved in different kinds of investment or other transaction;
 - b. the differing degrees of experience and expertise that different consumers may have;
 - c. the needs that consumers may have for the timely provision of information and advice that is accurate and fit for purpose;
 - d. the general principle that consumers should take responsibility for their decisions;
 - e. the general principle that those providing regulated financial services should be expected to provide consumers with a level of care that is appropriate having regard to the degree of risk involved in relation to the investment or other transaction and the capabilities of the consumers in question;
 - f. the differing expectations that consumers may have in relation to different kinds of investment or other transaction;
 - g. any information which the consumer financial education body has provided to the FCA in the exercise of the consumer financial education function;
 - h. any information which the scheme operator of the ombudsman scheme has provided to the FCA pursuant to section 232A.
4. The integrity objective is: protecting and enhancing the integrity of the UK financial system (s.1D FSMA 2000). The integrity of the UK financial system includes:
 - a. its soundness, stability and resilience,

- b. its not being used for a purpose connected with financial crime,
 - c. its not being affected by behaviour that amounts to market abuse,
 - d. the orderly operation of the financial markets, and
 - e. the transparency of the price formation process in those markets.
5. The competition objective is: promoting effective competition in the interests of consumers including in the markets for regulated financial services or services provided by a recognised investment exchange in carrying on regulated activities in respect of which it is by virtue of section 285(2) exempt from the general prohibition (s.1E FSMA 2000). The matters to which the FCA may have regard in considering the effectiveness of competition in the market for the services mentioned above include:
- a. the needs of different customers who use or may use those services, including their need for information that enables them to make informed choices,
 - b. the ease with which consumers who may wish to use those services, including consumers in areas affected by social or economic deprivation, can access them,
 - c. the ease with which consumers who obtain those services can change the person from whom they obtain them,
 - d. the ease with which new entrants can enter the market, and
 - e. how far competition is encouraging innovation.

ANNEX 2:

The FCA's approach to considering schemes of arrangement in general:

1. The FCA has a duty (s.1B FSMA 2000) in discharging its general functions, to act, in so far as is reasonably possible, in a way which is compatible with its strategic objective and which advances one or more of its operational objectives (see Annex 1). The FCA's general functions include determining the general policy and principles by reference to which it performs particular functions under FSMA 2000 including the policy and principles by which it will carry out its functions in relation to arrangements for the supervision of the firms which the FCA regulates, and in particular the functions of considering what, if any, representations to make to the Court in relation to arrangements proposed by an FCA-regulated firm, and also the FCA's functions in responding to consultation requests from the PRA.
2. The FCA also has a separate duty to discharge its general functions in a way which promotes effective competition in the interests of consumers, in so far as that is compatible with acting in a way which advances the consumer protection objective or the integrity objective (s1B(4) FSMA 2000).
3. As part of its normal risk-based and judgement-led approach to supervision, the FCA will assess, taking account of all relevant circumstances of a particular case, whether a scheme proposed by an FCA-regulated firm poses any threat to any of the FCA's operational objectives, to its duty to promote competition described in paragraph 2 above, or threatens to be inconsistent with its strategic objective.

ANNEX 3:

FCA Principles for Business

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| 1 Integrity | A firm must conduct its business with integrity. |
| 2 Skill, care and diligence | A firm must conduct its business with due skill, care and diligence. |
| 3 Management and control | A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems. |
| 4 Financial prudence | A firm must maintain adequate financial resources. |
| 5 Market conduct | A firm must observe proper standards of market conduct. |
| 6 Customers' interests | A firm must pay due regard to the interests of its customers and treat them fairly. |
| 7 Communications with clients | 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. |
| 8 Conflicts of interest | A firm must manage conflicts of interest fairly, both between itself and its customers and between a customer and another client. |
| 9 Customers: relationships of trust | 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. |
| 10 Clients' assets | A firm must arrange adequate protection for clients' assets when it is responsible for them. |
| 11 Relations with regulators | A firm must deal with its regulators in an open and cooperative way, and must disclose to the FCA appropriately anything relating to the firm of which that regulator would reasonably expect notice. |