

Morses Club Limited
Building 1, The Phoenix Centre
1 Colliers Way
Nottingham
NG8 6AT

12 Endeavour Square
London
E20 1JN

Tel: +44 (0)20 7066 1000
Fax: +44 (0)20 7066 1099
www.fca.org.uk

For the attention of Mr Gary Marshall
Chief Executive Officer

Copied to: Clifford Chance LLP

Copied to: Jon Yorke, Customer Advocate

Copied to: Jamie Drummond-Smith

3 March 2023

Dear Gary

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

1. PURPOSE OF THIS LETTER

- 1.1 We refer to the Company's application to the High Court of Justice of England and Wales dated 27 February 2023 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. We understand that the convening hearing is due to take place on Tuesday, 7 March 2023 (the '**Convening Hearing**').
- 1.2 We are writing to the Company to draw to the attention of the Company (and, in turn, the Court), the concerns of The Financial Conduct Authority (the **FCA**) in relation to the Scheme. We have raised these concerns with you previously but consider that it is helpful to set them out formally.
- 1.3 Please note that:
 - 1.3.1 the views of the FCA in this letter are expressed by reference to both: (i) the latest drafts of the legal documents provided by the Company to the FCA dated 2 March 2023¹ (and as filed at Court); and (ii) the design of the Scheme as relayed to the FCA by the Company as at the date of this letter;

¹ The draft Explanatory Statement (the '**Explan**') and the Scheme Document.

- 1.3.2 in relation to the above, the FCA has had very limited time to review the latest drafts of the legal documents. These were received only yesterday and contain further substantive updates to the Scheme. As you will appreciate, the fact that the Company continues to make last minute changes to the Scheme (having rushed to issue the Practice Statement Letter and commence the process without the support of the FCA) has made, and continues to make, it very difficult for the FCA to provide its views;
- 1.3.3 whilst the main concerns highlighted in this letter go to the fairness of the Scheme (and as such, are matters that will properly be considered by the Court at the sanction hearing, currently due to be heard on 26 May 2023 (the '**Sanction Hearing**')), the FCA considers that it is important formally to raise these matters now, such that both the Company and the Court are fully aware of the FCA's position, and in the hope that the Company might seek to address these concerns through making changes to the Scheme and securing the funding necessary to make the Scheme work; and
- 1.3.4 the FCA fully reserves its rights to make additional representations (to either the Company and/or the Court) and/or to oppose the sanction of the Scheme in due course.

2. SUMMARY OF THE FCA'S VIEWS

- 2.1 Noting the FCA's consumer protection objective in securing an appropriate degree of protection for consumers (s.1C Financial Services and Markets Act 2000, (**FSMA**)), the FCA has identified serious concerns regarding the design of the Scheme which the FCA considers necessary to draw to the attention of the Company and, in turn, the Court.
- 2.2 In summary, the FCA's position (on the information currently available to it) is as follows:
 - 2.2.1 The FCA opposes the Scheme in its current form.
 - 2.2.2 The FCA has some serious concerns regarding the design of the Scheme. At present, the FCA considers it highly speculative that the Scheme would produce a better outcome for the Scheme Creditors than an immediate administration. In fact, it may produce a worse result for some or all of the Scheme Creditors.
 - 2.2.3 The FCA is also concerned that, notwithstanding the contents of the Explan, customers will not fully understand the Scheme or appreciate the risks associated with it.
 - 2.2.4 As elaborated upon in Section 5 of this letter below, the FCA is concerned about the lack of committed funding for the Scheme and that Redress Creditors (including, but not limited to, Redress Creditors who have outstanding loan repayments) may well be worse off than they would be in an immediate administration of Morses Club in the event that, in due course, the Scheme becomes effective but the Scheme funding does not materialise.

- 2.2.5 There is a substantial risk that the funding will not materialise – and it will only be after a substantial time period that it will become clear whether or not the funding will materialise – which makes this Scheme one which is highly unusual and highly uncertain in terms of its impact.
- 2.3 The FCA is considering, but is not currently proposing to take, any immediate regulatory action that might otherwise prevent the Scheme from proceeding. The FCA reserves its right to take such action in the future.
- 2.4 The FCA intends to appear by Counsel at the Convening Hearing and to publish this letter on its website.
- 2.5 Please note that unless otherwise defined, capitalised terms used in this letter have the meaning ascribed to them in the draft Scheme.

3. THE FINANCIAL CONDUCT AUTHORITY'S ROLE

- 3.1 The Company is a special purpose vehicle, which was incorporated on 25 April 2022 for the sole purpose of promoting and implementing the Scheme. The Company is a subsidiary of Morses Club Limited (**'Morses Club'**) and is part of the broader Group. Certain entities in the Group (including Morses Club and Shelby Finance Limited (**'Shelby'**)) are authorised by the FCA to engage in regulated activities. As a result, the FCA is the regulator of certain Group entities under FSMA.
- 3.2 In summary terms, the Scheme is being proposed in order to enable Morses Club (via the Company) to compromise redress liabilities that are owed by Morses Club to certain of its customers in relation to loans that were or are deemed to be unaffordable, unsuitable or unsustainable.
- 3.3 Morses Club first informed the FCA that it was considering the development of a Scheme on 12 April 2022. Since this time, the FCA and Morses Club (and their respective legal advisers, CMS Cameron McKenna Nabarro Olswang LLP and Clifford Chance LLP) have been engaged in communications regarding the Company's proposals and the key aspects of the Scheme, including, importantly, how customers (past or present) will be affected.
- 3.4 In the past, it has been regarded as 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. There is, however, no statutory requirement to seek such a letter. As set out in the FCA's Guidance entitled 'The FCA's approach to compromises for regulated firms dated July 2022 (FG22/4)' (the **'Guidance'**), the FCA's position is that it will not provide such a letter (where one is sought), but will instead, focus its resources on assessing the proposed compromise and taking any connected supervisory and/or enforcement action as is necessary. In the circumstances, Morses Club has not made such a request of the FCA but, 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.
- 3.5 At all times, the FCA has considered the merits of 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 must to seek to secure an appropriate degree of protection for consumers. In this

case, Morses Club's business is home-collected credit and involves providing loans to persons likely to have experienced financial difficulties, many of whom may be vulnerable persons. Many of these customers would have taken the loans out, and made payments, in their home with a representative of Morses Club.

- 3.6 To give an indication of the nature of the loans offered, Morses Club currently states on its website that the representative annual percentage rate in relation to the loans it offers is 498.74% APR (in respect of a 39 week loan) and 342.94% APR (in respect of a 52 week loan). Set against this backdrop, it is crucial that the design of the Scheme and, notably, the manner in which the Scheme is communicated and explained to customers, is as accessible, simple and as clear as possible. It is also important that customers' expectations are carefully managed.
- 3.7 In addition, the FCA expects firms to have read and adhere to the Guidance (referred to at paragraph 3.4 above). This Guidance was published in view of the FCA's recent experience of seeing an increase in the number of regulated firms proposing compromises to deal with significant liabilities to customers, in particular redress liabilities. The Guidance is primarily aimed at firms regulated by the FCA, where those firms are seeking to propose a compromise that affects customers. It explains the FCA's role, what the FCA expects in terms of engagement from the firm (i.e. the provision of what information, and when), the FCA's participation and the FCA's use of regulatory/supervisory powers.
- 3.8 As above, the Company has provided to the FCA copies of the draft Scheme documentation, including the Scheme itself, the Explan and the Company's evidence in support of the Scheme. As appropriate, the FCA has previously 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.

4. THE FCA'S APPROACH TO ASSESSING THE SCHEME

- 4.1 The FCA's general approach to its evaluation of schemes of arrangement 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) and Principle 7 (customers' information needs).
- 4.2 In addition, the FCA will consider any proposed scheme of arrangement as against the Guidance (referred to at paragraph 3.4 above).
- 4.3 The FCA's assessment of the Scheme is therefore distinct from, and potentially broader than, the Court's assessment of the Scheme.
- 4.4 As part of its consideration to date, the FCA has had regard to:
- 4.4.1 information and documents provided by the Company (as above);
 - 4.4.2 the FCA's wider knowledge of the Company and its business; and

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

5. THE FCA'S POSITION AND CONCERNS

- 5.1 As stated above, the FCA objects to the Scheme in its current form. The FCA has some serious concerns regarding the design of the Scheme. In addition, the FCA considers that the Scheme is not compatible with the FCA's rules, principles and strategic objectives.
- 5.2 It is a matter for the FCA to determine whether it should (or should not) take any regulatory action as a result of the Scheme proposal. The FCA's 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. At this point, the FCA is setting out its concerns and position in writing to the Company (and in turn the Court), but the FCA fully reserves its right to take regulatory action in the future, even if that action has the effect of preventing the Scheme from having effect.
- 5.3 Putting the possibility of regulatory action to one side, the FCA has identified several issues, as set out below, which it considers are directly relevant to (a) customers, if and when they are asked to evaluate and vote on the Scheme, and (b) the Court, when considering whether or not to sanction the Scheme. Whilst these are largely matters for the Court to consider at the Sanction Hearing (and as such, the FCA does not intend to oppose SchemeCo's application for permission to convene the Scheme Meeting), it is important to raise these matters now.
- 5.4 As set out below at Section 6 of this letter, at the Convening Hearing, the FCA's primary concern will be to ensure that the Scheme Creditors receive a concise, easily understandable summary of the Scheme, its pros and cons and, in particular, the risks involved. The Scheme Creditors include vulnerable and (in all probability) commercially unsophisticated customers of Morses Club who are unlikely to wade through the Explan and the Scheme to enable them to form a view as to the merits of the Scheme.
- 5.5 The FCA's principal concerns can be summarised as follows:
- (a) Considerable uncertainty regarding funds to pay any redress**
- 5.6 The delivery through the Scheme of a better result for the Scheme Creditors than would be achieved on an immediate administration of Morses Club is dependent on a number of steps being achieved, even if the Scheme is sanctioned. On its current terms, the Scheme shall automatically terminate if either (i) the Morses Club Funding (due by 29 March 2024), (ii) the Shareholder Funding (due by 28 June 2024), or (iii) the Turnover Amount (due by 29 July 2024) are not received. Equally, the Scheme shall automatically terminate if either (i) the current shareholders of Morses Club do not vote in favour of the new equity raise (by 3 May 2024), or (ii) Morses Club goes into an insolvency process before the Compensation Fund has been received by the Company, i.e. at any point prior to 29 July 2024.
- 5.7 The Scheme is, in this respect, highly speculative and uncertain. There is, on any view, a substantial risk that the funding will never materialise and it will only be after a substantial time period that this will become clear. There is plainly, therefore, a

very real prospect that customers will never receive any redress payments under the Scheme.

5.8 Separately, there is also a question as to whether these risks have been sufficiently highlighted to customers (see further the 'Next Steps' Section 6 below).

5.9 To expand upon the above, there is uncertainty surrounding:

5.9.1 **The £5m Morses Club Funding:** Based on current financial analysis, there is minimal headroom in Morses Club's financial forecasts to generate sufficient monies for the £5m Firm Funding required by 29 March 2024. The Morses Club Funding is also significantly impacted by the funds needed to support the loss-making Shelby (see paragraph 5.18.1 below).

5.9.2 In addition, there is uncertainty over the viability of the Group's ongoing business model, given, for example stricter lending controls being required to comply with FCA rules. The FCA continues to monitor the Group including its ongoing lending policies and practices, and it is possible that the Group may be required to take further action in the future that may result in lower lending levels or the being required to provide customers redress that sit outside of the Scheme

5.9.3 **The £15m Shareholder Funding:** The latest versions of the legal documents provide that the Shareholder Funding is to be 'at least' £15m. This is conditional on the Morses Club Funding. There is no firm commitment that the Shareholder Funding will be forthcoming by 28 June 2024². The equity issue is also conditional on existing shareholder approval.

5.9.4 **The Turnover Amount:** In summary terms, this is the amount (if any) by which the realisable value of Morses Club's and Shelby's net assets, as at the Effective Date (after certain deductions), exceed £5m. As above, this is due by 29 July 2024. Morses Club have included that it shall use reasonable endeavours to ensure that any potential Turnover Amount is maximised, but it is not currently known if there will be any Turnover Amount available. However, the FCA has also suggested it could include a mechanism to ensure that additional profit generated by the business, if the performance in 2023-2024 is better than expected, is contributed to the Compensation Fund. This would provide an uplift to the £5m Morses Club Funding. No such mechanism has been included in the Scheme as drafted.

5.9.5 **Costs of the Scheme generally:** Morses Club is obliged³ to fund the Company to meet the costs of the implementation and running of the Scheme more generally. There are, however, no funds provided up-front for this. Equally, no funds have been set aside and ring-fenced for this purpose. If the funds are not provided, it is difficult to see how the Scheme can properly be implemented.

² Whilst there is a letter from a party indicating their intention to subscribe, this is non-binding commitment and provides no certainty.

³ Pursuant to the terms of a draft Implementation and Funding Agreement.

(b) Uncertainty regarding the level of expected dividend

- 5.10 The Company's current estimate is that, through the Scheme, customers will receive a dividend of c.32p of the sums owed to them, with payments being made around September 2024.
- 5.11 This is dependent on various factors including, for example, the total amount of the Compensation Fund, the outcome of the Redress Methodology once finalised and the number of claims.

(c) Valuation, amount and timing of Shareholder Funding

- 5.12 The Shareholder Funding of £15m is to be provided in exchange for 95% of the shares of Morses Club. It is crucial that the amount paid for these shares is 'fair' and that it represents proper value for customers. This is particularly the case in circumstances where (i) Morses Club's initial gambit was that the valuation takes place at the Scheme Effective Date (i.e. when Morses Club is potentially most financially vulnerable), and (ii) the delay in Shareholder Funding effectively gives potential investors (including current shareholders) a free option until June 2024, to see if the financial position of the Group is improving and to assess the future profitability and investment case. This means that, practically speaking, in the interim period, the Scheme Creditors effectively take all of the risk.
- 5.13 The latest draft of the Scheme provides that Morses Club has agreed to commission a second independent valuation of its business after the Claims Bar Date but before the equity raise is initiated, as this will inform whether (or not) an increase to the £15m is required. If the report returns a valuation higher than £15m, Morses Club has committed to attempt to raise equity up to the amount of that valuation.
- 5.14 The above said, it remains unclear whether shareholders (including current shareholders) would be supportive of this approach. Further, even if the valuation is in excess of £15m, the Scheme will not fail if Morses Club fails to procure that higher amount.
- 5.15 Equally, the inclusion of Shelby for the purposes of the valuation (see further at section 5(e) below) has a material adverse impact on the valuation.

(d) Claims Methodology

- 5.16 The FCA has outstanding concerns in relation to the Claims Methodology (i.e. the methodology for assessing and determining the validity of any Scheme Claim under the Scheme).
- 5.17 Whilst certain issues have now been rectified (albeit in the last week or so), the FCA has other concerns regarding the Claims Methodology, and exactly how it will work (by way of example, how it will assess additional information which customers might provide or where customers challenge a decision), which will have a direct impact on which customers will fall within (or outside) the scope of the Scheme. The FCA continues to liaise with the Company in this regard.

(e) Shelby

- 5.18 The position of Shelby vis a vis the Scheme raises two key issues:

- 5.18.1 First, the fact that redress creditors will be disadvantaged by the continued funding of Shelby by Morses Club, with any potential upside from an improvement in Shelby's performance going to shareholders. The latest financial forecasts provided by the Company indicate that Morses Club is intending to provide £7.4m of intercompany funding to Shelby during FY23-24 (to February 2024), despite Shelby generating negative EBITDA throughout the forecast (to FY27-28). The firm has stated the driver for these losses is aggressive growth combined with upfront provisioning of loans (IFRS 9 accounting treatment). Regardless of the reason, this poses certain key issues, including the fact that funding Shelby's losses reduces the cash available for Scheme Creditors or which could otherwise be used to fund the running/implementation costs of the Scheme itself.
- 5.18.2 Secondly, Shelby was included for the purposes of Interpath's first valuation of the Group. As to this, the inclusion of Shelby for these purposes results in a lower valuation of the Group than would otherwise have been the case.
- 5.19 Whilst these points have been raised with the Company, Morses Club's position is that Shelby remains a part of the future of the Morses Club Group. There are some shared costs (IT and personnel) and notably, if Shelby were not part of the business plan, shareholders would be less likely to invest.
- (f) Certain repayments made are not protected**
- 5.20 As the Scheme is drafted, we still have concerns that there may be a group (or groups) of customers who will not be treated fairly. For example, those customers who make their claims after the Effective Date but before the Claims Bar Date, and who continue to make repayments in relation to an outstanding loan after the Effective Date.
- 5.21 Whilst the Scheme now provides that notices will be sent to these customers telling them to stop repayments (because they are owed compensation) at various points in time⁴, if a customer has an active loan, where they continue to make repayments after the Effective Date (until being notified to stop making such repayments), there are no current proposals to protect any amounts paid by customers that would be liable to be redressed (by way of a ringfenced trust account, or similar). If, therefore, Morses Club goes into administration or another insolvency process prior to the Compensation Fund being transferred in July 2024, the customers will not recover the amounts of their repayments and will be worse off. The current draft of the Explan states that there is a risk that if Morses Club enters insolvency proceedings at any time before these monies are refunded, customers will not receive such refund payments 'in full'⁵. This is misleading: there is a real chance that (save for a possible *de minimis* return via an insolvency process), these customers will lose all of these monies.

⁴ (i) Within 30 days following the Scheme Effective Date (for Scheme Claims received after the Record Date (11 August 2022) and up to the Effective Date), (ii) on a monthly basis up until the Claims Deadline and (iii) again, following 30 days following the Claims Deadline (expected to be in November 2022).

⁵ Paragraph 44, page 8.

- 5.22 In addition to the above, as the FCA understands it, Morses Club is intending to use these funds (i.e. repayments made in respect of Loans⁶) in the ordinary course of its business. Despite requests, Morses Club has failed to justify this approach.
- 5.23 Further, in the event that the Scheme is sanctioned but fails at a later date, for example, because the funding does not become available, redress creditors may well fare worse in the administration than if the firm were to enter administration now. This is because (a) customers will have continued to make loan repayments which they will be unable to recover, and (b) Morses Club's funds are being used to fund its loss-making subsidiary, Shelby, (see further at section 5(e) above) and therefore any dividend may well be lower.

6. NEXT STEPS

- 6.1 The FCA has been in discussion with the Company in relation to the above issues (at Section 5) for a considerable period of time. Whilst the Company has, largely speaking, been unwilling to move on a number of these issues, in the last week or so, certain concessions have been made by the Company (for example, amendments have now been made to the Claims Methodology which will increase the number of customers who will be entitled to redress under the terms of the Scheme).
- 6.2 Nevertheless, certain significant concerns remain unresolved. The onus is on Morses Club/the Company to propose improvements that would remove the current uncertainties and enhance the design of the Scheme, to the benefit of customers.
- 6.3 Separately, the FCA remains concerned that, in reality, customers will not read either the Explan (77 pages) or the Scheme Document (45 pages) in full, or at all. These are long, complicated and technical documents. It is crucial, however, that customers are made aware of the key features of the Scheme and the key risks (which include those, as set above) in summary form – this is separate from the 'Possible advantages and disadvantages of the Scheme' at page 56 of the Explan. Accordingly:
- 6.3.1 First, please find enclosed at Schedule 1 to this letter, the FCA's wording to be inserted into the Explan in the section 'How does Morses Club's regulator view the Scheme'. Whilst we note that it is currently intended that this is inserted at pages 7 (paragraph 37) and 58 (paragraph 7.2), please confirm that the FCA's wording will be inserted at the front of the document, on page 1, in a box in bold type.
- 6.3.2 Second, we refer to the draft letter regarding the 'Meeting Advertisement', to be sent out to customers, attached to the draft Scheme Document (at pages Z0244 to Z0246 of the Court bundle). This letter appears to deal with the process in relation to the Scheme Meeting, including voting etc. We note that this letter is intended to be sent directly to customers in multiple formats, including by post/e-mail/text. Customers are not required to take pro-active steps (i.e. clicking through various links) to access this document, it will be easily accessible. We consider that it is essential that

⁶ As defined under the Scheme as (a) a loan made by Morses Club, and (i) any Purchased Loan made, to any Borrower, provided that such loan was made between 1 April 2014 and 2 August 2022 (inclusive).

this letter is expanded, by no more than 2 or 3 pages, to explain, in clear and simple terms:

- (a) what a scheme of arrangement is;
- (b) that this scheme of arrangement has been proposed because Morses Club is insolvent and will have to go into administration unless the Scheme takes effect;
- (c) that in an administration, it is estimated that the customers will recover between 1.8% and 5% of the value of their redress claims;
- (d) that if the Scheme becomes effective and the necessary funding is forthcoming, the customers stand to recover approximately 32% of the value of their redress claims;
- (e) that there is real uncertainty as to whether the funding will be forthcoming and this might not become clear until mid-2024 and, if it is not forthcoming, Morses Club will likely go into administration and the customers might recover less than the amount they are estimated to recover in an immediate administration and might recover nothing at all. In addition, further repayments of their loans after the Scheme becomes effective may be wholly irrecoverable in a future administration; and
- (f) that it will be a matter for the customers to decide whether to vote for or against the Scheme, but the FCA takes the view that the Scheme is not in their interests for reasons which are summarised in the Explan (the page number should be identified) and set out in more detail in this letter (which should be made available to the Scheme Creditors).

6.4 We would be grateful if you could let us know, **by no later than 4pm on Monday, 6 March 2023**, whether or not you agree with that proposal and, if you do, let us have an amended draft of the letter. Counsel for the FCA will raise this matter directly with the Court at the Convening Hearing if it cannot be agreed.

7. CONCLUSION

7.1 As above, the FCA's observations are based on the position as we understand it to be, as at the close of business on 3 March 2023. To the extent that things evolve between now and the Convening Hearing on 7 March 2023, we would expect the Company to update the FCA and the Court accordingly.

7.2 Please confirm that this letter will be brought to the attention of the Court at the Convening Hearing on 7 March 2023.

Yours sincerely,

Martha Stokes
Head of Department, Consumer Lending

SCHEDULE 1

Wording to be inserted into the Explanatory statement [to be in bold type and in a box to draw attention to it]

'How does Morses Club's regulator view the Scheme'

The FCA's position is as follows:

- (i) The FCA does not consider that the Scheme is in the interests of Scheme Creditors or compatible with the FCA's rules, principles and strategic objectives.
- (ii) The FCA has serious concerns that the Scheme would, if sanctioned, risk worsening the position of the Scheme Creditors.
- (iii) These concerns include the fact that there is considerable uncertainty as to whether the funding which is sought by Morses Club to enable an enhanced distribution to be made to the Scheme Creditors will, in fact, be received. For example, the funding which is required from the Shareholders has not been received and may not be received. The position may well remain uncertain until mid-2024. This means that there is a real risk that customers will not receive any form of redress payment whatsoever under the Scheme and instead, that the Scheme will terminate with Morses Club going into administration.
- (iv) If the Scheme fails and Morses Club goes into administration, Scheme Creditors may be 'worse off' than if Morses Club goes into administration now. This is because: (i) any dividend payable in a future administration may be lower than the estimated dividend payable in an imminent administration; and (ii) some Scheme Creditors will make further repayments of their loans after the Scheme becomes effective which may be wholly irrecoverable in a future administration. This means that, practically speaking, in the period after the Scheme becomes effective but prior to the funding being received, the Scheme Creditors effectively take all of the risk.
- (v) Unless the terms of the Scheme are improved, therefore, the FCA's present intention is to oppose the sanctioning of the Scheme at the Sanction Hearing.
- (vi) The FCA fully reserves its right to take regulatory action in the future, even if that action has the effect of preventing the Scheme from having effect.

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; and
 - 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:
 1. its soundness, stability and resilience,
 2. its not being used for a purpose connected with financial crime,
 3. its not being affected by behaviour that amounts to market abuse,
 4. the orderly operation of the financial markets, and
 5. 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.
4. The FCA will consider whether the scheme proposal is compatible with FCA rules, including the FCA's Principles for 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).

ANNEX 3: FCA Principles for Business

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