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## **FINAL NOTICE**

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**Mintos Marketplace Limited**  
**71-75 Shelton Street**  
**Covent Garden**  
**London**  
**WC2H 9JQ**

**7 December 2018**

### **ACTION**

1. By an Application dated 9 May 2017 Mintos Marketplace Limited (“Mintos” or the “Firm”) applied under section 55A of the Act for permission under Part 4A of the Act to carry on the regulated activities of:
  - (i) credit broking (Article 36A RAO);
  - (ii) debt-collecting (Article 39F RAO); and
  - (iii) debt administration (Article 39G RAO).
2. On 21 March 2018, Mintos amended its application to seek permission to operate an electronic system in relation to lending (Article 36H RAO).
3. For the reasons listed below, the Authority has refused the Application.

## **SUMMARY OF REASONS**

4. By its Decision Notice, the Authority gave Mintos notice that it had decided to take the action described above.
5. Mintos had 28 days from the date the Decision Notice was given to refer the matter to the Tribunal. No referral was made to the Tribunal within this period of time or to date.
6. Under section 390(1) of the Act, the Authority, having decided to refuse the Application and there having been no reference of that decision to the Tribunal, must give Mintos Final Notice of its refusal.
7. The Authority has decided to refuse the Application and to give this Final Notice as the Authority cannot ensure that Mintos will satisfy and continue to satisfy the Threshold Conditions set out in Part 1B of Schedule 6 to the Act.
8. The Authority is not satisfied that the Firm has been able to demonstrate that it has the appropriate resources to implement its proposed business model in the UK. In particular, a number of its policies and procedures are too high level and lack coherence, and it is unclear whether the Firm has the capability to implement them in a manner that will enable it to comply with its regulatory obligations. Accordingly, the Authority is not satisfied that the Firm is sufficiently ready, willing and organised to undertake its proposed business compliantly.
9. The Firm has not provided sufficient evidence to demonstrate that it will adequately capitalise its business. Whilst the Firm has provided an indication that it intends to meet capital requirements with funds currently held by its parent company, the capitalisation has not yet been carried out.
10. Additionally, the Firm has not demonstrated that its head office is based in the UK. Although the Firm has indicated that it will base its head office in the UK, it has not provided sufficient evidence to demonstrate that it has done so. Accordingly, the Authority is not satisfied that the Firm's mind and management will be based in the UK and that its central administrative functions will be in the UK.
11. In light of the above matters, the Authority cannot be satisfied that the Firm will have appropriate resources and that its head office will be based in the UK. The Authority cannot therefore ensure that, if authorised, Mintos will satisfy and continue to satisfy the Threshold Conditions in paragraphs 2D (appropriate resources) and 2B (location of offices) of the Act.
12. In light of the above, the Authority has refused the Application.

## **DEFINITIONS**

13. The definitions below are used in this Notice:
  - "the Act" means the Financial Services and Markets Act 2000
  - "the Application" means the application referred to in paragraphs 1 and 2 above
  - "the Authority" means the Financial Conduct Authority
  - "the Handbook" means the Authority's Handbook of rules and guidance

“Loan Originator” means an Authority-regulated firm that carries out functions on behalf of Mintos as described in paragraphs 20 to 24

“Mintos” or “the Firm” means Mintos Marketplace Limited

“Mintos Latvia” means Mintos Marketplace AS

“RAO” means the Financial Services and Markets Act 2000 (Regulated Activities) Order (SI 2001/544)

“RDC” means the Authority’s Regulatory Decisions Committee

“Tribunal” means the Upper Tribunal (Tax & Chancery Chamber)

“Warning Notice” means the warning notice given to Mintos dated 4 May 2018

## **FACTS AND MATTERS**

### **Background to the Application**

14. Mintos first applied to the Authority on 14 March 2016 for permission to operate an electronic system in relation to lending (the activity in Article 36H RAO). In the course of considering the application, the Authority raised the concern that the business model proposed by Mintos did not reflect the activity described in Article 36H RAO. The Authority also raised the concern that the Firm’s head office did not appear to be in the UK, and so the Firm did not meet the Threshold Condition in paragraph 2B of Schedule 6 to the Act in relation to the location of offices. The Firm withdrew its application on 12 October 2016.
15. On 9 May 2017 Mintos made a second application (“the Application”) to the Authority. On this occasion, the proposed business model involved facilitating investments in loans from various lenders to individual borrowers, in the same way as its parent company, Mintos Latvia. The Authority raised concerns that the Firm’s business model amounted to a collective investment scheme. On 21 March 2018, the Firm amended the Application to an application for permission to operate an electronic system in relation to lending pursuant to Article 36H RAO, and amended its proposed business model accordingly. Mintos later clarified that only UK investors and borrowers could use its platform.
16. Following the amendment to the Application, Mintos, at the request of the Authority, provided the Authority with various policies and documents to enable the Authority to assess whether it could ensure that the Firm would meet the Threshold Conditions in Schedule 6 to the Act. During the course of that assessment, the Authority provided the Firm with feedback and as a result the Firm updated a number of its policies. On 4 May 2018, the Authority gave Mintos the Warning Notice proposing to refuse the Application, following which, Mintos provided further updated policies, as well as new documents, as part of its representations on the Warning Notice.
17. While it is important that firms respond to feedback from the Authority (in order to ensure that they meet their regulatory obligations), an iterative approach to an application (as a result of amendments following feedback from the Authority) can call into question the extent to which the firm understands the rules, requirements and standards that it will be expected to comply with if authorised. An evolving application may lead to concerns about the extent to which the firm, (including its staff, systems and controls) is ready and able to meet its regulatory obligations from the moment of authorisation and onwards, and in particular, when it is not

being guided by the Authority or by advisers engaged to assist in obtaining authorisation (but who may not be engaged by the Firm on an ongoing basis).

### **Background to the Firm**

18. The directors of Mintos currently operate an unregulated firm in Latvia (Mintos Latvia). Mintos Latvia facilitates retail and other investors in buying loan receivables from various lenders.
19. Mintos Latvia has set up Mintos as a separate UK entity to carry out business in the UK. The directors of the Firm, together with their proposed controlled functions, are as follows:
  - a. Martins Sulte – CF1 (director), CF3 (chief executive), CF10 (compliance oversight), and CF11 (money laundering reporting)
  - b. Martins Valters – CF1 (director)
20. The directors together will perform all the controlled functions at the Firm. The Firm intends to employ two other members of staff in the UK, a “Risk Manager” and a “Loan Originator Partnership Executive”.
21. The UK office has not yet been staffed and the individuals the Firm intends to employ currently work for Mintos Latvia. The Firm has stated that, if authorised, its directors and employees will work from a UK office. The Firm also plans to hire one to three additional staff in the first year to assist with customer support, compliance, finance and marketing. The majority of the Firm’s administration, including IT infrastructure and maintenance, human resources (including payroll), portfolio management and operations including settlements, transactions processing, reconciliations, client reporting, cash management and account creation, will be carried out from Latvia. From the information provided by Mintos, the directors and the proposed members of staff do not appear to have any recent practical experience of the UK consumer credit regime.
22. The Authority’s understanding of the Firm’s proposed business model is set out in the following paragraphs.
23. Mintos intends to offer an electronic system to enable borrowers and investors to be introduced and enter into loan transactions. It proposes to facilitate unsecured lending for both consumer and business loans, predominantly by way of high-cost short-term credit. Mintos intends to promote its system through its website. Investors will gain access to the system by registering on Mintos’ website and opening an account. Investors can use the funds they transfer into their account to lend to borrowers.
24. Borrowers will not interact directly with the Mintos platform. Instead, they will approach a ‘Loan Originator’. Mintos has indicated that the Loan Originators will be Authority-regulated lenders who source borrowers in order to list loans on Mintos’ platform. Loan Originators will assess the borrower according to criteria to be agreed with Mintos. If a borrower (and their borrowing request) meets the agreed criteria, the loan may be listed on Mintos’ system. Once on the system, individual investors who have an account with Mintos can review and select whether they wish to lend to the borrower. Alternatively, they can set up an “auto-invest” option which enables them to invest in categories of loans that meet certain criteria automatically.

25. If sufficient investors are interested in a loan, the Mintos system enables loan agreements to be entered into between the individual borrower and investors as lenders. The Loan Originator will act as a sub-agent of Mintos who itself is the agent of the borrower or the lender in entering into such a loan agreement. Loan Originators may be required to lend from their own funds a certain percentage of the aggregate value of the loan applied for by the borrower (typically 5%-15%). The loan between the Loan Originator and the borrower is not facilitated by the Mintos platform. If investment in the loan is only part-filled by lenders, the Loan Originator is expected to cover any shortfall in the aggregate loan amount applied for by the borrower. This is in addition to the minimum investment it will make in the loan. However, if there is little or no interest in the loan it may be removed from the platform.
26. Loan repayments will be made by borrowers to a Mintos client account from which appropriate distributions will be made to investors, including the Loan Originator. Mintos will charge a service fee to borrowers of up to 5% of the value of the loan. This will be charged over the life of the loan and will be collected by deducting a percentage from the repayments it receives, before distributing the balance to investors.
27. Loan Originators are expected to carry out all interactions with the borrower. Accordingly, Loan Originators will be responsible for identifying borrowers, carrying out screening and financial crime checks on the borrowers, carrying out creditworthiness and affordability checks, and communicating with borrowers. Loan Originators will also be responsible for debt collection in the event of default by a borrower. Mintos will undertake due diligence on Loan Originators and oversee their activities. However, there may be exceptional circumstances (for example, where Mintos takes over the management of a loan from a Loan Originator) when one or more of these tasks would be carried out directly by Mintos. The extent of such direct intervention by Mintos remains unclear. No Loan Originators have been appointed.
28. Investors can sell their investment in a loan on a secondary market on Mintos' system. Investors can choose to do this at (i) a premium of up to a maximum of 20% of the value of the investment, (ii) at the face value of the loan or (iii) at a maximum discount of 99% of the loan. Mintos will also charge a 1% fee to investors that sell their loans to other investors on the secondary market.

### **Provision of information during the Application assessment**

29. During the assessment of the application, on occasions, the Firm was either unwilling or unable to provide, in a timely manner, information and evidence requested by the Authority. The Firm indicated on its application form, completed on 9 May 2017, that a number of the policies which were subsequently requested by the Authority were prepared and ready. However, some of the policies and other documentation, namely the Responsible Lending Policy, the Arrears Handling Policy and the Wind Down Policy were provided in their final form as late as 30 May 2018 together with the Firm's written representations on the Warning Notice. In addition, the Firm provided two sets of additional documents even later, namely the CASS Resolution Pack, the Client Money Policy, the Compliance Manual, the Compliance Monitoring Plan, the Loan Originator Checklist and the Risk Map on 13 June 2018 and the Lending Parameters, the Updated Financials and Updated Wind Down Financials on 12 July 2018.

### **Adequacy of Mintos' policies and procedures**

30. The policies and procedures that the Firm has provided to the Authority to date fail to set out in sufficient detail the practical steps and approaches that the Firm will need to take to implement its proposed business model compliantly.
31. In particular, Mintos proposes to outsource a number of significant functions to Loan Originators (such as sourcing borrowers, obtaining relevant information from borrowers, communicating with borrowers and collecting debt). Under SYSC 8.1.6R, if a firm outsources critical or important operational functions, it remains fully responsible for discharging all of its obligations under the regulatory system. Similarly, where a firm appoints agents to conduct activities on its behalf, it remains responsible for the activities of its agents and should oversee their activities accordingly. While Loan Originators will be authorised by the Authority to carry out certain regulated activities, Mintos should have in place adequate policies, procedures, systems, controls and expertise to select the Loan Originators and oversee the activities they carry out on behalf of Mintos.
32. The Firm's directors have recent experience of running a firm that operates an electronic platform selling loan receivables. However, that firm operates a different business model to Mintos and, crucially, is not subject to the same regulatory responsibilities that Mintos will be if authorised. In these circumstances, it is particularly important that Mintos' policies and procedures provide its officers and employees in the UK and Latvia with sufficient practical guidance to enable the Firm to ensure that it will comply with the rules, requirements and regulatory standards that will apply to it, its agents and those providing services on its behalf.
33. Three of the key areas where the Firm's policies and procedures are inadequate relate to creditworthiness assessments, arrears handling and winding down the Firm's business.

#### *Credit policy*

34. A firm operating an electronic system in relation to lending must comply with rules in CONC 5.5 in the Handbook in relation to creditworthiness assessments. The Authority expects firms to have in place adequate policies and procedures for ensuring compliance with these rules.
35. Under the Firm's proposed business model, decisions as to the creditworthiness of borrowers will generally be made by Loan Originators on behalf of the Firm. Mintos will require that these decisions be made in line with policies and procedures agreed with Mintos during the Loan Originator 'onboarding' process. The firm has developed policies and procedures (such as the 'Loan Originator Checklist', the Firm's 'Responsible Lending Policy' and its 'Due Diligence on Loan Originators' document) that summarise the obligations of a lender and which are aimed at ensuring that the policies it agrees with Loan Originators lead to compliant lending decisions.
36. The Firm's 'Due Diligence on Loan Originators' document states that the Firm will review Loan Originators' credit policies "*to ensure that they meet the same standards as our own*". However, it is not clear to the Authority how the Firm's staff can make this assessment adequately given the lack of detail and clarity in this document and the other policies mentioned above.
37. The Firm places reliance on the fact that Loan Originators will be authorised by the Authority, and that Loan Originators should already have adequate policies and procedures in place for their existing lending activities. However, the Firm's policies and procedures do not provide sufficient practical guidance to enable the Firm to ensure that suitable Loan Originators are selected and that the Loan Originator will

lend within lending judgements and parameters set by the Firm. For example, the Firm's Loan Originator Checklist and Responsible Lending Policy:

- a. do not contain guidance on the different lending parameters for different types of loans. For example, the documents do not distinguish between business loans and high-cost short-term personal loans;
  - b. do not set a minimum acceptable threshold for a borrower's creditworthiness; the policy simply sets out that the Firm will consider the information requested from the borrower by the Loan Originator but does not specify the criteria against which such information will be measured;
  - c. do not describe in sufficient detail the circumstances when a Loan Originator (on behalf of the Firm) should treat a customer as vulnerable. The Authority understands that the Mintos Lending Parameters, which address the issue of vulnerability, only apply in exceptional circumstances (i.e. where Mintos deals directly with a borrower) and do not explain how vulnerable borrowers are to be identified; and
  - d. require Loan Originators to 'stress test' borrowers (in other words, assess whether a borrower could afford a loan in less favourable circumstances), but do not give sufficient guidance on what the Firm considers an adequate stress test.
38. Without such details being specified in its policies, and absent any examples of policies to be used by Loan Originators, the Authority is not satisfied that the firm will be able to ensure that its lending decisions (made by Loan Originators on behalf of Mintos) comply with the requirements in the Handbook, in particular those in CONC 5.5. The Firm's Responsible Lending Policy and Loan Originator Checklist do not provide sufficient detail to the Firm's staff to enable them to ensure that the Loan Originators' policies and procedures and ultimately their lending decisions will comply with the rules in the Handbook.

#### *Arrears handling policy*

39. The Firm's arrears handling policy provides that "*under most circumstances loan originators manage the relationship with our borrowers, and as such will undertake debt collection*". In certain circumstances Mintos will undertake debt collection activities as well. Therefore, the Firm's policies and procedures should be adequate to ensure that its debt collection activities, and the debt collection activities carried out by the Loan Originators on its behalf, comply with applicable rules in the Handbook.
40. As with the creditworthiness assessment, Mintos intends to agree arrears policies with the Loan Originators as part of the 'onboarding' process. It appears that Mintos will seek to ensure that the arrears policies it agrees with Loan Originators meet the same standards as its own policy. However, the Firm's arrears handling policy contains limited practical information about how the Firm handles debt collection. For example:
- a. the section on identifying payment difficulties states that the Firm must monitor for repayment difficulties – but does not indicate how it will identify and establish when a customer is having repayment difficulties. It does not explain what the Firm considers to be a failed payment or non-payment, or what happens in practice when there is such a failure (such as, for example, when or how the Firm will contact customers);

- b. the policy does not articulate how the Firm monitors for missed payments. The Firm has stated that it has an automated system to monitor payments. However, it is not clear whether the system is appropriate for this purpose;
- c. the policy does not describe the practical steps the Firm (or the Loan Originators) will take to collect debt and how it will do so in different circumstances and for different types of loan; and
- d. the policy contains insufficient detail on the fees charged to borrowers in arrears. This is particularly important given that the Firm intends to facilitate high-cost short-term credit, where a cost cap restricts the costs and charges that can be imposed on a borrower.

#### *Wind-down plans*

- 41. SYSC 4.1.8A requires that an operator of an electronic system in relation to lending (such as Mintos) must take reasonable steps to ensure that certain loans that it facilitates are managed and administered in accordance with the contractual terms of the loans, if at any time the firm ceases to carry on the activity of operating an electronic system in relation to lending.
- 42. The Firm has created a 'wind-down policy' in order to comply with SYSC 4.1.8A. The wind-down policy indicates that the Firm will wind-down the loan book in-house.
- 43. The Authority considers that the wind-down policy is too high level and lacks sufficient detail. As a result, the Firm's clients may be at risk in the event that the Firm becomes insolvent. For example:
  - a. there is limited information on how the Board will identify a wind-down situation;
  - b. the policy fails to cater for different wind-down scenarios. For example, the Firm may have to wind down due to loss of business partner (for example, a Loan Originator). This may require a new debt collector to be appointed; and
  - c. the communication plan contains insufficient detail to ensure that the Firm will communicate with its customers and stakeholders in a timely, effective and compliant manner.
- 44. The Authority expects that a firm should be able to provide clear and specific proposals for the wind-down of its business. In light of the matters identified above, the Authority is not satisfied that the wind-down policy can be invoked in a timely manner, and that the Firm will have an effective plan to minimise the risk of a disorderly wind-down and the impact on its customers.

#### **Adequacy of Mintos' overall Systems and Controls**

- 45. If authorised, Mintos' systems and controls would need to enable it to identify the rules and regulations that will apply to it, and effectively monitor the performance of its officers and employees, and those to whom it has outsourced functions (in particular, the Loan Originators). This is particularly the case given that it appears to the Authority that the Firm's directors and proposed staff do not have any recent experience of consumer credit business in the UK. Further, it is not clear that Mintos' electronic system in relation to lending will offer any practical assistance in



complying with (and monitoring the Firm's compliance with) the rules and requirements that will apply to it in the areas where the Firms' policies and procedures are inadequate.

46. As set out in paragraph 26 above, at times Mintos has been unwilling or unable to provide, in a timely manner, certain information and documents (such as various policies) requested by the Authority. Further, Mintos has updated a number of its policies throughout the application process, often in response to concerns raised by the Authority. It therefore appears to the Authority that the Firm has relied on feedback from the Authority in order to identify and understand the rules and requirements that will apply to it if authorised.
47. This iterative approach to the Application is not limited to the Firm's policies. During its assessment of the Application, the Authority informed Mintos of certain concerns it had in relation to the Firm's intended approach for dealing with client money and complying with capital requirements. The Firm responded to these concerns when they were raised. However, the Authority considers that the Firm failed to proactively identify important and sometimes straightforward rules and requirements.
48. In light of these matters, the Authority is not satisfied that the Firm would, if authorised, have appropriate systems and controls in place to enable Mintos staff to identify, understand, and ultimately comply with the rules and requirements that will apply to Mintos.

#### **Mintos' financial resources**

49. The Authority must ensure that the Firm has adequate financial resources from the time of its authorisation and on an ongoing basis. The financial resources must be of a suitable type and amount as specified and calculated in accordance with rules in IPRU—INV 12 in the Handbook. Broadly, this requires that a firm operating an electronic system in relation to lending must have a minimum capital requirement of the higher of £50,000 or a percentage of the loans under management held in an appropriate format as specified in IPRU-INV 12.3.2, such as certain share capital, reserves and subordinated loans.
50. The Firm has stated that its parent company holds sufficient capital for Mintos to meet the capital requirements in the Handbook, and that this capital will be transferred to Mintos when the Authority indicates that its concerns in relation to non-financial resources have fallen away. As the Authority's concerns remain, the Firm has not been adequately capitalised. As a result, the Authority is not satisfied that Mintos will hold adequate financial resources if it becomes Authorised, as the financial resources are not yet in place.

#### **The location of Mintos' head office**

51. To authorise a firm the Authority needs to be satisfied that its head office is based in the UK. This is not merely the location or address of the physical office but is ultimately a question of where the central management, competent employees and control of the firm is located. This includes the location of directors who make material management decisions on a day to day basis and central administrative functions such as central compliance and internal audit.
52. For the majority of the period in which the Application has been pursued, other than having its registered office at what appears to be a virtual office in London, the Firm has not had a physical presence in the UK. On 16 April 2018, the Firm provided a copy of a one month lease agreement at an address in the UK.

53. The Firm's two directors currently reside and work in Latvia. They have arranged temporary accommodation in the UK and have stated that they will run the business from the UK. However, the directors are unwilling to relocate until they receive assurances from the Authority that it no longer has concerns with the non-financial resources of the Firm. As the Authority's concerns remain, the directors have not moved to the UK, and as a result the Authority cannot be satisfied that the Firm will have its head office in the UK at the time of Authorisation.

### **IMPACT ON THE THRESHOLD CONDITIONS**

54. The Authority is not satisfied that the Firm has the amount and quality of resources in place to carry out its business compliantly and without undue risk to its customers. It therefore appears to the Authority that the Firm is not ready, willing and organised to commence business in a compliant manner at this time.
55. The Authority is not satisfied that the Firm's head office is based in the UK.
56. Therefore, the Authority considers that, having regard to all of the circumstances, it cannot be satisfied that the Firm currently satisfies and will continue to satisfy Threshold Conditions 2D (Appropriate Resources) and 2B (Location of Offices).

### **REPRESENTATIONS**

57. Annex B contains a brief summary of the key representations made by Mintos and how they have been dealt with. In making the decision which gave rise to the obligation to give this Notice, the Authority has taken into account all of the representations made by Mintos, whether or not set out in Annex B.

### **PROCEDURAL MATTERS**

#### **Important notices**

59. This Final Notice is given under section 390 (1) of the Act.

#### **Decision maker**

58. The decision which gave rise to the obligation to give this Notice was made by the Regulatory Decisions Committee.

#### **Publication**

60. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Notice relates. Under those provisions, the Authority must publish such information about the matter to which this Notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to you or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
61. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

## **Contacts**

- a. For more information concerning this matter generally, contact Fiona Mackinnon-Miller, Manager, Lending & Intermediaries, Supervision – Retail & Authorisations Division at the Authority (direct line: 020 7066 6376 / email: [fiona.mackinnon-miller@fca.org.uk](mailto:fiona.mackinnon-miller@fca.org.uk)).

**Tim Parkes, Chair of the Regulatory Decisions Committee on behalf of  
Peter Hinchliffe  
Deputy Chair, Regulatory Decisions Committee**

## ANNEX A

### Relevant statutory provisions

- 1.1. Section 55B(3) of the Financial Services and Markets Act 2000 ("the Act") states that in giving permission, the FCA must ensure that the person concerned will satisfy, and continue to satisfy, the Threshold Conditions in relation to all of the regulated activities for which he will have permission.
- 1.2. The Threshold Conditions for firms regulated by the FCA only (and not the PRA) are set out in Part 1B of Schedule 6 to the Act.

### Relevant guidance - FCA Guidance on the Threshold Conditions ("COND")

- 1.3. COND 2.2(1):

[Subject to certain exceptions (which do not apply to Mintos)], if A is a body incorporated in the United Kingdom –

  - (a) A's head office, and
  - (b) if A has a registered office, that office,

must be in the United Kingdom
- 1.4. COND 2.2.3:

Neither the *UCITS Directive*, *MiFID*, the *Insurance Mediation Directive*, *AIFMD* nor the *Act* define what is meant by a *firm's* 'head office'. This is not necessarily the *firm's* place of incorporation or the place where its business is wholly or mainly carried on. Although the *FCA* will judge each application on a case-by-case basis, the key issue in identifying the head office of a *firm* is the location of its central management and control, that is, the location of:

  - (1) the *directors* and other senior management, who make decisions relating to the *firm's* central direction, and the material management decisions of the *firm* on a day-to-day basis; and
  - (2) the central administrative functions of the *firm* (for example, central compliance, internal audit).
- 1.5. COND 2.4.1A:
  - (1) The resources of A must be appropriate in relation to the regulated activities that A carries on or seeks to carry on.
  - (2) The matters which are relevant in determining whether A has appropriate resources include-
    - (a) the nature and scale of the business carried on, or to be carried on, by A;
    - (b) the risks to the continuity of the services provided by, or to be provided by, A; and

(c) A's membership of a group and any effect which that membership may have.

(3) Except in a case within sub-paragraph (3A), the matters which are relevant in determining whether A has appropriate financial resources include-

(a) the provision A makes and, if A is a member of a group, which other members of the group make, in respect of liabilities; and

(b) the means by which A manages and, if A is a member of a group, by which other members of the group manage, the incidence of risk in connection with A's business.

(3A) Where the only regulated activities that A carries on, or seeks to carry on, are

(a) relevant credit activities, and

(b) if any, activities to which, by virtue of section 39(1D), sections 20(1) and (1A) and 23(1A) do not apply when carried on by A, A has adequate financial resources if A is capable of meeting A's debts as they fall due.

(4) The matters which are relevant in determining whether A has appropriate non-financial resources include-

(a) the skills and experience of those who manage A's affairs;

(b) whether A's non-financial resources are sufficient to enable A to comply with

(i) requirements imposed or likely to be imposed on A by the FCA in the course of the exercise of its functions;

(ii) any other requirement in relation to whose contravention the FCA would be the appropriate regulator for the purposes of any provision of Part 14 of this Act.

1.6. COND 2.4.2G(2) states that the Authority will interpret the term 'appropriate' as meaning sufficient in terms of quantity, quality and availability, and 'resources' as including all financial resources (though only in the case of firms not carrying on, or seeking to carry on, a PRA-regulated activity), non-financial resources and means of managing its resources; for example, capital, provisions against liabilities, holdings of or access to cash and other liquid assets, human resources and effective means by which to manage risks.

1.7. COND 2.4.2G(3) states that high level systems and control requirements are in SYSC. The Authority will consider whether the firm is ready, willing and organised to comply with these and other applicable systems and controls requirements when assessing if it has appropriate non-financial resources for the purpose of Threshold Condition 2D.

1.8. COND 2.4.4G states that, when assessing whether a firm has appropriate resources, the Authority will have regard to matters including:

(a) (in relation to a firm other than a firm carrying on, or seeking to carry on, a PRA-regulated activity), whether there are any indications that the firm may have difficulties if the application is granted, at the time of the grant or in the

future, in complying with any of the FCA's prudential rules (see the relevant part of the Prudential Standards part of the FCA Handbook); [...]

- (d) Whether the firm has taken reasonable steps to identify and measure any risks of regulatory concern that it may encounter in conducting its business and has installed appropriate systems and controls and appointed appropriate human resources to measure them prudently at all times; [...] and
- (f) Whether the resources of the firm are commensurate with the likely risks it will face.

### **Handbook Rules**

1.9. CONC 5.5.3 states that:

(1) Before a P2P agreement is made, a firm must undertake an assessment of the creditworthiness of the prospective borrower.

(2) A firm carrying out the assessment in (1) must consider:

(a) the potential for the commitments under the P2P agreement to adversely impact the prospective borrower's financial situation, taking into account the information of which the firm is aware at the time the P2P agreement is to be made; and

(b) the ability of the prospective borrower to make repayments as they fall due over the life of the P2P agreement, or for such an agreement which is an open-end agreement, to make repayments within a reasonable period.

(3) A creditworthiness assessment must be based on sufficient information obtained from:

(a) a prospective borrower, where appropriate; and

(b) a credit reference agency, where necessary.

1.10. The extent and scope of the creditworthiness assessment or the assessment required by CONC 5.5.2R (1), in a given case, should be dependent upon and proportionate to factors which may include one or more of the following:

(1) the type of credit;

(2) the amount of the credit;

(3) the cost of the credit;

(4) the financial position of the customer at the time of seeking the credit;

(5) the customer's credit history, including any indications that the customer is experiencing or has experienced financial difficulties;

(6) the customer's existing financial commitments including any repayments due in respect of other credit agreements, consumer hire agreements, regulated mortgage contracts, payments for rent, council tax, electricity, gas, telecommunications, water and other major outgoings known to the firm;

(7) any future financial commitments of the customer;

(8) any future changes in circumstances which could be reasonably expected to have a significant financial adverse impact on the customer;

(9) the vulnerability of the customer, in particular where the firm understands the customer has some form of mental capacity limitation or reasonably suspects this to be so because the customer displays indications of some form of mental capacity limitation (see CONC 2.10).

- 1.11. CONC 7.2.1 - A firm must establish and implement clear, effective and appropriate policies and procedures for dealing with customers whose accounts fall into arrears;[...]
- 1.12. SYSC 4.1.8A - An operator of an electronic system in relation to lending must take reasonable steps to ensure that arrangements are in place to ensure that P2P agreements facilitated by it will continue to be managed and administered, in accordance with the contract terms, if at any time it ceases to carry on the activity of operating an electronic system in relation to lending.
- 1.13. SYSC 8.1.6R - If a firm (other than a common platform firm) outsources critical or important operational functions or any relevant services and activities, it remains fully responsible for discharging all of its obligations under the regulatory system and must comply, in particular, with the following conditions:
  - (1) the outsourcing must not result in the delegation by senior personnel of their responsibility;
  - (2) the relationship and obligations of the firm towards its clients under the regulatory system must not be altered;
  - (3) the conditions with which the firm must comply in order to be authorised, and to remain so, must not be undermined;
  - (4) none of the other conditions subject to which the firm's authorisation was granted must be removed or modified.

## **ANNEX B**

### **REPRESENTATIONS**

1. The Firm's representations (in italics), and the Authority's conclusions in respect of them, are set out below.

#### **Head office**

2. *The Firm has a lease agreement with a landlord providing flexible working space in London. The Firm has not yet set up working stations at this office. However, it has indicated that it will do so if it receives a "minded to authorise" letter (in other words, a letter from the Authority indicating that it will authorise the Firm subject to establishing a UK head office and adequately capitalising the Firm). The two proposed directors of the Firm currently divide their time between London and Latvia, but if the Firm is Authorised, intend to devote at least 80% of their time to managing the Firm. When the directors are in London they reside with friends. The intention of the directors and other staff to be employed by the firm is to move permanently to London once the Application is approved. As the Firm is a start-up, it is mindful of costs and is of the view that it would not make commercial sense to spend substantial amounts on a permanent office or permanent accommodation while the outcome of the Application is unknown.*
3. The Authority notes the Firm's commercial considerations. However, neither of the directors, or the proposed staff, have moved to the UK and the temporary offices have not been staffed and are with a provider of short term office space. As a result, the Authority cannot be satisfied that the Firm will have its head office in the UK at the time of authorisation.

#### **Financial resources**

4. *The Firm has the requisite funds available to capitalise the business in excess of the required level. The Firm is ready to deploy the funds and has indicated that it will do so if it receives a "minded to authorise" letter (in other words, a letter from the Authority indicating that it will authorise the Firm subject to establishing a UK head office and adequately capitalising the Firm). However, until that point, pending the authorisation and not having any information on the outcome and the timing of the decision, it would not be commercially sensible to transfer the funds to the Firm's account.*
5. The Authority notes the Firm's commercial considerations. However, the Firm does not currently hold sufficient financial resources to meet the capital requirements that it will be subject to if authorised. Instead, the funds are held by Mintos' parent company in Latvia. As a result, the Authority is not satisfied that Mintos will hold adequate financial resources if it becomes authorised, as the financial resources are not yet in place.

#### **The Firm's reactive approach to addressing areas of weakness**

6. *The Application was delayed while the FCA reached a view on whether the Firm had applied for appropriate permissions. As a result, the Firm did not settle its business model until very late in the process, approximately ten months after the Application had been submitted. The Authority requested information and policies at a time when the Authority was still determining whether the Firm applied for appropriate permissions. At that time, it was not clear what rules would apply to the Firm. The Firm was reluctant to submit policies that may need to be updated, depending on*



*the Authority's view. Once the Authority had reached its view, Mintos submitted its policies, listened to feedback from the Authority and made adjustments accordingly.*

7. *This process of responding to feedback from the Authority is typical of other applications from firms applying for permission to operate an electronic platform in relation to lending as this is a relatively new regulated activity.*
8. The Authority notes the Firm's reluctance to provide information while there was uncertainty around its business model. However, the Firm failed to provide in a timely manner even those policies which were required for the original application (such as the policies relating to responsible lending and arrears handling). Further, the Authority requested draft copies of various policies, so that it could progress its assessment of the Application. However, these were not always provided when requested.
9. The Authority accepts that firms are sometimes authorised despite having to react to feedback from the Authority during its consideration of an application. However, Mintos continued to amend its policies during the representations process and in each case the amendments directly resulted from the Authority's comments. As set out in paragraphs 42 to 45 of the Notice, in this instance, the Authority is not satisfied that Mintos has adequate systems and controls to identify and understand the rules and requirements that will apply to it if authorised. As a result, it appears to the Authority that Mintos is not ready, willing and organised to operate its business in a compliant manner.

## **Policies**

10. *The Firm's policies were developed with the help of experienced compliance advisors who have advised on numerous successful 36H RAO permission applications and have an extensive knowledge of the P2P industry. They consider that the policies are of high quality and provide sufficient detail. The Firm's policies are considerably better when compared to those of other P2P firms that have been authorised by the Authority. The Firm has spent a lot of time, effort and resources to develop these policies and was responsive to suggestions made by the Authority.*
11. The Authority must ensure that, if authorised, Mintos will satisfy and continue to satisfy the Threshold Conditions set out in Schedule 6 of the Act for which the Authority is responsible. Therefore, the Authority needs to examine the proposed policies in light of the particular circumstances of the Firm, and not in comparison with the policies of other firms. Based on this analysis the Authority is not satisfied that the policies provide sufficient detail to enable Mintos to operate its business in a compliant manner. The fact that these concerns remain even after several rounds of comments from the Authority and ensuing adjustments, leads the Authority to conclude that it is not satisfied that Mintos has an adequate understanding of the regulatory obligations that would apply to it if authorised.

## **Experience of Mintos' staff**

12. *The Firm's proposed directors hold degrees from well-known universities and have completed post-graduate courses in the area of finance. They have extensive working experience in the financial services industry. They have been running Mintos Latvia for a number of years. The additional proposed staff are also experienced professionals. Mintos Latvia has successfully operated its business in several countries and has established systems and processes in place to operate its business. The Firm's proposed staff undertook training on the UK regulatory*

*system and spent considerable time in the UK familiarising themselves with the business as well as the regulatory environment.*

13. The Firm's directors and proposed staff have to date been running a business in a jurisdiction where their activities have not been subject to the same level of regulation as they would have been in the UK. Mintos proposes to put in place a business model that is different from that already operated by Mintos Latvia. It therefore appears that neither Mintos' directors nor its proposed staff have experience of operating in the regulatory framework, or of complying with the regulatory obligations, that would govern the Firm's operation. As such, the experience of the Firm's directors and proposed staff does not compensate for the shortcomings in the Firm's policies and procedures, and systems and controls. As a result, the Authority is not satisfied that the Firm has adequate non-financial resources.

### **The Firm's policies and procedures should not be considered in a vacuum**

14. *The Firm's policies and procedures exist alongside training, culture, supervision, operations manuals and compliance monitoring, and this wider picture is a fuller representation of the systems and controls put in place by the Firm.*
15. The Authority agrees that it is appropriate to consider the Firm's policies and procedures in the context of the specific circumstances of the Firm, including its training, culture and compliance arrangements. In reaching the decision to issue this Notice, the Authority considered the representations made by the Firm in relation to the training undertaken by its staff, the Firm's culture, the experience of its directors and staff, and its proposed compliance monitoring. The Authority concluded, for the reasons set out above, that these factors did not compensate for the shortcomings in the Firm's policies and procedures.
16. Further, policies and procedures enable a firm to ensure that its officers and employees carry out the activities assigned to them in a way that has been prescribed by the Firm. Policies can also demonstrate the extent to which a firm understands its regulatory obligations and describe the ways in which it proposes to comply with those obligations. As the Firm's policies and procedures do not contain sufficient detail and guidance, taking into account the specific circumstances of the Firm, the Authority is not satisfied that the firm has adequate non-financial resources.

### **Controls around Loan Originators**

17. *The agreements that Mintos intends to enter into with Loan Originators set out the dynamic where they act as sub-agents of Mintos, able to undertake the borrower on-boarding and management in the first instance. Mintos has received no comments from the Authority's Authorisation Team or its legal team in relation to these documents.*
18. *While the Firm will continue to ensure that the Loan Originators are meeting the standards of the Firm, they will also have their own obligations to comply with FCA requirements. The Firm will not be overly relying on this, indeed it has its own compliance monitoring in place for this in the Compliance Monitoring Plan, as well as specific wording in the service level agreements with the Loan Originators.*
19. Even if the Firm relies on the Loan Originators to carry out certain tasks such as the on-boarding of borrowers, ultimately it is the Firm that will be responsible for those functions. Hence the Firm has to have adequate documentation and

procedures in place in order to discharge this responsibility. The draft agreement to be entered into with the Loan Originators does not include sufficient detail or guidance to compensate for the deficiencies in the Firm's policies and procedures. For example, the draft Service Level Agreement (SLA) provides that the Loan Originator must adhere to various policies to be agreed between Mintos and the Loan Originator, but there are no draft policies appended to the SLA or any guidance as to what should be included in the policies. As a result, while the Authority may not have commented on the SLAs, the SLAs do not include any detail that might otherwise be included in the Firm's policies.