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**FIRST SUPERVISORY NOTICE**

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**To:** Catalyst Investment Group Limited  
**Of:** 125 Old Broad Street  
London  
EC2N 1AR  
**FSA Reference Number:** 197230  
**Date:** 17 August 2010

**TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London, E14 5HS (“the FSA”) has taken the following action:**

**1. ACTION**

- 1.1. For the reasons listed below and pursuant to section 45 of the Financial Services and Markets Act 2000 (“the Act”), the FSA has decided to vary the Permission granted to Catalyst Investment Group Limited (“the Firm”) pursuant to Part IV of the Act on the following basis.
- 1.2. Paragraphs 1.3 and 1.4 of this Notice (and the requirements set out in them) have immediate effect. The remainder of this paragraph 1 takes effect as set out below.
- 1.3. The Firm must not:
  - (1) undertake any regulated activity in respect of, or otherwise involve itself in, any new business relating to products wholly or partly consisting of, or linked in any

way to, investments issued by ARM Asset Backed Securities SA (“ARM”) and/or Assured Risk Mitigation Plc (“ARM plc”); and

- (2) without the written consent of the FSA, make any payment, or otherwise dispose of, deal with or diminish the value of any of its assets, except to pay expenses incurred in the ordinary course of the Firm’s business.
  - (3) publish, or make public in any way, this notice or any details concerning this notice except for the purpose of obtaining advice on its contents
- 1.4. For the avoidance of doubt, the expenses referred to in paragraph 1.3(2) above do not include gifts, or payments of unusual or significant amounts to employees or officers of the Firm or any persons connected to them.
- 1.5. Unless the Trigger Condition is satisfied, then paragraph 1.6 shall take effect, or if it is satisfied but the letters referred to in paragraph 1.7 have not been sent within a further 7 days thereafter, then paragraph 1.6 shall thereupon take effect. The Trigger Condition is that:
- (1) the Firm confirms to the FSA within 14 days that
    - (a) all assets and liabilities of ARM have been transferred to ARM plc; and
    - (b) the Supplemental Base Prospectus has been fully approved by the Irish Stock Exchange; and
  - (2) the FSA within 48 hours thereafter confirms that it is satisfied that those conditions have been met (such confirmation not to be unreasonably withheld).
- 1.6. The Firm’s permission is varied by including the following requirements, namely that the Firm must:
- (1) immediately procure the return as far as it can, to investors of monies paid in by investors who applied to invest in ARM bonds since 2 September 2009 but where such bonds have not been issued, and any other monies paid over since that time in relation to any products wholly or partly consisting of, or linked in any way to, investments issued by ARM, together with interest;

- (2) immediately write to those investors a letter which includes the following elements (in a form to be agreed with the FSA):
  - that ARM SA required authorisation by the Commission de Surveillance du Secteur Financier, the Luxembourg financial regulator, in order to issue bonds;
  - that ARM SA has not yet obtained such authorisation;
  - that a decision was taken to redomicile the bond issuer to Ireland, and that ARM plc is in the process of being established in Ireland but this process is not yet finalised and no bonds can yet be issued;
  - that if investors do not wish to await finalisation of this process they should seek a refund of their investment monies with appropriate interest from ARM;
  - Details of how to seek such a refund.
- (3) copy the letter described above to the independent financial adviser that accepted the application from the investors described above
- (4) Report to the FSA at regular agreed intervals on the progress of the above.

1.7. If the Trigger Condition is met, then the Firm's permission is varied such that:

- (1) Catalyst may arrange for ARM plc to write to pending investors, in the terms of the attached draft or in substantially similar terms, in order to communicate to them
  - (a) an offer of a bond issued to them by ARM plc, and, in the alternative
  - (b) an offer from ARM plc of the return of funds received from them;
- (2) upon such letters being sent to pending investors
  - (a) Catalyst may take such steps, on behalf of ARM plc, as are required in order to give effect to the responses received from such pending investors;

- (b) Catalyst shall report to the FSA on the responses received from pending investors and on the steps taken by ARM plc to return funds which pending investors seek to have returned

(3) paragraphs 1.3(1) and (2) of this Notice will cease to have effect.

- 1.8. As to the offer referred to at paragraph 1.7(1), the Firm will, if any investor has not yet responded within 23 days, arrange for a further letter to be sent.

## **2. REASONS FOR ACTION**

### **Summary**

- 2.1. The FSA has concluded, on the basis of the facts and matters described below, that the Firm presents a risk to consumers by continuing to be permitted to conduct any regulated activity in respect of new business relating to products linked in any way to investments issued by ARM.
- 2.2. The FSA considers, on the basis of those facts and matters, that it is necessary, in order to protect the interests of consumers or potential consumers, for the action specified above to take immediate effect.

### **Relevant Statutory Provisions**

- 2.3. The FSA's regulatory objectives established in section 2(2) of the Act include the protection of consumers.
- 2.4. By section 45 of the Act, the FSA may (among other things) exercise its power to vary an authorised person's Part IV permission in any of the ways mentioned in section 44(1) of the Act where it is desirable to exercise that power in order to protect the interests of existing and potential consumers.
- 2.5. By section 45(4) of the Act the FSA's power to vary a Part IV permission extends to including any provision in the permission as varied that could be included if a fresh permission were being given in response to an application for authorisation.
- 2.6. By section 48 of the Act, on giving a person a Part IV permission, the FSA may impose an assets requirement on that person (and so, by virtue of section 45(4) of the Act, the

FSA may impose such an assets requirement when varying an authorised person's Part IV permission).

- 2.7. Section 53(3) of the Act allows such variations to take effect immediately if the FSA reasonably considers that it is necessary for the variations to take effect immediately.

### **Relevant Regulatory Provisions**

- 2.8. The FSA's policy for exercising its own-initiative power to vary an authorised person's Part IV permission is set out in chapter 8 of the Enforcement Guide ("EG"), and chapter 7.3 of the Supervision Manual ("SUP"), which are part of the FSA Handbook.
- 2.9. EG 8.1(3) reflects the provisions of section 45 of the Act that the FSA may use its own-initiative power to vary or cancel the permission of an authorised firm where it is desirable to do so in order to protect the interests of consumers or potential consumers.
- 2.10. EG 8.1B provides that the FSA will have regard to its regulatory objectives and the range of regulatory tools that are available to it when it considers how it should deal with a concern about a firm. The FSA will also have regard to the principle that a restriction imposed on a firm should be proportionate to the objectives the FSA is seeking to achieve.
- 2.11. EG 8.3 provides that the FSA will exercise its formal powers under section 45 of the Act, where the FSA considers it is appropriate to ensure a firm meets its regulatory requirements. EG 8.3(1) specifies that the FSA may consider it appropriate to exercise its powers where it has serious concerns about a firm or about the way its business is being or has been conducted.
- 2.12. EG 8.6 to 8.9 set out the FSA's policy on exercising its own-initiative power to vary an authorised person's Part IV permission in urgent cases.
- 2.13. EG 8.7 provides that the FSA will consider exercising its own-initiative power as a matter of urgency where (1) the information available to it indicates serious concerns about the firm or its business that need to be addressed immediately; and (2) circumstances indicate that it is appropriate to use statutory powers immediately to require and / or prohibit certain actions by the firm in order to ensure the firm addresses these concerns.

- 2.14. EG 8.8 provides a non-exhaustive list of situations that will give rise to such serious concerns and states that this is likely to include a situation where there is information indicating significant loss, risk of loss or other adverse effects for consumers, where action is necessary to protect their interests (EG 8.8(1)).
- 2.15. EG 8.9 provides a non-exhaustive list of the factors the FSA may consider when deciding whether an urgent variation of permission is appropriate and includes the extent of any loss or risk of loss or other adverse effect on consumers (EG 8.9(1)).
- 2.16. SUP 7 provides more information about the situations in which the FSA may decide to take formal action in the context of its supervision activities. SUP 7.3 provides further guidance on the criteria for varying a firm's permission. Further, SUP 7.3.4 provides that the FSA may vary a firm's permission with immediate effect where it considers that a delay may be prejudicial to the interests of consumers.

**Facts and matters relied on**

- 2.17. The Firm is a product provider and the "primary distributor" of ARM's bonds. The Firm is responsible for the sale of ARM's products through intermediaries. The Firm distributes ARM's products via UK and international intermediaries. The network is not one of appointed representatives, rather a sales network. The Firm supplies marketing and information materials to intermediaries, and holds events to explain the products to intermediaries. The Firm receives a proportion of the available commission for each product sold. The Firm also acts as "arranger" for ARM products, monitoring, managing and communicating with all the counterparties and service providers involved, as well as providing corporate advice to these firms. The Firm receives a regular monthly fee from ARM for discharging its "arranger" services.
- 2.18. The Firm distributes, via intermediaries, tranches and versions of two products, the Capital Growth Bond (growth) and the Assured Income Plan (income). These products are invested in and underpinned by securities issued by ARM. ARM owns a portfolio consisting mainly of acquired Senior Life Settlement policies, but also cash and "alternative assets." ARM purchases policies sourced from a market in the USA by agents appointed for this purpose, thereby acquiring the rights to the sums assured when the lives assured die.

- 2.19. From information submitted by ARM to the Commission de Surveillance du Secteur Financier (“the CSSF”)(the financial regulator in Luxembourg) as part of its application for a licence (see paragraph 4.10), as at February 2010, bondholders worldwide had invested approximately \$182m in ARM’s bonds. The total face value of the Senior Life Settlement policies within the portfolio (the total amount due to the portfolio in future death benefit proceeds) was approximately \$591m. According to information provided by the Firm, as at the end of March 2010 the Firm has sold 1,976 products to UK clients, who had invested a total of £76,393,928.
- 2.20. ARM is domiciled in Luxembourg. It has been in the process of applying to the CSSF for a licence to issue securities in Luxembourg which, according to local law, it should have had in order to issue bonds of the type and at the frequency that it has been carrying out. No new ARM bonds have been issued since 1 October 2009. On 20 November 2009, ARM came to an agreement with the CSSF that it would discontinue the issuance of new bonds pending the CSSF’s decision regarding its authorisation application.
- 2.21. ARM’s application is yet to be determined by the CSSF and will lapse upon full redomiciliation of the issuer to the Republic of Ireland. This process is yet to be finalised and still requires the approval of ARM plc’s Supplemental Base Prospectus by the Irish Stock Exchange. Additionally, ARM is yet to transfer all its assets and liabilities into ARM plc.
- 2.22. On 10 March 2010, it came to the FSA’s attention that the Firm has continued to market and distribute products despite no new bonds having been issued by ARM since 1 October 2009. According to information provided by the Firm, as at 31 March 2010, the Firm has sold 471 products to UK clients, who had invested £12,506,836, since 2 September 2009. The Firm has continued to market and distribute products after 31 March 2010 to date. This money has not been invested in the way the investors will have expected, and is being held by receiving agents and deposit takers appointed by ARM who, with one exception, are outside the jurisdiction of the FSA.
- 2.23. The Firm’s communications with investors since ARM’s licence application to the CSSF have been misleading to investors insofar as they imply that the authorisation application was a mere formality. A sample letter provided by the Firm dated 26 March 2010 includes the statement: “*the ARM board believes it is advantageous for ARM to be either regulated in Luxembourg or have the issuer domiciled in Ireland, under the same*”

*organisation. ARM will initiate its next issue once these changes have been completed. We have been advised by ARM that it anticipates that this will take place shortly”.*

2.24. The Firm also provided a sample letter on this subject sent to intermediaries, which includes the statement: *“The process [ARM’s application to the CSSF for a licence] is in its final stages. However, it has now reached such an advanced stage in its application that ARM has agreed with the CSSF that ARM will delay the next issue of bonds until authorisation has been formally approved”.* This sample letter also states that the application to the CSSF was made *“in order to offer investors reassurance in the current climate,”* and that *“as soon as the authorisation for ARM has been approved...we will send a letter explaining the importance of ARM’s authorisation and the benefits that this will offer”.* Again, this implies that ARM’s application to the CSSF is a formality, and something that will add beneficial aspects of the investment for consumers, rather than a serious requirement that is in no way guaranteed to be confirmed in ARM’s favour.

2.25. In a letter dated 9 April 2010 the Firm was invited to vary its Permission voluntarily to prevent it from issuing any new business relating to ARM’s products, pending (a) the CSSF’s decision regarding ARM’s application to the CSSF for a licence, and (b) the Firm’s satisfactory responses to the FSA’s requests for information. However, the Firm declined the invitation to vary its Permission voluntarily.

### **3. CONCLUSIONS**

3.1. The facts and matters described above lead the FSA, having regard to its regulatory objectives, to the following conclusions:

(1) The risk of loss or other adverse effect on consumers because of the Firm’s actions causes the FSA to have serious concerns about the Firm such that the exercise of the FSA’s own-initiative powers to vary the Firm’s permission to with immediate effect is an appropriate response to those concerns; and

(2) specifically, the variation of the Firm’s permission to impose the requirements detailed above should take immediate effect to address the FSA’s serious concern that there is a risk of loss to consumers or potential consumers.

3.2. The FSA’s reasons for making the variation and requirements effective immediately are that:



- (1) the Firm has continued, since 2 September 2009, to accept new investment monies from retail clients, when it knew, or ought to have known, that: (1) ARM should not have been issuing bonds until authorised by the CSSF to do so; and (2) thereafter, in November 2009, ARM had stopped issuing bonds by agreement with the CSSF;
- (2) these investment monies have not been invested in ARM's bonds in the way that the investors would have expected;
- (3) these investment monies are being held by receiving agents and deposit takers, who, with one exception, are outside the jurisdiction of the FSA;
- (4) it is unclear whether, under which terms, and when the CSSF will grant a licence to ARM to authorise it to continue issuing bonds in Luxembourg; and
- (5) the Firm has declined to vary its permissions voluntarily in relation to new ARM business.

#### **4. DECISION MAKER**

- 4.1. The decision which gave rise to the obligation to give this notice was made by the Regulatory Decisions Committee.

#### **5. IMPORTANT**

- 5.1. This Supervisory Notice is given to you under section 53(4) and in accordance with section 53(5) of the Act, and is being served on you at the principal place of business last notified by you to the FSA. The following statutory rights are important.

##### **The Tribunal**

- 5.2. You have the right to refer the matter to which this Supervisory Notice relates to the Upper Tribunal (Tax and Chancery Chamber)(the "Tribunal"). Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, you have 28 days from the date on which this Supervisory Notice is given to you to refer the matter to the Tribunal. A reference to the Tribunal is made by way of a reference notice (Form FTC3) signed by you (or on your behalf) and filed with a copy of this Supervisory Notice. The Tribunal's address is: The Upper Tribunal, Tax and Chancery Chamber, 45 Bedford Square, London WC1B 3DN (tel 020 7612 9700; email

financeandtaxappeals@tribunals.gsi.gov.uk). Further details are contained in “Making a Reference to the UPPER TRIBUNAL (Tax and Chancery Chamber)” which is available from the Upper Tribunal website:

<http://www.tribunals.gov.uk/financeandtax/FormsGuidance.htm>

- 5.3. You should note that a copy of the reference notice (Form FTC3) must also be sent to the FSA at the same time as filing a reference with the Tribunal. A copy of the reference notice should be sent to Simone Ferreira at the FSA, 25 The North Colonnade, Canary Wharf, London, E14 5HS.

### **Representations**

- 5.4. You have the right to make written and oral representations to the FSA (whether or not you refer this matter to the Tribunal). If you wish to make written representations you must do by 21 September 2010, or such later date as may be permitted by the FSA. Written representations should be made to the Regulatory Decisions Committee and sent to Michelle Broadhurst, Regulatory Decisions Committee Professional Support Services. The address of the Regulatory Decisions Committee Professional Support Services is: 25 The North Colonnade, Canary Wharf, London E14 5HS. If you wish to make oral representations, please inform Michelle Broadhurst in writing of your intention to do so by 30 August 2010. If you do not notify the FSA by 30 August 2010, you will not, other than in exceptional circumstances, be able to make oral representations.

### **Access to evidence**

- 5.5. Section 394 of the Act does not apply to this Supervisory Notice.

### **Confidentiality and publicity**

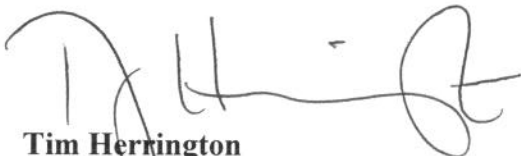
- 5.6. You should note that this Supervisory Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining advice on its contents).
- 5.7. The FSA is required by section 391(5) to 391(6) of the Act to publish such information about the matter to which this notice relates as it considers appropriate, unless such

publication would in its opinion be unfair to the Firm to which the requirement applies or prejudicial to the interest of consumers.

- 5.8. In the opinion of the FSA, publication of such information would be prejudicial to the interests of consumers, since it would be likely to precipitate redemptions which would have a detrimental effect on the value of the portfolio, and consequently on the returns available to investors as a whole.
- 5.9. For these reasons, the requirement imposed in paragraph.1.3 above prevents the Firm from publishing this notice or any details concerning it (except for the purpose of obtaining advice on its contents).

**FSA contacts**

- 5.10. If you have any questions regarding the procedures of the Regulatory Decisions Committee, you should contact Michelle Broadhurst (direct line: 0207 066 2724).
- 5.11. For more information concerning this matter generally, you should contact Simone Ferreira at the FSA (direct line: 0207 066 3016).



**Tim Herrington**

**Chairman, Regulatory Decisions Committee**