
SECOND SUPERVISORY NOTICE

To: **Equity for Growth (Securities) Limited**

Reference Number: **475953**

Address: **International House, 101 King's Cross Road,
London WC1X 9LP**

Date: **24 January 2025**

1 ACTION

- 1.1 For the reasons given in this Second Supervisory Notice, the Financial Conduct Authority ("the Authority") has decided not to rescind the requirements set out at paragraph 1.2 below ("the Requirements") on Equity for Growth (Securities) Limited ("the Firm") and contained in the First Supervisory Notice dated 18 October 2024 ("the FSN"). On 27 November 2024, the Firm made written representations to the Authority in relation to the FSN. The Firm submitted additional information on 17 December 2024. On 10 January 2025, the Firm submitted supplemental written representations. The Firm also submitted additional information on 17 January 2025. The representations made and material provided to the Authority by the Firm since the issuance of the FSN is referred to in this Notice as the "Representations". The Authority has considered the Representations and concluded that the Requirements set out at paragraph 1.2 below remain proportionate and appropriate. A summary of the Representations and the Authority's response is set out at Annex B.
- 1.2 Pursuant to section 55L(3)(a) of the Financial Services and Markets Act 2000 ("the Act"), the Authority decided to impose the following requirements with immediate effect:
- 1) The Firm must immediately cease carrying on all regulated activities for which it has a Part 4A permission, other than where it has the express written consent of the Authority;

- 2) The Firm must, by no later than 4 pm on 7 November 2024, (i) write to all its customers; and (ii) publish in a prominent place on its website and on all platforms upon which its customers are placed, informing each of them of the imposition of the Requirements and their effects, in a form and by a method of delivery each to be agreed in advance with the Authority;
- 3) Once the notifications referred to in sub-paragraph (2) above have been made, within 24 hours, the Firm must provide to the Authority:
 - a) A list of all parties to whom notifications have been sent; and
 - b) Confirmation that, to the best of its knowledge, the Firm has sent the specified notifications (in the form agreed with the Authority) to all relevant parties;
- 4) The Firm must secure all books and records and preserve all information, including material held via online/cloud-based systems to which the Firm has access, in relation to regulated activities carried on by it. These include but are not limited to all:
 - a) Client lists;
 - b) Communications with clients; and
 - c) Financial records.

These books, records and information must be retained in a form and at a location within the UK to be notified to the Authority within 24 hours of the receipt of this notice. The records must be retained in a form and at a location such that they can be provided to the Authority, or to a person named by the Authority, promptly upon its request.
- 5) Save as set out in sub-paragraph (6) below, the Firm must not, without the prior written consent of the Authority, take any action which has, or may have the effect of in any way disposing of, withdrawing, transferring, dealing with or diminishing the value of any of its own assets, and any funds it holds for, or to the order of, its customers (whether in the United Kingdom or elsewhere). Any request for consent envisaged by this Requirement is to be made by the Firm in writing to the Authority;
- 6) Sub-paragraph (5) above does not apply to monetary payments, or the disposal of assets made by the Firm in the ordinary course of business, including the following circumstances:
 - a) Payments in satisfaction of any money awards made by the FOS;
 - b) Payments to the Firm's suppliers and in satisfaction of any existing contractual obligation by the Firm, on the proviso that any such payment has first been approved in writing by the Authority. To enable the Authority to consider any such requests for payment, the Firm must first provide the Authority with written details of the proposed recipient of any such payment, the amount of the payment and a justification for the payment;
 - c) Payments to legal advisors of the Firm; and
 - d) Usual and proper salary payments made by the Firm, where those payments have been agreed prior to the imposition of these Requirements.

- 7) For the purposes of sub-paragraph (5), the following will not be regarded as payments in the ordinary course of business:
 - a) Payments of unusual or significant amounts to the Firm's controllers, shareholders, partners, directors, officers, employees, or any connected persons;
 - b) The making of any capital distribution;
 - c) The making of any gift, loan or dividend;
 - d) Payments made as part of any financial restructuring or reorganisation of its business, or from the sale of any part of the Firm's business (whether share or asset based); and
 - e) Salaries to any staff employed by the Firm which has not been approved in writing by the Authority.
- 8) The terms and effect of sub-paragraphs (5) to (7) above comprise an asset requirement within the meaning of section 55P(4) of the Act.

1.3 These Requirements shall remain in force unless and until varied or cancelled by the Authority (either on the successful application of the Firm or of the Authority's own volition).

2 REASONS FOR ACTION

Summary

- 2.1 The Authority has concluded, on the basis of the facts and matters described below that, in respect of the Firm, it is necessary to exercise its power under section 55L(3)(a) of the Act to impose the Requirements on the Firm because it is failing, or is likely to fail, to satisfy the Appropriate Resources Threshold Condition pursuant to section 2D of Schedule 6 of the Act and it is desirable in order to advance one or more of the Authority's operational objectives, which includes securing an appropriate degree of protection for consumers pursuant to section 1C of the Act.
- 2.2 The Authority considers that the Firm is failing, or is likely to fail, to satisfy the Appropriate Resources Threshold Condition as the Firm appears to the Authority to be unable to pay its debts as they fall due. Specifically, the Authority considers that the Firm has significant contingent liabilities arising from potential awards of compensation to be made by the Financial Ombudsman Service ("FOS"), and that these liabilities are highly likely to exceed the insurance coverage available to the Firm and the Firm's assets.
- 2.3 The Authority considers that the imposition of the Requirements should take immediate effect because the matters set out in this Second Supervisory Notice demonstrate that the Firm is unable to manage its affairs in a sound and prudent manner, and because the Authority considers the Firm may put consumers at risk.

3 DEFINITIONS

- 3.1 The definitions below are used in this Second Supervisory Notice:

"March 2022 SSN" means Second Supervisory Notice dated 17 March 2022;

"the Act" means the Financial Services and Markets Act 2000;

"the ARs" means together Company A and Company B;

"the Authority" means the Financial Conduct Authority;

"Company A" means a company acting as an appointed representative for the Firm;

"Company B" means a company acting as an appointed representative for the Firm;

"Company F" means an investment company in which the Firm has a shareholding;

"Company G" means a company which issued mini-bonds to investors;

"the Firm" means Equity for Growth (Securities) Limited;

"FOS" means the Financial Ombudsman Service;

"Group E" means a group of companies which issued mini-bonds to investors;

"Handbook" means the Authority's online handbook of rules and guidance (as in force from time to time);

"Person C" means a director of the Firm;

"Person D" means a director of the Firm;

"the Petition" means the petition to wind up the Firm filed with the Court by the Authority;

"Requirements" means the terms imposed on the Firm as outlined in section 1 above; and

"Tribunal" means the Upper Tribunal (Tax and Chancery Chamber).

4 FACTS AND MATTERS

Background

- 4.1 The Firm was incorporated on 1 April 2005 and was authorised by the Authority to conduct regulated activities on 9 May 2008.
- 4.2 The Firm has the following Part 4A permissions:
- 1) advising on investments (except on Pension Transfers and Pension Opt Outs);
 - 2) advising on peer-to-peer agreements;
 - 3) arranging (bringing about) deals in investments;
 - 4) making arrangements with a view to transactions in investments; and
 - 5) agreeing to carry on a regulated activity.
- 4.3 The Firm has had five appointed representatives, including two of particular relevance for this action: Company A and Company B. While ARs of the Firm, the ARs were involved in the promotion of non-readily realisable securities (commonly called 'mini-

bonds') issued by unlisted companies, several of which have subsequently failed to repay capital.

- 4.4 As the principal to each of Company A and Company B at the relevant time, the Firm is, pursuant to the terms of section 39 of the Act, liable for the acts or omissions of its ARs in conducting the activities for which it had, by way of agreements with each of Company A and Company B, accepted responsibility. This includes accepting responsibility for liabilities in respect of any money awards made by the FOS in respect of regulated activities conducted by the ARs.
- 4.5 The Firm has two current directors, Person C and Person D. The majority of the shares in the Firm are held by Person C and Person D. Both Person C and Person D are also SMF 3 (Executive Director) holders at the Firm.
- 4.6 The Firm has stated in a business plan provided to the Authority in June 2022 that it is *"a small but ambitious corporate finance advisory firm dedicated to assisting growth companies, predominantly small/microcap companies and companies in a distressed situation with their financial future, and in matters of corporate finance. It has traded in this field of expertise since 2008"*.
- 4.7 The Firm has been subject to significant supervisory engagement. In particular, the Firm:
 - 1) agreed with the Authority that it would withdraw all approvals of financial promotions and agreed not to appoint any further ARs in August 2019;
 - 2) has been subject to an investigation by the Authority's Enforcement and Market Oversight Division since 1 April 2019, which is ongoing and in relation to which no findings have been made in respect of the Firm;
 - 3) undertook in May 2020 to the Authority that it would not resume any regulated activities until it had devised and implemented a written plan to remediate deficiencies in its compliance framework;
 - 4) was issued with a First Supervisory Notice whereby the Authority varied by removal the Firm's regulatory permissions on 15 December 2021, which action was subsequently reaffirmed in a Second Supervisory Notice dated 17 March 2022 (the "March 2022 SSN"). In June 2022, the Authority decided to withdraw the March 2022 SSN, such that the Firm's regulatory permissions were reinstated.

Failings and risks identified

- 4.8 The Authority sets out the following details of determinations made by the FOS against the Firm and complaints made by investors against the Firm.

FOS determination against EFG in relation to Company A

- 4.9 Pursuant to section 228 of the Act, awards of the FOS create binding legal obligations on an authorised firm to pay redress. Authorised firms are required by DISP 1.4.4R to comply promptly with any award of the FOS. As above, the Firm is liable in respect of any money awards made by the FOS in respect of the ARs in conducting such regulated business.
- 4.10 On 29 September 2022, the FOS issued a determination in respect of a complaint about the Firm made by an investor ("the Company A Determination"). The investor had referred their complaint to the FOS in January 2020 and the FOS found that the

Firm should pay compensation to the investor plus interest calculated at 8% per annum. The Firm did not pay the total compensation owed to the investor until approximately two years after the FOS made the Company A Determination.

Complaints received by the Firm

- 4.11 While an AR of the Firm, Company B promoted or arranged approximately 273 investments in respect of a group of seven companies under the common ownership of two individuals ("Group E") and which issued mini-bonds, the proceeds of which were used by other companies within Group E for the purposes of property development. The Firm acted as security trustee for the bonds issued by certain entities in Group E and acted as an approver of financial promotions under section 21 of the Act for certain of the Group E companies.
- 4.12 Company B also promoted 34 investments in respect of Company G, until Company G was put into insolvency proceedings in Germany on 23 June 2020. On 23 March 2018, in connection with the Firm's application to register Company B as an AR, the Firm informed the Authority that Company B was introducing investors to Company G and provided certain documents relating to this.
- 4.13 On 3 October 2023, the Firm provided the Authority with information stating that there were, at that time, 46 complaints in respect of the Firm being considered by the FOS. The Firm informed the Authority at this time that it did not accept the outstanding complaints being considered by the FOS and considered them without merit, noting that it would commence judicial review proceedings in respect of determinations made by the FOS (which the Authority understood to relate to only those which the FOS determined in favour of the complainant). The Firm also informed the Authority, in response to a request for the Firm's view of the potential financial implications for it should it face any adverse FOS determinations, that it would both contest any adverse decisions but, if any judicial review commenced by the Firm was unsuccessful, it would "*seek to agree a realistic payment plan tied to the Firm's net profits and/or available capital, or seek to claim against its PII [professional indemnity insurance] policy where possible*".
- 4.14 As a result, the Firm informed the Authority at that time that the Firm "*has not made any provision for contingent liabilities in its financial accounts*" and further confirmed that EFG "*has not sought any insolvency advice as its not insolvent*".

FOS determinations against EFG

- 4.15 On 15 March 2024, the FOS issued three final determinations in respect of the Firm. Each concerned complaints made by consumers who had invested in bonds issued by Group E and (as determined by the FOS) arranged by Company B. On 21 May 2024, the FOS issued a further final determination in respect of Company B, and which required the Firm to pay the complainant compensation. On 17 June 2024, the FOS issued four further final determinations in respect of the Firm. On 12 September 2024, the FOS issued a further final determination in respect of the Firm. The Authority notes that these awards of compensation have been paid to the relevant consumer, and the Firm has done so via claims under its professional indemnity insurance ("PII").

Outstanding complaints

- 4.16 On 5 September 2024, the Firm provided a spreadsheet to the Authority containing details of complaints as at 5 September 2024. The Firm had, at that time, identified 74 complaints, of which:

- 1) Three had been rejected by the FOS with the cases closed;
- 2) Nine had, on an initial assessment, been rejected by the FOS, but were being appealed by the complainant;
- 3) There were 19 cases which were yet to be assessed by the FOS, but which the Firm had assessed as likely to be upheld against the Firm;
- 4) The FOS was reviewing seven which the investigator had made an initial assessment in favour of the complainant but which the Firm had disagreed with;
- 5) The FOS had issued a final decision in favour of the complainant in nine cases;
- 6) The FOS had issued a provisional decision in favour of the complainant in one case; and
- 7) There were 26 cases under review by the FOS.

4.17 The information provided by the Firm to the Authority showed that, as at 5 September 2024, there were 26 cases that the Firm had identified as either being likely to be upheld against it or where the FOS had made an initial determination in favour of the complainant (albeit where these determinations were potentially subject to challenge by the Firm), and the value of these claims amounted to at least £996,076, of which £100,000 has since been paid.

4.18 On 27 November 2024, in its Representations, the Firm informed the Authority that it would provide updated information in respect of FOS complaints. The Firm provided to the Authority a table containing a summary of FOS complaints on 17 December 2024 to reflect the position as at 17 December 2024.

4.19 The updated table provided by the Firm showed that, as at 17 December 2024, the Firm had identified 117 complaints with the FOS, of which:

- 1) The FOS had issued a decision in favour of the complainant in 36 cases (with a claim value of £1,224,356.12);
- 2) The FOS had issued a decision in favour of the Firm in 41 cases (with a claim value of £1,368,733); and
- 3) There were 40 cases under review by the FOS where the outcome was "unknown" (with a claim value of £2,125,949.13).

4.20 The Authority notes that this information from the Firm shows a large increase in the number of complaints received by the FOS in respect of the Firm since 5 September 2024. Whilst there is inherently some uncertainty as to the outcome of these claims, the Authority considers that they are likely to increase, potentially significantly, the Firm's contingent liabilities in relation to FOS claims.

4.21 The FOS has informed the Firm that, due to the Petition, it is closing open complaints against the Firm. The FOS has also informed the Firm that it will reopen these complaints if the solvency position of the Firm changes following the hearing of the Petition and that the Firm's liabilities in respect of these complaints have not been discharged.

The Firm's financial position and performance

- 4.22 The Firm filed its most recent accounts on 30 September 2024, for the year ending 31 December 2023 ("the 2023 Accounts"). The 2023 Accounts were unaudited and were signed by Person C. The 2023 Accounts contain a balance sheet but no profit and loss account. The balance sheet states the total net assets of the Firm was £73,963.
- 4.23 On 6 September 2024, the Firm informed the Authority that its assets included approximately £65,000 in shares in an investment company ("Company F") and cash. In relation to the value of the shares in Company F, on 27 November 2024 the Firm informed the Authority that the current value of these shares was £56,559.33, albeit that the "theoretical [net asset value] per share" meant that the value was £64,777. The Firm has not provided evidence to support this assertion. The Firm described its liabilities as a £40,000 bank loan and trade creditors of £2,000. The Firm also stated that *"trade creditors that will never be paid out, but at the same time currently appear on our balance sheet amount to approximately £30k"*. It described these as *"an accounting issue"* and *"aged creditor"*, most of which *"will simply drop away this year anyway as they are nearly more than 6 years old"*. The Authority is unclear as to why this sum, which the Firm has recognised as a liability it owes, would simply *"drop away"* at some point in the year following 6 September 2024.
- 4.24 On 27 November 2024, the Firm informed the Authority that the position as contained in the 2023 Accounts was *"now outdated"* and that the Firm's total net assets were now £17,225.46 (as compared to £73,963, as per the 2023 Accounts).
- 4.25 The Firm also informed the Authority on 6 September 2024 that *"we believe the outlook for revenue and profits is very positive over the next 12 months, as well as other capital inflows. We will provide more detail on this over the next two weeks and run against this a revised profit and loss account forecast. However, in simple terms we have business we are engaged with that should deliver £1m of income on the low side."*
- 4.26 The Firm initially did not provide any evidence to support the assertions it made regarding projected revenue, despite being required to do so by the Authority on 5 August 2024, and despite being on notice as a result of that letter that the Authority considered the Firm may not be solvent. On 27 November 2024, having received the FSN, the Firm provided further information to the Authority on its plans to raise additional capital and generate further revenue. The Firm's evidence is summarised at paragraphs 10 and 12 of Annex B below. The Authority has serious concerns that none of the investors are in a position to contribute the additional capital that the Firm is seeking, and that the Firm's forecasted revenue will not materialise.

Insurance

- 4.27 The Firm has provided the Authority with materials relating to its PII for the period 23 March 2019 to 22 September 2020, in which both the Firm and Company B are the insured parties. As at 5 September 2024, the Firm informed the Authority that the remaining limit of the indemnity under the PII for the 2019-2020 policy year is £549,631. On 27 November 2024, the Firm informed the Authority that it has *"an insurance policy with c. £359,000 available for payment"*.

The Firm's threatened legal action against Company B

- 4.28 The Firm informed the Authority on 8 November 2023 that it planned to take legal action against Company B to *"seek legal redress against them by way of recoupment"*

for any losses EFG [the Firm] suffers by reason of its breach of contract". Further, in response to the Authority's information requirement dated 5 August 2024, the Firm informed the Authority that it was "in the process" of taking action against Company B.

- 4.29 Following issuance of the FSN by the Authority, on 27 November 2024 the Firm provided the Authority with further information relating to its potential legal action against Company B. The Firm explained that any claim against Company B would be pursuant to a contractual indemnity and that whilst it *"has not been able to obtain formal accounting advice as to the consequence of the indemnity...it is [the Firm's] present understanding that the effect of the indemnity is to provide for a contingent claim that has the effect of balancing out the alleged contingent liability"*. The Firm also provided the Authority with a copy of the pre-action letter of claim issued by the Firm to Company B, dated 20 November 2024 (the "20 November Letter"). The 20 November Letter requested that Company B confirm that it will accept liability and pay on demand (i) an estimated sum of between £1,000,000 to £1,500,000 to account for the Firm's contingent liabilities for further FOS claims, (ii) an amount of no less than £500,000 in respect of the Firm's legal costs attributable to Company B's actions and (iii) payment of £368,325.58 (plus legal fees) in respect of the Firm's crystallised FOS liabilities. The 20 November Letter also requested that Company B provide a full response by 11 December 2024.
- 4.30 The Firm provided the Authority with correspondence it had received from Company B in relation to the claim on 17 December 2024. In this correspondence, Company B denies the claims articulated by the Firm in the 20 November Letter in their entirety and stated that it will actively defend any proceedings initiated by the Firm. The Firm has not provided the Authority with any further correspondence with Company B or provided an explanation of its response to Company B's correspondence.
- 4.31 Although the Authority has not been able to assess the merits of any potential legal action commenced by the Firm against Company B, the Authority notes that the Firm had failed to initiate proceedings prior to sending the 20 November Letter, despite stating that it intended to on 8 November 2023 and despite being on notice of the facts giving rise to any such claim against Company B since 9 April 2020 when the Firm terminated the AR agreement with Company B. The Authority considers that the prospects of any action successfully recovering any monies for Company B, and the extent of any such recoveries, are inherently uncertain.

Summary

- 4.32 In summary, the Authority considers that the Firm has significant contingent liabilities arising from potential awards of compensation to be made by the FOS, and that these liabilities are highly likely to exceed the insurance coverage available to the Firm and the Firm's assets.
- 4.33 As a result, on 18 October 2024 the Authority filed a petition with the Court seeking to wind up the Firm on the bases that it is unable to pay its debts as they fall due and as the Authority considers it is just and equitable to wind it up (the "Petition"). The date of the Petition hearing is 18 February 2025.
- 4.34 Following the issuing of the FSN by the Authority, Supervision notes that the Firm has complied with the Requirements at paragraphs 1.2.2 and 1.2.3 above.

5 CONCLUSION

5.1 The regulatory provisions relevant to this Second Supervisory Notice are set out in the Annex.

Analysis of failings and risks

5.2 The analysis of failings and risks in this section are dealt with as follows:

- 1) Failure to comply with the Threshold Conditions; and
- 2) The Authority's operational objective of consumer protection.

Failure to comply with the Threshold Conditions

5.3 The Authority considers that the Firm is failing, or is likely to fail, to satisfy the Appropriate Resources Threshold Condition as the Firm appears to the Authority to be unable to pay its debts as they fall due. Specifically, the Authority considers that the Firm has significant contingent liabilities arising from potential awards of compensation to be made by the FOS, and that these liabilities and those arising from future awards made by the FOS are highly likely to exceed the insurance coverage available to the Firm and the Firm's assets.

The Authority's operational objective of consumer protection

5.4 The Authority's operational objective of consumer protection requires the Authority to secure an appropriate degree of protection for consumers (Section 1C of the Act). The Authority considers that the Firm is unable to pay its debts as they fall due, such that it is insolvent. The Authority considers that there is a risk that should the Firm continue to be permitted to conduct regulated activities, notwithstanding its apparent insolvency, it may expose existing customers or any prospective customers to risk of loss in the event the Firm winds down in a disorderly manner.

5.5 The Authority has assessed the extent to which the Firm has taken, or is taking, steps to deal with its insolvency. The Firm informed the Authority in response on 3 October 2023 and 8 November 2023 that it has not received, and has no intention of seeking, insolvency advice. The Firm has also consistently declined to make any provision in the Firm's accounts for contingent liabilities arising from the FOS awards.

5.6 On 5 August 2024, the Authority specifically stated that it considered that the Firm's potential liabilities in relation to the claims against it were likely to exceed its available assets, meaning that the Firm may be insolvent. The Authority noted in this letter that, as a result, it was giving serious consideration to exercising its powers under section 367 of the Act to present a petition to the Court for the winding up of the Firm. The Authority then requested that the Firm provide its response to the Authority's assessment of the Firm's solvency position and provide supporting evidence. As set out above, the Firm's response contained various assertions relating to its assets and liabilities and financial projections, but produced no evidence to support those or to suggest the Authority's assessment was incorrect. The Firm's Representations also do not materially alter the Authority's assessment in respect of the Firm's financial position.

5.7 The Authority considers that, in addition to preventing the Firm from conducting regulated activities, it is also appropriate and proportionate to prevent the Firm from dealing with, or disposing of, its assets without the prior written consent of the Authority to ensure that any monies that are owed to those individuals that may be

owed compensation as a consequence of awards made by the FOS are appropriately secured.

- 5.8 The Authority considers that the Requirements are a proportionate and appropriate means to address the current and immediate risks and are desirable in order to advance the Authority's operational objective of consumer protection.

Timing and duration of the Requirements

- 5.9 It is necessary to impose the Requirements given the seriousness of the risks and the need to protect consumers.
- 5.10 The Authority considers that it is necessary for the Requirements to remain in place indefinitely.

6 PROCEDURAL MATTERS

Decision-maker

- 6.1 The decision which gave rise to the obligation to give this Second Supervisory Notice was made by an Authority staff member under executive procedures according to DEPP 2.5.7AG and DEPP 4.1.7G.
- 6.2 This Second Supervisory Notice is given under section 55Y(7) and in accordance with section 55Y(9) of the Act.
- 6.3 The following statutory rights are important.

The Tribunal

- 6.4 The Firm has the right to refer the matter to which this Second Supervisory Notice relates to the Tribunal. The Tax and Chancery Chamber is part of the Tribunal which, amongst other things, hears references arising from decisions of the Authority. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Firm has 28 days from the date on which this Second Supervisory Notice is given to it to refer the matter to the Tribunal.
- 6.5 A reference to the Tribunal can be made by way of a reference notice (Form FTC3) signed by or on behalf of the Firm and filed with a copy of this Second Supervisory Notice. The Tribunal's contact details are: The Upper Tribunal, Tax and Chancery Chamber, 5th Floor, Rolls Building, Fetter Lane, London EC4A 1NL (telephone: 020 7612 9730; email: uttc@hmcts.gsi.gov.uk).
- 6.6 Further information on the Tribunal, including guidance and the relevant forms to complete, can be found on the HM Courts and Tribunal Service website: <http://www.justice.gov.uk/forms/hmcts/tax-and-chancery-upper-tribunal>
- 6.7 The Firm should note that a copy of the reference notice (Form FTC3) must also be sent to the Authority at the same time as a reference is filed with the Tribunal. A copy of the reference notice should be sent to the Executive Decision-Making Secretariat (EDMCaseInbox@fca.org.uk).

Confidentiality and publicity

- 6.8 The Firm should note that this Second Supervisory Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining legal advice on its contents).
- 6.9 The Firm should note that section 391(5) of the Act requires the Authority, when the Second Supervisory Notice takes effect, to publish such information about the matter to which the notice relates as it considers appropriate.

Authority contacts

- 6.10 Any questions regarding the executive procedures decision-making process should be directed to the Executive Decision-Making Secretariat (EDMCaseInbox@fca.org.uk).

Director, Markets, Supervision, Policy and Competition Division

Annex A

RELEVANT STATUTORY PROVISIONS

1. The Authority's operational objectives established in section 1B of the Act include securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.
2. Section 55L of the Act allows the Authority to impose a new requirement on an authorised person if it appears to the Authority that the authorised person is failing, or likely to fail to satisfy the Threshold Conditions (section 55L(2)(a)), or it is desirable to exercise the power in order to advance one or more of the Authority's operational objectives (section 55L(2)(c)).
3. Section 55N of the Act allows a requirement to be imposed under section 55L of the Act so as to require the person concerned to take specified action (section 55N(1)(a)), or to refrain from taking specified action (section 55N(1)(b)).
4. Section 55P of the Act allows an assets requirement to be imposed under the Authority's own-initiative power. Pursuant to section 55P(4)(a) of the Act an assets requirement means a requirement prohibiting the disposal of, or other dealing with, any of the Firm's assets (whether in the United Kingdom or elsewhere) or restricting such disposals or dealings.
5. Section 55Y(3) of the Act allows the imposition of a requirement and variation of permission to take immediate effect or on such date as is specified in the notice.
6. Section 391 of the Act provides that:
"[...]
(5) When a supervisory notice takes effect, the Authority must publish such information about the matter to which the notice relates as it considers appropriate.
(6) But the Authority may not publish information under this section if in its opinion, publication of the information would, be unfair to the person with respect to whom the action was taken or proposed to be taken [or] prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
(7) Information is to be published under this section in such manner as the Authority considers appropriate."

RELEVANT REGULATORY PROVISIONS

FCA Handbook

7. The section of the Handbook entitled "Threshold Conditions" (COND) gives guidance on threshold conditions. COND 1.2.3G provides that the Authority may exercise its own-initiative powers under section 55L of the Act if, among other things, a firm is failing to satisfy any of the Threshold Conditions or is likely to do so.

The Enforcement Guide

8. The Authority's approach in relation to its enforcement powers is set out in Chapter 8 of the Enforcement Guide (EG), certain provisions of which are summarised below.
9. EG 8.1.1 reflects the provisions of section 55L of the Act by stating that the Authority may use its own-initiative power to impose requirements on an authorised person where,

amongst other factors, the person is failing or is likely to fail to satisfy the threshold conditions for which the Authority is responsible (EG 8.1.1(1)), or it is desirable to exercise the power in order to advance one or more of its operational objectives (EG 8.1.1(3)).

10. EG 8.2.1 states that when the Authority considers how it should deal with a concern about a firm, it will have regard to its statutory objectives and the range of regulatory tools that are available to it. It will also have regard to the principle that a restriction imposed on a firm should be proportionate to the objectives the Authority is seeking to achieve (EG 8.2.1(2)).
11. EG 8.2.3 states that in the course of its supervision and monitoring of a firm or as part of an enforcement action, the Authority may make it clear that it expects the firm to take certain steps to meet regulatory requirements. In the vast majority of cases the Authority will seek to agree with a firm those steps the firm must take to address the Authority's concerns. However, where the Authority considers it appropriate to do so, it will exercise its formal powers under section 55L of the Act to impose a requirement to ensure such requirements are met. This may include where, amongst other factors, the Authority has serious concerns about a firm, or about the way its business is being or has been conducted (EG 8.2.3(1)) or is concerned that the consequences of a firm not taking the desired steps may be serious (EG 8.2.3(2)).
12. EG 8.3.1 states that the Authority may impose a requirement so that it takes effect immediately or on a specified date if it reasonably considers it necessary for the requirement to take effect immediately (or on the date specified), having regard to the ground on which it is exercising its own-initiative powers.
13. EG 8.3.2 states that the Authority will consider exercising its own-initiative power 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.
14. EG 8.3.3 states that it is not possible to provide an exhaustive list of the situations that will give rise to such serious concerns, but they are likely to include one or more of four listed characteristics, these include: 1) information indicating significant loss, risk of loss or other adverse effects for consumers, where action is necessary to protect their interests; 2) information indicating that a firm's conduct has put it at risk of being used for the purposes of financial crime, or of being otherwise involved in crime; 3) evidence that the firm has submitted to the Authority inaccurate or misleading information so that the Authority becomes seriously concerned about the firm's ability to meet its regulatory obligations; 4) circumstances suggesting a serious problem within a firm or with a firm's controllers that calls into question the firm's ability to continue to meet the threshold conditions.
15. EG 8.3.4 states that the Authority will consider the full circumstances of each case when it decides whether an imposition of a requirement is appropriate and sets out a non-exhaustive list of factors the Authority may consider, these include:
16. EG 8.3.4(1) includes the extent of any loss, or risk of loss, or other adverse effect on consumers. The more serious the loss or potential loss or other adverse effect, the more likely it is that the FCA's exercise of own-initiative powers will be appropriate, to protect the consumers' interests.
17. EG 8.3.4(4) includes the seriousness of any suspected breach of the requirements of the legislation or the rules and the steps that need to be taken to correct that breach.
18. EG 8.3.4(5) includes the financial resources of the firm. Serious concerns may arise where it appears the firm may be required to pay significant amounts of compensation to

consumers. In those cases, the extent to which the firm has the financial resources to do so will affect the FCA's decision about whether exercise of the FCA's own-initiative powers is appropriate to preserve the firm's assets, in the interests of the consumers.

19. EG 8.3.4(8) includes the firm's conduct. The Authority will take into account whether the firm identified the issue, brought it promptly to the Authority's attention and what steps the firm has taken or is taking to address the issue.
20. EG 8.3.4(9) includes the impact that use of the Authority's own-initiative powers will have on the firm's business and on its customers. The Authority will need to be satisfied that the impact of any use of the own-initiative power is likely to be proportionate to the concerns being addressed, in the context of the overall aim of achieving its statutory objectives.

Decision Procedure and Penalties Manual ("DEPP")

21. DEPP 2.5.7G provides that a member of the Authority's staff under executive procedures will take the decision to give a supervisory notice exercising the Authority's own-initiative powers (by removing a regulated activity, by imposing a limitation or requirement or by specifying a narrower description of regulated activity), including where the action involves a fundamental variation or requirement.
22. DEPP 2.5.7AG provides that the Authority's staff under the executive procedures will be the decision maker when the exercise of the Authority's own-initiative powers is contested by a firm.
23. DEPP 2.5.7BG provides that an Authority staff of at least Director level will take the decision to give a supervisory notice exercising the Authority's own-initiative powers if the action involves a fundamental variation or requirement. DEPP 2.5.8G provides that a fundamental variation or requirement means: 1) removing a type of activity or investment from the Firm's permission; 2) refusing an application to include a type of activity or investment; or 3) imposing or varying an assets requirement (as defined in s.55P of the Act) or refusing an application to vary or cancel such a requirement. Otherwise, where own-initiative action involves a non-fundamental requirement, this decision can be taken by a Head of Department at the Authority.

Annex B

THE FIRM'S WRITTEN REPRESENTATIONS AND THE AUTHORITY'S RESPONSE

1. The Representations submitted by the Firm (*in italics*) and the Authority's response in respect of them are set out below.

Contingent liabilities

2. *The Firm makes various assertions in relation to the total contingent liability and states further that it does not accept that the figures provided represent a fair assessment of its total contingent liability.*
3. The Authority accepts that there is inherently some degree of uncertainty in relation to the claims. However, the Authority considers that the claims are likely to result in liabilities to the Firm given that they were assessed by the Firm itself as likely to be upheld, assessed by FOS' investigators as adverse for the Firm or were related to provisional decisions which the FOS itself had decided in favour of the complainants.
4. The basis of the application was (and remains) the Firm's inability to meet its contingent liabilities, i.e. its future obligation to make payments to customers in whose favour the FOS have made awards. On the basis of the information provided to the Authority by the Firm, the Firm continues to lack sufficient financial resources to meet its present and contingent liabilities. The Authority submits that the Firm is therefore failing, or likely to fail, to satisfy the Appropriate Resources Threshold Condition.

FOS complaints

5. *The Firm states that even if all FOS complaints were accepted by the FOS (which, according to the Firm, is unlikely) payment would not be required for months, if not years. Timescales are driven by FOS, taking account of the Firm's and the complainant's rights to make representations.*
6. The Firm's assessment that these liabilities will not fall due for some time appears to ignore the fact that assessing whether a firm is balance sheet insolvent involves considering whether it has insufficient assets to be able to meet all of its liabilities, including its prospective and contingent liabilities.
7. The Authority considers that the Representations also make no allowance for the fact that further FOS claims could yet be lodged by customers in the future, including in relation to investments made via Company A, which is in liquidation (and, in respect of which, the Firm has confirmed as part of its Representations that it has no insurance coverage). The Authority notes that any further adverse FOS determinations in respect of the investments introduced or arranged by Company A will present a further liability for the Firm to meet.
8. The Firm appears not to have taken this into consideration. The Firm has also not presented cashflow forecasts, projections, or budget that, in the Authority's view, are credible and which reasonably demonstrate how it could generate future revenue which would enable it to afford to pay further future claims which become liabilities.

Claim against Company B

9. *The Firm states the terms of its agreement with Company B provides it with the right to be indemnified for any claims upheld by the FOS that relate to the business of Company B.*
10. *The Firm sent a pre-action letter of claim to Company B dated 20 November 2024 requiring payment of crystallised FOS claims and confirmation that Company B accepts liability for and will pay on demand the contingent liabilities for any further FOS claims estimated to be between £1m and £1.5m, and the Firm's legal costs attributable to Company B's breaches.*
11. The Authority refers to the matter contained at paragraph 4.28 of this Notice which set out a summary of the relevant facts. The Authority notes that whilst the Firm has provided Company B's letter of response, it has not provided any further correspondence relating to the matter including the Firm's response (if any has been sent) to Company B. In the event the Firm does pursue its claim, and having regard to the fact that Company B has stated it will defend those claims in their entirety, the Authority considers there is significant inherent uncertainty regarding the likelihood of the Firm receiving sums further to any claim against Company B (sought pursuant to a contractual indemnity or otherwise), as well as the quantum and timing of receipt regarding any such sums.

Capital from three additional investors

12. *The Firm states that it has secured commitments from three investors who have each agreed to pay £50,000 for a 9.9% equity stake in the Firm and has provided signed letters from the individuals representing the investors.*
13. The Authority doubts the veracity of these letters as they do not, in themselves, provide evidence of the Firm having secured capital in the amount of £150,000 or that there is a reasonable prospect that the Firm will receive these funds from the investors any time soon, if at all. Based on the most recent unaudited accounts the investors have filed with Companies House, the Authority has serious concerns that none of the investors are in a position to contribute £50,000 each by way of additional capital to the Firm.

The Firm's projected revenues

14. *The Firm states that it has an interesting and promising pipeline of companies seeking investment for their projects and they that have engaged with the Firm to source investors. The Firm expects to generate revenues of £2m in the first half of 2025. The Firm has provided engagement letters between the Firm and six prospective clients of the Firm.*
15. The Authority considers the projects referred to by the Firm to be speculative and unsupported by evidence of either a financial or trading track record. The Authority notes that information in the public domain relating to a number of the prospective investments raises very serious questions as to whether they are viable, and also notes that of the six engagement letters produced by the Firm in relation to these projects, four were signed in the six days prior to 27 November 2024 (being the date the Firm submitted its first set of written Representations). In addition, the Authority considers that the Firm's projected revenue for the first six months of 2025, being approximately £1.99m, is unrealistic; it is at odds with its actual revenue in recent years, being £17,500 for the year ending 31 December 2022, £22,500 for the year

ending 31 December 2023 and approximately £30,000 for the 9 months from 1 January 2024 to 30 September 2024. The Firm does not have a history of earning revenues anywhere close to the level that it is now projecting.

16. The Firm also has limited human resources. One of the directors, Person C, is the only revenue generating principal of the Firm as well as being a director of 7 other companies.
17. The Authority does not consider the Representations regarding the Firm's projected revenues to be plausible and notes the Firm has made similar projections in the past that have failed to materialise.

The proposal for the Firm to be acquired by an investment company and rebranding

18. *The Firm has provided details of a proposal, involving it being acquired by a third-party which will issue some of its shares to Person C and Person D as consideration for acquiring the entire share capital of the Firm. The Firm has then provided details of steps that third-party proposes to take, including raising additional capital, securing further investment, developing a pipeline of work, before itself being subject to a "reverse-merger" by another third-party. The Firm states that the proposal will provide consumers with the opportunity to seek redress through the imminent capital injection and the anticipated revenues generated by the Firm's future business activities, all of which are expected to cover the Firm's actual liabilities as and when the fall due for payment after its insurance policy indemnity expires.*
19. The Authority considers that the Firm's anticipated capital injection and projected revenues are speculative and unsupported by either a financial or trading track record. In addition, the proposed purchase of the Firm is conditional on the Authority lifting the Requirements and the various steps being approved by the Authority as part of any change in control process. The Authority notes that information in the public domain, including relating to certain of the parties referred to by the Firm as being involved in the various transactions relating to this proposal, raises very serious questions as to whether the proposal is viable and credible. The Authority does not consider the proposal alters its assessment that the Firm is unable to pay its debts as they fall due and therefore is not meeting the Appropriate Resources Threshold Condition.