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## FIRST SUPERVISORY NOTICE

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**To:** **Andrew Baxter**

**Firm  
Reference  
Number:** **453786**

**Dated:** **2 October 2014**

### **ACTION**

1. For the reasons given below and pursuant to section 55J of the Act, the Authority has decided to vary the permission granted to Mr Baxter pursuant to Part 4A of the Act, by removing all regulated activities with immediate effect. Accordingly, Mr Baxter's Part 4A permission no longer includes the regulated activities of:
  - (a) advising on investments (except on Pension Transfers and Pension Opt Outs);
  - (b) advising on regulated mortgage contracts;
  - (c) agreeing to carry on a regulated activity;
  - (d) arranging (bringing about) deals in investments;
  - (e) arranging (bringing about) regulated mortgage contracts;
  - (f) making arrangements with a view to regulated mortgage contracts;
  - (g) making arrangements with a view to transactions in investments.

## **REASONS FOR ACTION**

2. Mr Baxter, a sole trader, was convicted of offences for which he was sentenced on 12 May 2014 to 12 months' imprisonment. As a consequence of his imprisonment, Mr Baxter is unable to control and manage his business. He has also failed to explain adequately how his business is being operated in his absence and what locum arrangements, if any, exist (having been given a reasonable opportunity to do so). In view of this, it appears to the Authority that no or no adequate arrangements to manage his business in his absence are in place.
3. Mr Baxter has also failed to be open and co-operative in his dealings with the Authority, including by failing to disclose to the Authority that he had been charged with and convicted of criminal offences and imprisoned and by failing to explain how his business is being operated in his absence.
4. In view of the facts and matters set out below:
  - a. It appears to the Authority that Mr Baxter is failing to satisfy the Threshold Conditions, in that he:
    - i. lacks appropriate non-financial resources (paragraph 2D of Schedule 6 to the Act (appropriate resources)), and
    - ii. is not a fit and proper person in all the circumstances (paragraph 2E of Schedule 6 to the Act (suitability)).
  - b. The Authority considers that it is necessary to vary Mr Baxter's Part 4A permission with immediate effect. It has serious concerns about Mr Baxter's business (in that he is failing to satisfy the Threshold Conditions and his business potentially poses risks to consumers). The Authority considers that it is appropriate to remove all regulated activities from Mr Baxter's Part 4A Permission to address those concerns.

## **DEFINITIONS**

5. The definitions below are used in this First Supervisory Notice:

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

the "Authority" means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority;

the "Handbook" means the Authority's Handbook of Rules and Guidance;

"Mr Baxter's Part 4A permission" means Mr Baxter's permission granted pursuant to Part 4A of the Act;

the "Principles" means the Authority's Principles for Businesses;

the "Threshold Conditions" means the threshold conditions set out in Schedule 6 to the Act;

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

## **FACTS AND MATTERS RELIED ON**

6. Mr Baxter was authorised by the Authority on 2 October 2006 to conduct regulated home finance and designated investment business. Mr Baxter is a sole trader and the only approved person at his firm.
7. On 12 May 2014, Mr Baxter was convicted at Durham Crown Court sitting at Teeside of offences for which he was sentenced to 12 months' imprisonment. His certificate of conviction indicates that he was convicted 'upon his own confession'.
8. Mr Baxter did not notify the Authority at any stage that he had been charged with criminal offences, that he had been convicted of criminal offences or that he had been imprisoned.
9. On 8 July 2014, the Authority sent a letter to Mr Baxter which stated that the Authority had become aware that he had been convicted on 12 May 2014 and that he was serving a 12 month prison sentence. The Authority stated that as a consequence of this situation, and his status as a sole trader, the Authority no longer considered Mr Baxter to be meeting the Threshold Conditions. The Authority requested that Mr Baxter apply to cancel his Part 4A permission by 22 July 2014.
10. Mr Baxter wrote to the Authority on 18 July 2014, stating amongst other things that he had a locum in place and was appealing his convictions. He stated he cannot carry out any Part 4A permission related activity whilst in prison. He asked that the Authority defer enforcement action until after his conditional release date (on licence), which he gave as 25 October 2014.
11. The Authority unsuccessfully attempted to contact Mr Baxter's office by telephone on 29 July 2014.
12. The locum last notified to the Authority for Mr Baxter is Firm A. On 31 July 2014, Firm A stated to the Authority that it does not act as a locum for Mr Baxter and that Firm A has never agreed to act as locum for Mr Baxter.
13. On 12 August 2014, the Authority sent a further letter to Mr Baxter stating that as Mr Baxter is imprisoned, he is unable to control and manage his business and will be unable to do so for a further prolonged period, and in these circumstances Mr Baxter is no longer meeting the Threshold Conditions. The letter requested that Mr Baxter apply, by 20 August 2014, to have a requirement imposed on his Part 4A permission to the effect that he would not be permitted to conduct any regulated activities.
14. Mr Baxter wrote to the Authority on 18 August 2014 stating, amongst other things, that:
  - a. the Authority has the incorrect locum details;
  - b. there is no risk of unauthorised advice being given at his firm in his absence, administrative work is undertaken only by suitably trained staff and any requests for advice are outsourced to suitably authorised persons;

- c. he did not notify the Authority that he had been convicted and imprisoned because he had not expected to be convicted or imprisoned and had been immediately taken into custody.
15. Mr Baxter has not provided any alternative locum details. Despite the requests by the Authority, Mr Baxter has failed to cancel or vary his permission.

## **FAILINGS**

16. The regulatory provisions relevant to this First Supervisory Notice are set out in the Annex.
17. From the facts and matters described above the Authority has reached the conclusions set out below.
18. First, Mr Baxter has been unable to control and manage his business because of his imprisonment since 12 May 2014 and he remains unable to do so. He has indicated that business activity continues, but has failed to explain adequately how his business is being operated in his absence. He has had a reasonable opportunity to provide such an explanation and the Authority has attempted unsuccessfully to contact his business by telephone. In view of this, it appears to the Authority that no or no adequate arrangements to manage his business in his absence are in place.
19. It appears, therefore, to the Authority that Mr Baxter is failing to satisfy:
- a. the appropriate resources Threshold Condition (of paragraph 2D of Schedule 6 to the Act), in terms of his non-financial resources;
  - b. the suitability Threshold Condition (of paragraph 2E of Schedule 6 to the Act), as the Authority is not satisfied that Mr Baxter is a fit and proper person in all the circumstances (including the need to ensure that his affairs are conducted in an appropriate manner, having regard in particular to the risks to consumers and his inability to manage his business in such a way as to ensure that its affairs will be conducted in a sound and prudent manner).
20. Secondly, Mr Baxter has failed to deal openly and co-operatively with the Authority:
- a. He failed to inform the Authority at any stage that he had been charged with criminal offences, convicted of criminal offences or sentenced to a term of imprisonment (in breach of SUP 15.3.1R).
  - b. As noted above, he has failed to explain adequately how his business is being operated in his absence and what locum arrangements, if any, exist, despite having been provided with a reasonable opportunity to do so.
21. The Authority is also concerned that Mr Baxter's letter of 18 August 2014 is misleading in that he states that he was not expecting to be convicted, yet his certificate of conviction states that he was convicted upon his own confession.
22. The Authority therefore considers that Mr Baxter has not dealt openly and co-operatively with the Authority in breach of Principle 11 (Relations with regulators)

of the Principles. It appears, therefore, to the Authority that Mr Baxter is failing to satisfy the suitability Threshold Condition (of paragraph 2E of Schedule 6 to the Act), of being a fit and proper person in all the circumstances.

23. Thirdly, the Authority considers that it is necessary to vary Mr Baxter's Part 4A permission with immediate effect. It has serious concerns about Mr Baxter's business (in that he is failing to satisfy the Threshold Conditions and his business potentially poses risks to consumers). The Authority considers that it is appropriate to remove all regulated activities from Mr Baxter's Part 4A Permission to address those concerns.

## **PROCEDURAL MATTERS**

24. This First Supervisory Notice is given to Mr Baxter under section 55Y(4) and in accordance with section 55Y(5) of the Act.

### **Decision Maker**

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

### **The Tribunal**

26. Mr Baxter has the right to refer the matter to which this First Supervisory Notice relates to the Tribunal (the Tax and Chancery Chamber is the part of the Upper Tribunal which, amongst other things, hears references arising from decisions of the Authority). Under paragraph 2(2) of Schedule 3 to the Tribunal Procedure (Upper Tribunal) Rules 2008, Mr Baxter has 28 days from the date on which this First Supervisory Notice is given to Mr Baxter to refer the matter to the Tribunal.
27. A reference to the Tribunal is made by way of a signed reference notice (Form FTC3) and filed with a copy of this Notice. The Tribunal's contact details are: The Upper Tribunal, Tax and Chancery Chamber, 45 Bedford Square, London WC1B 3DN (tel: 020 7612 9730; email: [fs@hmcts.gsi.gov.uk](mailto:fs@hmcts.gsi.gov.uk)).
28. For further information on the Tribunal (including the power to vary time periods) Mr Baxter should refer to the HM Courts and Tribunal Service website which will provide guidance and the relevant form to complete. The relevant page on HM Courts and Tribunal Service website can be accessed via the following link:  
  
<http://www.justice.gov.uk/forms/hmcts/tax-and-chancery-upper-tribunal>
29. A copy of Form FTC3 must also be sent to Donovan Thorpe-Davis at the Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS at the same time as filing a reference with the Tribunal.

## **Representations**

30. Mr Baxter has the right to make written and oral representations to the Authority.
31. The deadline for providing written representations to the Authority is 10 November 2014, or such later date as may be permitted by the Authority.
32. The deadline for notifying the Authority that Mr Baxter wishes to make oral representations is 10 November 2014, or such later date as may be permitted by the Authority.
33. The address for doing so is:

Jane Hendley  
Regulatory Decisions Committee Secretariat  
Financial Conduct Authority  
25 The North Colonnade  
Canary Wharf  
London E14 5HS

## **Publicity**

34. Mr Baxter should note that section 391 of the Act requires the Authority when the First Supervisory Notice takes effect to publish such information about the matter as it considers appropriate. This First Supervisory Notice takes immediate effect.

## **Contacts**

35. For more information concerning this matter generally, Mr Baxter should contact Donovan Thorpe-Davis at the Authority (direct line: 020 7066 8678).
36. If Mr Baxter has any questions regarding the procedures of the Regulatory Decisions Committee, he should contact Jane Hendley (direct line: 020 7066 3200).

**Robin Callender Smith**  
**Deputy Chairman, Regulatory Decisions Committee**

## **ANNEX**

### **RELEVANT STATUTORY PROVISIONS**

1. The Authority may, under section 55J of the Act, vary an authorised person's permission—
  - where it appears to the Authority that such person is failing to satisfy the Threshold Conditions (section 55J(1)(a));
  - by removing a regulated activity from those to which the permission relates (section 55J(2)(a)(ii)).
2. Section 55Y(3) of the Act allows such a variation to take effect immediately only if the Authority, having regard to the ground on which it is exercising its own-initiative power under section 55J, reasonably considers that it is necessary for the variation to take effect immediately.
3. 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) The [Authority] may not publish information under this section if, in its opinion, publication of the information would be—
    - (a) unfair to the person with respect to whom the action was taken,
    - (b) prejudicial to the interests of consumers [...].

[...]

  - (7) Information is to be published under this section in such manner as the [Authority] considers appropriate. [...]”
4. Paragraph 2D of Schedule 6 to the Act states that:

“(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;

[...]

- (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 [Authority] in the exercise of its functions, or
  - (ii) any other requirement in relation to whose contravention the [Authority] would be the appropriate regulator for the purposes of any provision of Part 14 of this Act."

- 5. Paragraph 2E of Schedule 6 to the Act states that:

"A must be a fit and proper person having regard to all the circumstances, including—

[...]

- (c) the need to ensure that A's affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers and the integrity of the UK financial system;
- (d) whether A has complied and is complying with ... requests made by the [Authority], relating to the provision of information to the [Authority] and, where A has so complied or is so complying, the manner of that compliance;
- (e) whether those who manage A's affairs have adequate skills and experience and have acted and may be expected to act with probity;
- (f) whether A's business is being, or is to be, managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner;

[...]"

## **RELEVANT HANDBOOK PROVISIONS**

- 6. In exercising its power to vary a Part 4A permission, the Authority must have regard to guidance published in the Handbook. The relevant main considerations in relation to the action specified above are set out below.

### **Relevant Principles**

- 7. Principle 11 (Relations with regulators) of the Principles (PRIN 2.1.1R) provides:



"A *firm* must deal with [the Authority] in an open and cooperative way, and must disclose to [the Authority] appropriately anything relating to the *firm* of which [the Authority] would reasonably expect notice."

### **Duty to notify the Authority**

8. SUP 15.3.1R of the Supervision Manual (matters having a serious regulatory impact) provides:

"A *firm* must notify [the Authority] immediately it becomes aware, or has information which reasonably suggests, that any of the following has occurred, may have occurred or may occur in the foreseeable future:

- (1) the *firm* is failing to satisfy one or more of the *threshold conditions*; or
- (2) any matter which could have a significant adverse impact on the *firm's* reputation; or
- (3) any matter which could affect the *firm's* ability to continue to provide adequate services to its *customers* and which could result in serious detriment to a *customer* of the *firm*;

[...]"

### **Guidance concerning the relevant Threshold Conditions**

9. Guidance on the Threshold Conditions is set out in the part of the Handbook entitled Threshold Conditions ("COND").

#### COND 2.4 – Appropriate resources: Paragraph 2D of Schedule 6 to the Act

10. COND 2.4.1A UK reproduces paragraph 2D of Schedule 6 to the Act (set out in part above).
11. COND 2.4.2G(2) states that the Authority will interpret the term 'appropriate' as meaning sufficient in terms of quantity, quality and availability, 'resources' as including all financial resources, non-financial resources and means of managing its resources; for example, human resources and effective means by which to manage risks.

#### COND 2.5 - Suitability: Paragraph 2E of Schedule 6 to the Act

12. COND 2.5.1A UK reproduces paragraph 2E of Schedule 6 to the Act (set out in part above).
13. COND 2.5.4G(2) states that examples of the considerations to which the Authority may have regard when assessing whether a firm will satisfy and continue to satisfy the Threshold Conditions include whether the firm conducts its business in compliance with proper standards; has competent and prudent management; and can demonstrate that it conducts its affairs with due skill, care and diligence.

14. COND 2.5.6G states that examples of considerations to which the Authority may have regard when assessing whether a firm will satisfy, and continue to satisfy the suitability Threshold Condition include whether the firm has been open and co-operative in all its dealings with the Authority and is ready, willing and organised to comply with the requirements and standards under the regulatory system (COND 2.5.6G(1)) and the firm has made arrangements to put in place an adequate system of internal control to comply with the requirements and standards for which the Authority is responsible under the regulatory system (COND 2.5.6G(1A)).

#### **OTHER RELEVANT REGULATORY PROVISIONS**

15. The Authority's policy in relation to its enforcement powers is set out in the Enforcement Guide (EG), certain provisions of which are summarised below.
16. EG 8.1 reflects the provisions of section 55J of the Act that the Authority may use its own-initiative power to vary or cancel the permission of an authorised firm where a firm is failing or is likely to fail to satisfy the Threshold Conditions (EG 8.1(1)).

#### Varying a firm's Part 4A permission on the Authority's own initiative

17. EG 8.3 provides that the Authority will exercise its formal powers under section 55J or 55L of the Act, where the Authority considers it is appropriate to ensure a firm meets its regulatory requirements. EG 8.3(1) specifies that the Authority may consider it appropriate to exercise its powers where it has serious concerns about a firm or the way its business is being or has been conducted.
18. EG 8.5(1)(a) specifies that the Authority will consider exercising its own-initiative power under section 55J(1)(a) or 55L(2)(a) of the Act, where the firm appears to be failing, or appears likely to fail, to satisfy the Threshold Conditions relating to one or more, or all, of its regulated activities.
19. EG 8.5(1)(b) specifies that the Authority will consider exercising its own-initiative power under section 55J(1)(a) or 55L(2)(a) of the Act, where the firm appears not to be a fit and proper person to carry on a regulated activity because it has breached requirements imposed on it by or under the Act (including Principles and rules) and the breaches are material in number or individual seriousness (EG 8.5(1)(b)(iii)).

#### Use of the own-initiative powers in urgent cases

20. EG 8.6 states that the Authority may impose a variation of permission so that it takes effect immediately or on a specified date if it reasonably considers it necessary for the variation to take effect immediately (or on the date specified), having regard to the ground on which it is exercising its own-initiative powers.
21. EG 8.7 provides the circumstances in which the Authority will consider exercising its own initiative power as a matter of urgency, include where the information available to it indicates serious concerns about the firm or its business that need to be addressed immediately (EG 8.7(1)).
22. EG 8.8 sets out a non-exhaustive list of factors the Authority will consider in exercising its own-initiative power as a matter of urgency. EG 8.8(1) specifies that

the Authority will consider urgent own-initiative action if there is information indicating a significant loss, risk of loss or other adverse effects for consumers, where action is necessary to protect their interests.

23. EG 8.9 sets out the factors which will determine whether the urgent exercise of the Authority's own-initiative power is an appropriate response to serious concerns, including: the extent of any consumer loss or risk of consumer loss or other adverse effect on consumers (EG 8.9(1)) and the extent to which customer assets appear to be at risk (EG 8.9(2)).