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**FIRST SUPERVISORY NOTICE**

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**To: Exmoor Partners LLP (“Exmoor”)**

**FRN: 673694**

**Dated: 14 September 2018**

**TAKE NOTICE: The Financial Conduct Authority (“the Authority”) of 12, Endeavour Square, London, E20 1JN has taken the following action pursuant to regulation 12(1) of the Payment Services Regulation 2017 (“the Regulations”):**

**ACTION**

1. For the reasons given below and pursuant to regulation 12(1) of the Regulations, the Authority has decided to vary the authorisation granted to Exmoor pursuant to Part 2 of the Regulations, by imposing the following requirements on Exmoor:
  - a) As of 14 September 2018, Exmoor must not carry out any regulated payment services.
  - b) As of 14 September 2018, Exmoor must not in any way dispose of, deal with or diminish the value of any of its assets, whether held in the United Kingdom or elsewhere, without the prior written consent of the Authority.
  - c) By 20 September 2018, Exmoor must set out in a prominent place on all of its websites, including, but not limited to [www.exmoorpartners.com](http://www.exmoorpartners.com), that it is no longer permitted to conduct any regulated payment services. The wording and format of this announcement is to be approved by the Authority prior to its being placed on the website.

- d) Exmoor must immediately secure all books and records and preserve information and systems relating to regulated payment services, and must retain these in a form and at a location, to be notified to the Authority in writing within by 20 September 2018 such that they can be provided to the Authority, or to a person named by the Authority, promptly on its request.

## **REASONS FOR ACTION**

2. On the basis of the facts and matters described below, the Authority considers that the variation to Exmoor's authorisation is desirable in order to protect the interests of consumers because the Authority has serious concerns relating to the following:
  - a) On at least two occasions, having accepted instructions from clients to fulfil payment orders in respect of significant sums of money, Exmoor appears to have accepted funds but failed to make payments;
  - b) Exmoor has failed to provide any good reason for failing to fulfil these instructions, or to return the equivalent funds;
  - c) Exmoor is now subject to two freezing orders and one judgment debt order made by the Court;
  - d) Exmoor failed to notify the Authority of the imposition of these orders;
  - e) Exmoor has failed to respond appropriately to the Authority's requests for information and has indicated that it is not fully in control of its business and business records;
  - f) Exmoor does not appear to occupy its registered business premises and the Authority has no effective means of ensuring adequate supervision of it;
  - g) the Authority has very serious concerns that new and existing clients of the Firm may be at risk of financial loss. Exmoor is likely to be insolvent.

## **DEFINITIONS**

3. The definitions below are used in this First Supervisory Notice:
  - a) "the Act" means the Financial Services and Markets Act 2000;
  - b) "the Authority" means the Financial Conduct Authority;
  - c) "Exmoor" means Exmoor Partners LLP;
  - d) "the Regulations" means the Payment Services Regulations 2017.

## **FACTS AND MATTERS**

### **Background**

4. Exmoor is an authorised payment institution under the Regulations with permission to provide payment services, including money remittance services. It also provides foreign exchange services to clients seeking to exchange money. Its designated members are Anwar Sioufi and Exmoor Capital Ltd, a company ultimately owned by Mr Sioufi.
5. Authorised payment institutions are obliged to safeguard sums received from, or for the benefit of, a payment service user for the execution of a payment transaction and to keep them segregated in a designated safeguarding account.

### **Customer complaints**

6. In February 2018, Mr M transferred \$US 1 million to Exmoor, for exchange into UK sterling. Exmoor confirmed that the exchange resulted in a sum due of £716,948.67 but, upon Mr M's request to remit these funds to a UK bank account, transferred only £216,948.67.
7. Thereafter, Mr M made enquiries about the missing funds on numerous occasions to Exmoor. Exmoor failed to provide him with any cogent reasons why the instructed payment had not been made in full or as to where his funds were.
8. On 30 May 2018, solicitors for Mr M issued a letter before action, requiring payment of the missing £500,000. No substantive response was made by Exmoor. On 19 July 2018, Mr M obtained from the court a freezing order, freezing Exmoor's assets. He subsequently issued a claim for the missing £500,000.
9. On 25 July 2018, Exmoor paid £250,000 to Mr M. On 26 July 2018, Exmoor consented to judgment in the court action being made in Mr M's favour, for payment of the sum of £250,000, plus £40,000 costs, to be paid by 9 August 2018.
10. To date, Exmoor has failed to make payment of the £290,000 or to offer explanation for the failure to pay.
11. Exmoor failed to notify the Authority of the freezing order or of the judgment against it until the Authority ascertained the facts independently.
12. On 2 July 2018, Ms W transferred Bitcoins to Exmoor, which it was agreed would be sold by Exmoor and the sales proceeds, agreed to be £935,814, transferred to Ms W's solicitors' account. Exmoor failed to make the payment as agreed. Despite numerous requests to explain the failure or to transfer the funds, Exmoor failed to provide any cogent explanation for the failure to make payment. On 22 August 2018, Ms W obtained a freezing order from the court, freezing Exmoor's assets.
13. Exmoor failed to notify the Authority of this freezing order. To date, Exmoor has failed to make any payment to Ms W.

## **Failure to engage with the Authority**

14. Despite receiving numerous requests from the Authority since 2 July 2018 to discuss its affairs, Exmoor has failed to engage with the Authority to any significant degree and has avoided substantive contact. In conversations with the Authority's officers, Mr Sioufi has indicated that Exmoor cannot access its business premises and that it is unable to reconcile its payment records.
15. When officers of the Authority visited Exmoor's registered business premises on 12 September 2018, they ascertained that it no longer occupied the premises.

## **FAILINGS AND RISKS TO OPERATIONAL OBJECTIVE**

16. The regulatory provisions relevant to this First Supervisory Notice are set out in the Annex.
17. From the facts and matters described above, and having regard to its regulatory objectives the Authority has concerns that:
  - a) Exmoor has accepted substantial funds for the purposes of making payment transactions;
  - b) On at least two occasions, Exmoor has failed to make payment transactions as agreed and has failed to return funds to its clients;
  - c) Exmoor has failed to provide the customers in question with information as to the reasons for its failures;
  - d) Exmoor has failed to inform the Authority of these failures or the fact that both freezing orders and a court judgment have been made against it;
  - e) Exmoor has failed to engage adequately with the Authority and to provide it with information about its affairs;
  - f) Exmoor has indicated that it is not in control of its affairs and has vacated its premises; and
  - g) the Authority has very serious concerns that new and existing clients of the Firm may be at risk of financial loss. Exmoor is likely to be insolvent.
18. As such, existing and potential new customers of the Firm may be at risk of financial loss should the Firm continue to conduct regulated payment services and/or dispose of its assets. As a result, the Authority considers that the variation of Exmoor's authorisation is desirable in order to protect the interests of consumers.

19. The Authority considers that these requirements are appropriate and proportionate in order to advance its consumer protection objective.

## **PROCEDURAL MATTERS**

### **Decision Maker**

20. This decision was taken by a Deputy Chair of the Regulatory Decisions Committee.
21. This First Supervisory Notice is given to Exmoor under regulation 12(6) of the Regulations and in accordance with regulation 12(7) of the Regulations.

### **The Tribunal**

22. Exmoor has the right to refer the matter to which this First Supervisory Notice relates to the Upper 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 of the Tribunal Procedure (Upper Tribunal) Rules 2008, Exmoor has 28 days from the date on which this First Supervisory Notice is given to it to refer the matter to the Upper Tribunal.
23. A reference to the Tribunal can be made by way of a signed reference notice (Form FTC3) and filed with a copy of this First Supervisory Notice. The Tribunal's contact details are: The Upper Tribunal, Tax and Chancery Chamber, 5th Floor, 7 Rolls Buildings, Fetter Lane, London EC4A 1NL (telephone: 020 7612 9730; email: [uttchmcts.gsi.gov.uk](mailto:uttchmcts.gsi.gov.uk)).
24. For further information on the Upper Tribunal (including the power to vary time periods) reference should be made to the HM Courts and Tribunal Service website which provides 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>
25. A copy of Form FTC3 must also be sent to William Walsh at the Authority, 12, Endeavour Square, London, E20 1JN at the same time as filing a reference with the Upper Tribunal.

### **Representations**

26. Exmoor has the right to make written and oral representations to the Authority (whether or not it refers this matter to the Tribunal). The deadline for notifying the Authority that Exmoor wishes to make oral representations and for providing written representations is 2 October 2018 or such later date as may be permitted by the Authority. The address for doing so is:

Lynn Cheesman  
Decision-Making Committees  
Financial Conduct Authority  
12 Endeavour Square  
London  
E20 1JN

### **Publicity**

27. Paragraph 10 of schedule 6 to the Regulations provides that section 391 of the Act shall apply to supervisory notices given under regulation 12(6) of the Regulations. Section 391(5) requires the Authority, when the First Supervisory Notice takes effect (and this First Supervisory Notice takes immediate effect), to publish such information about the matter as it considers appropriate.

### **Contacts**

28. For more information concerning this matter generally, Exmoor should contact William Walsh at the Authority (direct line: 020 7066 5518).

29. If Exmoor has any questions regarding the procedures of the Regulatory Decisions Committee, it should contact Lynn Cheesman (direct line: 020 7066 3192).

**Simon Pearce, Company Secretary on behalf of  
John Hull  
Deputy Chair, Regulatory Decisions Committee**

## ANNEX

### RELEVANT STATUTORY PROVISIONS

1. By sections 1B to 1H of the Act, the Authority has operational objectives which include securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.
2. By regulation 2(1) of the Regulations, “payment service providers” include authorised payment institutions.
3. Regulation 7(1) of the Regulations provides that the Authority may include in the authorisation of an authorised payment institution such requirements as it considers appropriate. Regulation 7(2) of the Regulations provides that a requirement may, in particular, be imposed so as to require the person concerned to (a) take a specified action; (b) refrain from taking a specified action.
4. Regulation 8 of the Regulations provides that the Authority may, on the application of an authorised payment institution, vary that person's authorisation by, among other things, imposing a requirement such as may, under regulation 7 of the Regulations, be included in an authorisation.
5. Regulation 12(1) of the Regulations provides that the Authority may vary a person's authorisation in any of the ways mentioned in regulation 8 if it appears to the Authority that—(a) the person no longer meets, or is unlikely to continue to meet, any of the conditions set out in regulation 6(4) to (9) (conditions for authorisation) or, if applicable, the requirement in regulation 22(1) (capital requirements) to maintain own funds, or does not inform the Authority of a major change in circumstances which is relevant to its meeting those conditions or that requirement, as required by regulation 37 (duty to notify change in circumstance);... (c) the person would constitute a threat to the stability of, or trust in, a payment system by continuing to provide a particular payment service or payment services; or (d) the variation is desirable in order to protect the interests of consumers.
6. Regulation 12(2) of the Regulations provides that a variation under this regulation takes effect immediately, if the notice given under paragraph (6) states that that is the case or (b) on such date as may be specified in the notice. Regulation 12(3) of the Regulations provides that a variation may be expressed to take effect immediately or on a specified date only if the Authority, having regard to the ground on which it is exercising the power under paragraph (1), reasonably considers that it is necessary for the variation to take effect immediately or, as the case may be, on that date.
7. Regulation 12(6) of the Regulations provides that, where the Authority proposes to vary a person's authorisation under this regulation, it must give the person notice.
8. Regulation 37(1) of the Regulations provides that, where it becomes apparent to an authorised payment institution that there is, or is likely to be, a significant change in circumstances which is relevant to—(a) in the case of an authorised payment institution—(i) its fulfilment of any of the conditions set out in regulation 6(4) to (9) (conditions for authorisation) and, if applicable, the requirement in

regulation 22(1) (capital requirements) to maintain own funds; (ii) the payment services which it seeks to carry on in exercise of its passport rights it must provide the Authority with details of the change without undue delay, or, in the case of a substantial change in circumstances which has not yet taken place, details of the likely change a reasonable period before it takes place.

9. Section 391 of the Act, as varied by paragraph 10 of Schedule 6 to the Regulations, provides that:
  - a. “[...]”
  - b. When a supervisory notice takes effect, the [Authority] must publish such information about the matter to which the notice relates as it considers appropriate.
  - c. 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 or proposed to be taken, (b) prejudicial to the interests of consumers...
  - d. Information is to be published under this section in such manner as
  - e. the [Authority] considers appropriate.”

## **RELEVANT HANDBOOK PROVISIONS**

10. 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.
11. EG 19.20 outlines the Authority's approach to enforcing the provisions of the Regulations. EG 19.20.5 provides that the Regulations, for the most part, mirror the Authority's investigative, sanctioning and regulatory powers under the Act and that the Authority has decided to adopt procedures and policies in relation to the use of those powers akin to those it has under the Act.
12. The Authority considers that the powers under regulation 12(1) of the Regulations are similar to those under sections 55J and 55L of the Act and that the provisions of EG 8 “Variation and cancellation of permission and imposition of requirements on the FCA's own initiative and intervention against incoming firms” are applicable.

### Imposing requirements on the Authority's own-initiative

13. EG 8.1B provides that the Authority will have regard to its statutory 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 Authority will also have regard to: (1) the responsibilities of a firm's management to deal with concerns about the firm or about the way its business is being or has been run; and (2) the principle that a restriction imposed on a firm should be proportionate to the objectives the Authority is seeking to achieve.
14. 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.

15. EG 8.12 states examples of requirements that the Authority may consider imposing when exercising its own-initiative power in support of its enforcement function are: a requirement not to hold or control client money and a requirement that prohibits the disposal of, or other dealing with, any of the firm's assets or restricts those disposals or dealings; and a requirement that all or any of the firm's assets, or all or any assets belonging to investors but held by the firm to its order, must be transferred to a trustee approved by the Authority.

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

16. EG 8.6 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.
17. 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)).
18. EG 8.8 sets out a non-exhaustive list of situations in which the Authority will consider in exercising its own-initiative power as a matter of urgency. EG 8.8(1) suggests that the Authority may 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.
19. EG 8.9 states that the Authority will consider the full circumstances of each case when it decides whether an urgent imposition of a requirement is appropriate and sets out a non-exhaustive list of 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)), the financial resources of the firm (EG 8.9(5)), the firm's conduct (EG 8.9(6)) and the impact which the use of the Authority's own-initiative powers will have on the firm's business and on its consumers.