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## FIRST SUPERVISORY NOTICE

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**To:** Hoch Capital Ltd

**Reference Number:** 631408

**Address:** Griva Digeni & Kolonakiou  
125, Grosvenor Tower  
Ground Floor  
Linopetra 3107  
Limassol  
Cyprus

**Date:** 28 May 2020

### 1 ACTION

- 1.1 For the reasons given below and pursuant to section 196 of the Financial Services and Markets Act 2000 ("the Act"), the Authority has decided to impose the following requirements on Hoch Capital Ltd, trading as "ITrader" and "tradeATF" ("the Firm"), with immediate effect:
- 1) The Firm must not conduct any regulated activities with, or in respect of, any client who is resident in the United Kingdom, except as is necessary to comply with requirements 3) and 4) below.
  - 2) The Firm must not conduct any marketing activity to persons resident in the United Kingdom.
  - 3) By 4 June 2020, in respect of all its clients who are resident in the United Kingdom, the Firm must close all open trading positions and liquidate the positions into pound sterling balances (save for hedged positions which should be netted off rather than closed individually). Any positive cash balance held by a client resident in the United Kingdom must be paid to a bank or payment account held in the client's name as soon as practicable and, in any event, by 11 June 2020.

- 4) By 4 June 2020, the Firm must notify all its clients who are resident in the UK by email that it is no longer able to provide investment services to them and will be taking all reasonable steps to return all balances held by the Firm on their behalf.
- 5) By 1 June 2020, the Firm must display on all websites used by it in the course of providing regulated activities, including but not limited to [www.hochcapital.com](http://www.hochcapital.com), [www.itrader.com](http://www.itrader.com) and [www.tradeATF.com](http://www.tradeATF.com) , a notice of such size and prominence that all viewers of the website will inevitably see and be able to read it, which states: "Hoch Capital Ltd is not permitted to provide regulated financial services to residents of the United Kingdom."
- 6) By 1 June 2020, the Firm must display on its trading platform, at the point when clients log into the trading platform, a notice of such size and prominence that all users seeking to log into the trading platform will inevitably see and be able to read it, which states: "Hoch Capital Ltd is not permitted to provide regulated financial services to residents of the United Kingdom."
- 7) If any payments are made to any account held by the Firm with an institution which either: (1) were paid from any bank account held in the United Kingdom; or (2) were made using any credit or debit card issued in the United Kingdom, the Firm must not dispose of, withdraw, transfer, deal with or diminish the value of the proceeds of any such payments without the written consent of the Financial Conduct Authority.

1.2 Requirement 7) above is a requirement of the kind mentioned in subsection (4) of section 55P of the Act.

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

## 2 REASONS FOR ACTION

2.1 The Firm is an investment firm registered in Cyprus. It provides consumers with the ability to trade CFDs through an online platform. The Authority considers that the Firm has acted in contravention of its obligations under MiFID, as implemented in Cypriot law, and that it is acting in a manner which is clearly prejudicial to the interests of investors in the United Kingdom.

2.2 In particular, the Firm's marketing material is not fair, clear and not misleading, it has failed to carry out appropriate assessments of the compatibility of its products with its customers and it has engaged in highly inappropriate sales practices.

2.3 Several of its clients have lost significant sums of money through dealing with the Firm.

2.4 As a result, the Authority has concluded, on the basis of the facts and matters described below, that it is desirable to exercise its power of intervention to impose requirements on the Firm which will prevent it from providing any further

investment services to United Kingdom consumers. Given the serious concerns that the Authority has about the Firm, and the significant risks it presents to UK consumers, the Authority considers that it is necessary for the requirements to take effect immediately.

- 2.5 This action is taken in order to advance the Authority's consumer protection objective.

### **3 DEFINITIONS**

- 3.1 In this Notice:

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

"the Authority" means the Financial Conduct Authority;

"CFD" means contracts for differences;

"CySEC" means the Cyprus Securities and Exchange Commission;

"the Firm" means Hoch Capital Ltd, trading as "ITrader" and "tradeATF";

"MiFID" means the Markets in Financial Instruments Directive (2014/65/EU);

"the RDC" means the Regulatory Decisions Committee of the Authority (see further at paragraph 6.1 below);

"the requirements" mean the requirements set out at paragraph 1.1 of this Notice; and

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

### **4 FACTS AND MATTERS**

#### Background

- 4.1 The Firm is a company registered in Cyprus and authorised since 13 May 2013 as an investment firm with CySEC to conduct the following regulated activities: reception and transmission of orders in relation to one or more financial instruments, execution of orders on behalf of clients and portfolio management.
- 4.2 The Firm operates primarily through the websites [www.hochcapital.com](http://www.hochcapital.com), [www.tradeATF.com](http://www.tradeATF.com) and [www.itrader.com](http://www.itrader.com) under the trading names "ITrader" and tradeATF.
- 4.3 Through its websites, the Firm provides its clients with access to an online platform on which CFDs can be traded. The website [itrader.com](http://itrader.com) advertises that "Our platforms offer CFD trading on a variety of financial assets, such as stocks, indices, currencies, cryptocurrencies and commodities".

- 4.4 Since 2 October 2014 the Firm has had permission to conduct cross-border services to the UK under MiFID for investment services involving financial CFDs. The Firm is obliged to comply with the conduct of business requirements of MiFID, as transposed into Cypriot law.
- 4.5 CFDs are complex financial derivative products which are used to speculate on the movement in prices on a wide range of assets. They frequently involve high levels of leverage which creates the risk of substantial losses in the event of even small adverse price fluctuations in the underlying assets. CFDs present significant risks to investors who lack the necessary experience, knowledge and expertise to make appropriate investment decisions. As a result, they are generally unsuitable products for inexperienced investors.
- 4.6 Under the terms of MiFID, investment firms are required to assess the compatibility of financial instruments with the needs of their clients and ensure that the financial instruments are offered or recommended only when this is in the interest of the client. They are also required to ensure that their marketing communications are fair, clear and not misleading, that they provide appropriate information to clients and that they act honestly, fairly and professionally in accordance with the best interests of their clients.

#### Complaints

- 4.7 Between 2 January 2018 and 30 March 2020, the Authority has received 87 contacts from customers complaining or expressing concern about the Firm.
- 4.8 A particular theme to the complaints is the use of misleading advertising to attract customers: for example through the use of celebrities in the Firm's advertisements. These advertisements frequently purported to advertise trading in cryptoassets or foreign exchange and failed adequately to disclose the true nature of the products being marketed.
- 4.9 The Authority has identified marketing material which purported to be articles on websites relating to cryptoassets but which, in fact, induced consumers to register their details with tradeATF. These articles failed to make clear the nature of the products which the Firm offered.
- 4.10 As a result, despite having invested significant sums with the Firm, many customers remained unclear about the nature of the products they had been trading, stating that they considered themselves to have been trading cryptoassets, foreign currency or company shares, rather than leveraged derivatives.
- 4.11 Clients were induced to open trading accounts with the Firm by making small initial investments (generally £250-£400). Having opened accounts, some customers who complained to the Authority described the Firm's representatives putting significant pressure on them to invest further sums of increasing amounts. Seventeen complainants complained of having been pressurised to take out loans or credit cards to make additional investments.
- 4.12 Four complainants complained that Hoch employees had taken over their computers in order to conduct trades or had provided advice on what investments to make. Hoch does not have permission to provide investment advice.

- 4.13 Several customers complained about being unable to contact the Firm or to withdraw their funds. In one case, a customer was required to pay £7,500 in order to close his account. Other complaints included the inappropriate treatment of a customer as a professional investor, the charging of undisclosed fees and the use of settlement agreements to resolve disputes. The Firm's fees are not outlined clearly on its websites.
- 4.14 As a result of transacting with the Firm, some customers sustained significant financial losses. Ten customers lost over £20,000. A further nine customers lost over £50,000. An additional three customers lost over £100,000.

#### Procedure

- 4.15 Having clear and demonstrable grounds for believing that the Firm was contravening provisions adopted in Cyprus for the purposes of implementing MiFID, the Authority notified the Cyprus Securities and Exchange Commission ("CySEC") of the situation, requested that it take all appropriate measures for the purpose of ensuring that the Firm puts an end to the contravention, stated that the Authority's powers of intervention were likely to become exercisable in relation to the Firm if it continued the contravention and indicated the requirements that the Authority proposed to impose on the Firm in the event of the power becoming exercisable. A reasonable time has expired since this notice was given and, either the CySEC has failed to take such measures or any measures taken have proved inadequate for the purpose of ending the contravention. The Authority considers that the Firm is acting in a manner which is clearly prejudicial to the interests of investors in the UK and has informed CySEC of its intention to exercise its power of intervention in respect of the Firm.

## **5 FAILINGS**

- 5.1 The regulatory provisions relevant to this First Supervisory Notice are set out in the Annex.
- 5.2 From the facts and matters described above, the Authority has concluded that the Firm has acted in contravention of its obligations under MiFID, as transposed into Cypriot law by failing to:
- a) ensure that its marketing communications are fair, clear and not misleading;
  - b) assess the compatibility of the financial instruments with the needs of the clients to whom the Firm provides investment services;
  - c) provide appropriate information in good time to clients or potential clients with regard to the Firm and its services;
  - d) act honestly, fairly and professionally in accordance with the best interests of its clients; and
  - e) disclose its fee schedule in a comprehensible form such that clients are reasonably able to understand the nature and risks of the investment services.
- 5.3 The Authority considers that the Firm is acting in a manner which is clearly prejudicial to the interests of investors in the United Kingdom and presents a significant risk to consumers.

- 5.4 As a result, the Authority has concluded that it is desirable to exercise its power of intervention under section 196 of the Act to impose the requirements with immediate effect in order to secure an appropriate degree of protection for consumers.
- 5.5 The Authority considers that the requirements are an appropriate and proportionate means to protect against the risks identified.

## 6 PROCEDURAL MATTERS

### Decision Maker

- 6.1 The decision which gave rise to the obligation to give this First Supervisory Notice was made by the RDC. The RDC is a committee of the Authority which takes certain decisions on behalf of the Authority. The members of the RDC are separate from the Authority staff involved in conducting investigations and recommending action against firms and individuals. Further information about the RDC can be found on the Authority's website: <https://www.fca.org.uk/about/committees/regulatory-decisions-committee-rdc>.
- 6.2 This First Supervisory Notice is given under section 197(3) and in accordance with section 197(4) of the Act.
- 6.3 The following paragraphs are important.

### Representations

- 6.4 The Firm has the right to make representations to the Authority (whether or not it refers this matter to the Tribunal). The deadline for providing written representations and/or notifying the Authority that the Firm wishes to make oral representations is 18 June 2020 or such later date as may be permitted by the Authority. The address for doing so is:

Jack Williams  
Decision-Making Committees Secretariat  
Financial Conduct Authority  
12 Endeavour Square  
London  
E20 1JN  
Email: [DMCScaseinbox@fca.org.uk](mailto:DMCScaseinbox@fca.org.uk)

### The Tribunal

- 6.5 The Firm has the right to refer the matter to which this First Supervisory Notice relates to the Tribunal, which considers 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 First Supervisory Notice is given to it to refer the matter to the Tribunal.

- 6.6 A reference to the Tribunal can be made by way of a reference notice (Form FTC3) signed by the Firm and filed with a copy of this First Supervisory Notice. The Tribunal's contact details are: Upper Tribunal (Tax and Chancery Chamber), 5th Floor, Rolls Building, Fetter Lane, London EC4A 1NL (telephone: 020 7612 9730; email: [uttc@justice.gov.uk](mailto:uttc@justice.gov.uk)).
- 6.7 Further details are contained in "Making a Reference to the Upper Tribunal (Tax and Chancery Chamber)" which is available from the Tribunal website: <http://formfinder.hmctsformfinder.justice.gov.uk/t400-eng.pdf>
- 6.8 A copy of Form FTC3 must also be sent to James Alleyne at the Financial Conduct Authority, 12 Endeavour Square, London, E20 1JN at the same time as a reference is filed with the Tribunal.

#### Confidentiality and publicity

- 6.9 The Firm should note that this First 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).
- 6.10 The Firm should note that section 391(5) of the Act requires the Authority, when this First Supervisory Notice takes effect (and this First Supervisory Notice takes immediate effect), to publish such information about the matter to which the notice relates as it considers appropriate.

#### Authority contacts

- 6.11 For more information concerning this matter generally, contact James Alleyne at the Authority (direct line 020 7066 2686; email [james.alleyne@fca.org.uk](mailto:james.alleyne@fca.org.uk)).
- 6.12 If the Firm has any questions regarding the procedures of the RDC, it should contact Jack Williams (direct line 020 7066 1610; email [DMCScaseinboxsecretariat@fca.org.uk](mailto:DMCScaseinboxsecretariat@fca.org.uk)).

**Tim Parkes**  
**Chair, Regulatory Decisions Committee**

## Annex

### **RELEVANT STATUTORY PROVISIONS UNDER THE ACT**

1. The Authority's operational objectives established in section 1B of the Act include securing an appropriate degree of protection for consumers (section 1C).
2. If the Authority is entitled to exercise its power of intervention in respect of an incoming firm under Part XIII of the Act, it may impose under section 196 of the Act any requirement in relation to the firm which the Authority could impose if the firm's permission was a Part 4A permission and the regulator was entitled to exercise its power under section 55L(3) of the Act.
3. Section 55L of the Act allows the Authority to impose a new requirement on an authorised person if it appears to the Authority that it is desirable to exercise the power in order to advance one or more of the Authority's operational objectives (section 55L(2)(c)).
4. 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)).
5. Section 55P of the Act allows a requirement to be imposed under section 55L of the Act prohibiting the disposal of, or other dealing with, any of an authorised person's assets (whether in the UK or elsewhere), or restricting such disposals or dealings.
6. Section 197(2) of the Act allows a requirement to take effect immediately (or on a specified date) only if the Authority, having regard to the ground on which it is exercising its power of intervention, considers that it is necessary for the requirement to take effect immediately (or on that date).
7. 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 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 MiFID STATUTORY PROVISIONS**

8. Article 24 of MiFID concerns general principles and information to clients.
9. Article 24.1 of MiFID requires that, when providing investment or ancillary services, investment firms act honestly, fairly and professionally in accordance with the best interests of their clients.



10. Article 24.2 of MiFID requires that investment firms assess the compatibility of the financial instruments with the needs of the clients to whom they provide investment services and ensure that the financial instruments are offered or recommended only when this is in the interest of the client.
11. Article 24.3 of MiFID requires that all information, including marketing communications, addressed by investment firms to clients or potential clients shall be "fair, clear and not misleading". It also requires marketing communications shall be clearly identifiable as such.
12. Article 24.4 of MiFID requires appropriate information to be provided in good time to clients or potential clients with regard to the investment firm and its services, the financial instruments and proposed investment strategies, execution venues and all costs and related charges.
13. Article 24.5 of MiFID requires that the information referred to in paragraph 24.4 shall be provided in a comprehensible form in such a manner that clients or potential clients are reasonably able to understand the nature and risks of the investment service and of the specific type of financial instrument that is being offered and, consequently, to take investment decisions on an informed basis.

## **RELEVANT REGULATORY PROVISIONS**

### The Enforcement Guide

14. 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.
15. EG 8.7 sets out the Authority's policy on exercising its power of intervention against incoming firms under section 196 of the Act.
16. EG 8.7.1 states that the Authority adopts a similar approach to the exercise of its power of intervention under section 196 as it does to its own-initiative powers to vary a Part 4A permission or impose requirements, but with suitable modification for the differences in the statutory grounds for exercising the powers. Consequently, the factors and considerations set out in EG 8.2.1 to 8.4.4 and 8.6.1 to 8.6.8 may also be relevant when the Authority is considering regulatory concerns about incoming firms.
17. EG 8.7.2 states that when considering action against an incoming firm, the Authority will co-operate with the firm's home state regulator as appropriate, including notifying and informing the firm's home state regulator as required by the relevant section of the Act.
18. A home state regulator in relation to an EEA firm as defined by paragraph 9 of Schedule 3 to the Act is the competent authority under the relevant Single Market Directive of an EEA State (other than the UK) in relation to the EEA firm concerned.
19. 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)).
20. 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)).

21. 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.
22. EG 8.3.2 states that the Authority 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.
23. 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;..."*.
24. 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:
  - "(1) 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 it is that [the Authority]'s urgent exercise of its own-initiative powers will be appropriate, to protect the consumers' interests.*
  - (2) The extent to which customer assets appear to be at risk. Urgent exercise of [the Authority]'s own-initiative power may be appropriate where the information available to [the Authority] suggests that customer assets held by, or to the order of, the firm may be at risk.*
  - ...
  - (4) 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.*
  - ...
  - (8) The firm's conduct. [The Authority] will take into account:*
    - (a) whether the firm identified the issue (and if so whether this was by chance or as a result of the firm's normal controls and monitoring);*
    - (b) whether the firm brought the issue promptly to [the Authority]'s attention;*

*(c) the firm's past history, management ethos and compliance culture;*

*(d) steps that the firm has taken or is taking to address the issue.*

- (9) *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 take into account the (sometimes significant) impact that a variation of permission may have on a firm's business and on market confidence. [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."*