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## FIRST SUPERVISORY NOTICE

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**To:** **Micro-E C.I.C.**

**Reference Number:** **671697**

**Address:** **Bemrose Chambers  
38 St Peters Churchyard  
Derby  
Derbyshire  
DE1 1NN**

**Date:** **16 November 2022**

### **1 ACTION**

1.1 For the reasons given in this First Supervisory Notice, and pursuant to section 55L(2)(a) and (3)(a) of the Financial Services and Markets Act 2000 ("the Act"), the Financial Conduct Authority ("the Authority") has decided to impose the following requirements ("the Requirements") on Micro-E C.I.C ("the Firm") with immediate effect.

#### Restrictions on activities

- 1) The Firm must not, without the prior written consent of the Authority, provide loans or credit to any new or existing customers;
- 2) The Firm must not, without the prior written consent of the Authority, enter into any agreement with any party relating to the provision of loans, investment monies or any other form of funding to the Firm, its director or any other party;

- 3) The Firm must not, without the prior written consent of the Authority, receive any loans, investment monies or any other form of funding directly or indirectly from any third parties. For the avoidance of doubt, this does not prevent the Firm from receiving repayments of debts incurred prior to the imposition of the Requirements, including but not limited to loans to its directors;

#### Assets requirement

- 4) Save as set out in sub-paragraphs (5) and (6) below, the Firm must not, without the prior written consent of the Authority, in any way dispose of, withdraw, transfer, deal with or diminish 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), whether held by the Firm as at the date of the imposition of the Requirements or acquired thereafter;
- 5) The Firm may continue dealing with or disposing of any of its own assets in the ordinary and proper course of business provided that the sum or value of such dealings or disposals, whether as a single transaction or a combination of related transactions, does not exceed £1,000 (or £3,000 in the case of legal expenses);
- 6) For the avoidance of doubt, for the purposes of sub-paragraph (5) above, the following would be in the ordinary and proper course of business:
  - a) Any and all fees incurred or paid in exchange for professional advisory services provided to the Firm;
  - b) Any amounts due to be paid to creditors of the Firm for sums incurred prior to the imposition of the Requirements, including but not limited to suppliers' fees and sums owing to HMRC; or
  - c) Any and all salaries of the Firm's staff, including to its directors, contractors or any other employees, where such salaries have been agreed prior to the imposition of the Requirements;
- 7) For the avoidance of doubt, for the purposes of sub-paragraph (5) above, the following would not be in the ordinary and proper course of business:
  - a) The making of any distribution to the Firm's shareholders whether by way of capital distribution or dividends;
  - b) Subject to sub-paragraph (6)(c) above, any payment to the Firm's shareholders, directors, officers, employees, any connected entities or persons;
  - c) The making of any gift or loan by the Firm to any party; or
  - d) The entry into any financial reconstruction, sale of any part of the Firm (whether share or asset based) or reorganisation;
- 8) Sub-paragraphs (4) and (5) are assets requirements within the meaning of section 55P(4)(a) of the Act;

#### Retention and notification requirements

- 9) By close of business on 23 November 2022, the Firm must notify in writing:

- a) all parties from which the Firm has received a loan, investment monies or any other form of funding and in respect of which any amounts (whether principal, capital or interest) are outstanding,

of the terms and effects of these Requirements. This must be in a form to be agreed in advance with the Authority;

- 10) Once the notifications in sub-paragraph (9) have been made, by 24 November 2022, the Firm must provide to the Authority:

- a) Copies of the notifications sent to each of the parties referred to in sub-paragraph (9); and

- b) Confirmation that, to the best of its knowledge, the Firm has sent notifications pursuant to sub-paragraph (9) to all relevant parties.

- 11) The Firm must secure and preserve all records and/or information (physical or electronic) in relation to all activities carried on by it. These must be retained in a form and at a location within the United Kingdom, to be notified to the Authority in writing by 22 November 2022, such that they can be provided to the Authority, or to a person named by the Authority, promptly on its request;

- 12) The Firm must provide written confirmation to the Authority that it is in compliance with the Requirements by 24 November 2022, until such time as it is notified in writing by the Authority that it may cease to do so; and

- 13) The Firm's director must send to the Authority via email by 12 noon every Friday (or the following business day should the Friday fall on a Bank Holiday), until such time as it is notified otherwise in writing by the Authority, copies of that week's bank statements for all bank accounts held by the Firm showing that the Firm is in compliance with the Requirements.

- 1.2 These Requirements shall take immediate effect and 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**

### **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(2)(a) and (3)(a) of the Act to impose the Requirements on the Firm because it is failing, or is likely to fail, to satisfy the Threshold Conditions.

- 2.2 Section 55L of the Act permits the Authority to impose requirements on the Firm because:

- 1) 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
- 2) it is failing, or is likely to fail, to satisfy the Suitability Threshold Condition pursuant to section 2E of Schedule 6 of the Act.

### Appropriate Resources Threshold Condition

2.3 The Authority considers that the Firm is failing, or likely to fail, to satisfy the Appropriate Resources Threshold Condition because there are no reasonable prospects that the Firm's largest asset, a debt of £99,397 owed pursuant to a purported director's loan, will be fully repaid. The Firm's director appears to have used the director's loan account to fund personal expenditure and the Authority has serious concerns that the director does not have a viable plan, or the means, to fully repay the loan within a reasonable timeframe. Accordingly, the Authority considers that the Firm's liabilities of £98,130 exceeds the Firm's remaining assets of £18,809. The Firm has not satisfied the Authority that it has sufficient resources to meet its liabilities as they fall due.

#### Suitability Threshold Condition

2.4 The Authority considers that the Firm is failing, or likely to fail, to satisfy the Suitability Threshold Condition because the Firm is not a fit and proper person as its business is not being, or will not be, managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner. This is because:

- 1) The Firm appears to have misappropriated £10,000 in loan monies, which were to be used for working capital for the Firm, by enabling the loan monies to be paid to a person closely connected to the director. The Firm misled the Authority when it stated that the person closely connected to the director had "shortly cascaded" the funds to the Firm when in fact, they had not;
- 2) The Firm improperly accepted a £10,000 loan repayable with high interest as "remuneration" in lieu of salary or fees for consultancy work carried out by the Firm's director for a third party;
- 3) The Firm's continued trading is dependent on accepting further loans or funding. The Authority considers that there are no reasonable prospects that any further loans will be fully repaid as the Firm already appears to be incapable of meeting its liabilities as they fall due. Although the Firm has stated that it will not accept a planned loan to it of £10,000 while the Authority's enquiry is ongoing, the Authority is concerned that the Firm has either failed to understand that it would not be sound or prudent for the Firm to accept further loans or is recklessly indifferent to the harm that doing so may cause to the Firm's lenders; and
- 4) The Firm failed to conduct its affairs and use its assets for the benefit of the community as required of a Community Interest Company ("CIC") and under the Firm's Articles of Association.

2.5 The Authority considers that imposition of the Requirements should take immediate effect because the matters set out in this First Supervisory Notice demonstrate that the Firm is unable to manage its affairs in a sound and prudent manner and is putting consumers at risk.

### **3 DEFINITIONS**

3.1 The definitions below are used in this First Supervisory Notice:

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

"the Authority" means the Financial Conduct Authority;

"CIC" means a Community Interest Company;

“Company A” means a company of which the Connected Person is the sole director;

“Connected Person” means a person closely connected with the Director;

“the Director” means the director of the Firm;

“the Firm” means Micro-E C.I.C.;

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

“HCSTC” means high-cost short-term credit;

“Individual A” means the individual who entered into the Individual A Agreement with the Firm;

“the Individual A Agreement” means the loan agreement between the Firm and Individual A dated 1 July 2022 described as a “business loan agreement”;

“Individual B” means the individual who entered into the Individual B Agreement with the Firm;

“the Individual B Agreement” means the loan agreement between the Firm and Individual B dated 14 November 2019 described as a “business loan agreement”;

“Notification Form” means a SUP 15 Annex 4 notification form;

“the Requirements” means the terms imposed on the Firm by this First Supervisory Notice as outline in section 1.1 above;

“the Threshold Conditions” are the minimum requirements that firms need to meet in order to be authorised and to continue carrying on regulated activities as set out in Schedule 6 to the Act; and

“the Tribunal” means the Upper Tribunal (Tax and Chancery Chamber).

## **4 FACTS AND MATTERS**

### **Background**

- 4.1 The Firm was incorporated on 30 November 2009 as a limited company. On 23 November 2011, the Firm was converted to a CIC. The Firm trades as “Kariba Finance” and “Kariba Credit”. It purports to provide “*ethical and competitively priced [high-cost short-term credit (“HCSTC”)] working with economically disadvantaged or financially excluded individuals [...]*”.
- 4.2 The Firm obtains funding to provide HCSTC to customers through loan agreements with third parties. The Authority has identified that the third parties are predominantly individuals, albeit the agreements identified described the loans as “business loans”. The interest rates applied to the HCSTC lent to customers (24% per month) appear to typically exceed the interest rates applied to the “business loans” between the Firm and the third-party lenders (5% to 12.5% per month).
- 4.3 CICs are limited companies which operate to provide a benefit to the community they serve. A CIC must conduct its affairs in such a way that a reasonable person would consider its activities to be carried on for the benefit of the community.

Under the Firm's Articles of Association, the Firm's activities must not be conducted for private gain and any profit or assets must be used principally for the benefit of financially disadvantaged individuals in the community.

- 4.4 The Firm was authorised on 27 January 2016. Its Part 4A permissions enable it to enter into HCSTC as lender, exercise or have the right to exercise the lender's rights and duties in relation to HCSTC and agree to carry on these regulated activities.
- 4.5 The Firm has one director and approved person who currently holds the SMF3 (Executive Director) and SMF17 (Money Laundering Reporting Officer) roles ("the Director"). The Director is also a majority shareholder holding 90.01% of the shares in the Firm.

#### **Failings and risks identified**

- 4.6 On 22 August 2022, the Authority contacted the Firm because it appeared that it had failed to repay a business loan of £5,000 to an individual. The Authority asked the Firm to complete a Notification Form in respect the reason as to why it had not repaid the loan.
- 4.7 On 23 September 2022, the Authority sent a letter to the Firm pursuant to section 165 of the Act because it appeared that the Firm had not submitted a Notification Form. The letter required the Firm to produce documents and information relating to its financial position and business plan.

#### Financial position as at 30 September 2022

- 4.8 As at 30 September 2022, the Firm had total assets of £118,206. The Firm's primary asset is a director's loan with a balance of £99,397. The Firm's net assets were £20,076, represented by total assets of £118,206 less total liabilities of £98,130.
- 4.9 The total liabilities of £98,130 included outstanding "business loans" with four individuals and one company with outstanding balances totalling £43,010. This includes a balance of £10,000 on a loan with Individual A and a balance of £10,000 on a loan with Individual B.
- 4.10 The Firm's financial projections indicate that the Firm intends to continue as a going concern by collecting repayments on its existing loan book and by providing new HCSTC to customers. It appears that the new HCSTC and the Firm's repayment of existing liabilities would be funded by a further advance of £10,000 from Individual A to the Firm in October 2022, and monthly repayments of £2,000 per month by the Director on the director's loan.

#### Director's loan account

- 4.11 As stated at paragraph 4.8, the Firm's largest asset is a director's loan with a balance of £99,397.
- 4.12 According to the Firm, the director's loan account was opened in October 2018, with the payment by the Director to the Firm of £50,000 (in the form of a loan). Since then, the Director made both monthly withdrawals from and payments to the account (which the Firm called "repayments"). Since September 2020 onwards, the account has had a negative balance, with the Firm in effect therefore lending the sum to the Director.
- 4.13 The size of the loan provided by the Firm to the Director is significant. Although the

Director made some payments to the Firm, the balance of the loan has increased each year since the start of the loan in September 2020.

4.14 The Authority considers that the Director has used the director's loan to fund his personal expenditure. The Firm did not have a written director's loan agreement. The Authority has not seen any evidence of:

- 1) Any repayment terms or interest associated with the director's loan;
- 2) Any repayment plans prior to the Authority's engagement with the Firm; and
- 3) The loan of £99,397 providing any benefit to the Firm or the community.

#### *Repayment of the director's loan*

4.15 The Authority is concerned that the Director does not have a viable plan, or the means, to fully repay the director's loan within a reasonable timeframe.

4.16 The Director has not provided evidence that, other than his salary from the Firm (which he said he would sacrifice), he currently has any source of income from employment or consultancy work. The Director has stated that he will pay £1,000 to £2,000 per month to the Firm to repay the director's loan within less than 24 months. However, even if interest payments were ignored, it would take the Director nearly 50 months (or over four years) to fully discharge his debt if he were to make repayments at the maximum amount of £2,000 per month. The Director does not appear to currently have any significant cash that can be used to repay the director's loan.

4.17 Accordingly, the Authority considers that the director's loan is unlikely to be recovered and may therefore represent a bad debt. Other than the director's loan, the Firm's sole assets comprise debtors of £16,981 and office equipment valued at £1,250 and cash of £578. This means that the Firm's liabilities of £98,130 considerably exceed the Firm's assets of £18,809. The Firm has not satisfied the Authority that it has sufficient resources to meet its liabilities as they fall due.

#### Improper use of the Firm's bank account

4.18 The Authority is also concerned that the Director, as the Firm's sole director, has improperly used the Firm's bank account to directly pay for his own personal expenses.

4.19 The Authority has identified 87 payments totalling £3,020.25 made by the Firm's bank account during the period 1 September 2021 to 26 September 2022 that appear to fall within the following payment categories – luxury/clothes, cinema, healthcare, soft play centre, toy shop, streaming subscription premium plan, restaurant/bar/food and drink retailer, gym, and fireworks.

4.20 There does not appear to be any business reason for the Firm to make these payments. It therefore appears that the payments were made for the Director's personal benefit.

4.21 The Authority therefore is concerned that, by misusing the Firm's cash assets, the Firm did not conduct its affairs in a sound and prudent manner.

#### Loan from Individual B to the Firm

4.22 On 14 November 2019, the Firm entered into a loan agreement with Individual B,

described as a "business loan agreement" ("the Individual B Agreement") for the receipt of a loan of £10,000 to be used by the Firm "*as working capital for loan disbursements in [the Firm]*".

- 4.23 The Firm told the Authority on 6 October 2022 that Individual B "*inadvertently*" transferred the loan monies to the bank account of a person closely connected with the Director's ("the Connected Person"), and that the funds were "*shortly cascaded*" (i.e. paid) into the Firm's bank account.
- 4.24 The Connected Person is the sole director of Company A. Company A's bank statements indicate that Company A received the loan monies from Individual B on 18 November 2019.
- 4.25 However, contrary to what the Firm told the Authority on 6 October 2022, the Firm never received the loan monies. It appears that, on 18 November 2019, the same day that Company A received the principal sum, Company A's bank account paid the funds to the Connected Person. There is no evidence that the Connected Person subsequently paid the loan proceeds to the Firm.
- 4.26 The Authority is not aware of any legitimate reason why the Connected Person would receive the loan monies under the Individual B Agreement. The Authority therefore is concerned that the Firm misappropriated the loan monies by enabling it to be paid to the Connected Person. As a result, the funds were not used as working capital for HCSTC loan disbursements as required under the Individual B Agreement. Further, the loan was not used for a community purpose as required of a CIC. It further follows that the loan proceeds did not generate income from which the Firm could make loan repayments to Individual B.
- 4.27 The Authority understands that the Firm did not make any repayments of principal or interest to Individual B by October 2020 as required under the terms of the Individual B Agreement and that the principal remains outstanding.
- 4.28 Given the above evidence, the Authority is concerned that the Firm did not act in a sound and prudent manner when it misappropriated the loan paid pursuant to the Individual B Agreement. In addition, the Firm misled the Authority when it stated that the Connected Person had "*shortly cascaded*" the funds to the Firm when in reality, this did not occur.

#### Loans from Individual A to the Firm

- 4.29 On 1 July 2022, the Firm entered into a loan agreement, described as a "business loan agreement" with Individual A for the receipt of a loan of £10,000 "*as working capital for loan disbursements in [the Firm]*" ("the Individual A Agreement").
- 4.30 On 27 September 2022, the Firm told the Authority that the loan represented remuneration in lieu of salary for consultancy work that the Director carried out for Individual A's business.
- 4.31 The Authority is concerned that the Firm did not act in a sound and prudent manner by entering into the Individual A Agreement. The Firm did not receive any benefit from the Individual A Agreement because:
- 1) The Individual A Agreement cannot be considered true remuneration for the Director's consultancy work for Individual A's firm because the Firm is liable to repay the principal and substantial interest of 5% per month having received the loan. In doing so, the Director exposed the Firm to a substantial further liability without it receiving any benefit in return (save for



the short-term receipt of cash); and

- 2) Had the Director instead agreed to be remunerated directly by way of fees or a salary, he would have been in a position to make repayments on the director's loan.

*Proposed receipt of further loans*

- 4.32 The Firm's financial projections indicate that its continued trading was dependent on receiving a further advance of £10,000 from Individual A in October 2022.
- 4.33 The Authority has serious concerns about the Firm taking a further loan of £10,000 from Individual A or any other loans. This will increase the Firm's liabilities, which it already appears unable to repay.
- 4.34 The Authority is also concerned that the Firm's lenders, including Individual A, may not be aware of the Firm's precarious financial position. There is no commercial reason for Individual A to provide the further advance of £10,000 to a Firm that appears to be insolvent and is unlikely to be in a position to fully repay it.
- 4.35 The Firm was required to disclose in its accounts filed with Companies House details of advances and credits granted by the Firm to its director (sections 413(1)(a) and 472 of the Companies Act 2006). The 2020 and 2021 accounts filed by the Firm did not disclose the director's loan account. The Authority is therefore concerned that these accounts may provide a misleading picture of the Firm's financial health and the Firm's ability to repay the loans.
- 4.36 Given the above evidence, the Authority considers that the Firm should not receive the further advance from Individual A or any other further loans or funding. Given the Firm's financial position, the Authority considers that it is highly unlikely that it will be able to repay in full any further loans or other forms of funding. The Firm would risk causing financial harm to the lenders, some of whom are individuals, by accepting any further loans, particularly if the Firm does not adequately disclose its true financial position and performance to those lenders.
- 4.37 On 24 October 2022 during a telephone conversation, the Firm told the Authority that it had not received the further loan advance from Individual A. It told the Authority that it was prudent to "hold fire" and did not want the Firm to make further "commitments" while the Authority's review of the Firm's activities was underway. The Authority is concerned that the Firm has either failed to understand that it would not be sound or prudent for the Firm to accept further loans or is recklessly indifferent to the harm that it may cause to the Firm's lenders.

Failure to act in the community interest

- 4.38 The Authority is concerned that the Firm has failed to comply with its obligations as a CIC and under its Articles of Associations as set out at paragraph 4.3, namely that it has failed to conduct its affairs and use its assets principally for the benefit of financially disadvantaged individuals in the community. The Authority considers that the evidence as set out in paragraphs 4.11 to 4.31 supports this contention.

## 5 CONCLUSION

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

### **Analysis of failings and risks**

- 5.2 The Authority has serious concerns about the Firm's compliance with the Threshold Conditions. The Threshold Conditions are minimum requirements that firms need to meet in order to be authorised and to continue carrying on regulated activities.
- 5.3 The Authority considers that the Firm is failing, or likely to fail, to satisfy the Appropriate Resources Threshold Condition because there are no reasonable prospects that the Firm's largest asset, a debt of £99,397 owed pursuant to a purported director's loan, will be fully repaid. The director used the director's loan account to fund personal expenditure and he does not have a viable plan, or the means, to fully repay the loan within a reasonable timeframe. Accordingly, the Authority considers that there are no reasonable prospects that the loan will be fully repaid and so the loan may therefore represent a bad debt. Accordingly, the Authority considers that the Firm's liabilities of £98,130 considerably exceeds the Firm's assets of £18,809. The Firm has not satisfied the Authority that it has sufficient resources to meet its liabilities as they fall due.
- 5.4 Further, the Authority considers that the Firm is failing, or likely to fail, to satisfy the Suitability Threshold Condition because the Firm is not a fit and proper person as its business is not being, or will not be, managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner. This is because:
- 1) The Firm appears to have misappropriated £10,000 in loan monies, which were to be used for working capital for the Firm, by enabling the loan monies to be paid to the Connected Person. The Firm misled the Authority when it stated that the Connected Person had transferred the funds to the Firm when they had not;
  - 2) The Firm improperly accepted a £10,000 loan repayable with high interest as "remuneration" in lieu of salary or fees for consultancy work carried out by the Firm's director for a third party;
  - 3) The Firm has provided financial projections which indicate that its continued trading is dependent on receiving a further loan of £10,000 from a third party. The Authority considers that there are no reasonable prospects that this loan will be repaid as the Firm already appears incapable of meeting its liabilities as they fall due. Although the Firm has stated that it will not accept a planned loan to it of £10,000 while the Authority's enquiry is ongoing, the Authority is concerned that the Firm has either failed to understand that it would not be sound or prudent for the Firm to accept further loans or is recklessly indifferent to the harm that doing so may cause to the Firm's lenders; and
  - 4) The Firm failed to conduct its affairs and use its assets for the benefit of the community as required of a CIC and under the Firm's Articles of Association.
- 5.5 The Authority has concluded, in light of the matters set out above, that it is necessary to exercise its own-initiative power under section 55L(2)(a) and (3)(a) of the Act by imposing the Requirements to stop the Firm conducting specific activities and prevent any dissipation of assets in order to protect the interests of the Firm's lenders and other creditors.

- 5.6 The Authority considers that the Requirements are a proportionate and appropriate means to address the current and immediate risks.

### **Timing and duration of the Requirements**

- 5.7 It is necessary to impose the Requirements on an urgent basis given the seriousness of the risks and the need to protect consumers.
- 5.8 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 First Supervisory Notice was made by an Authority staff member under executive procedures according to DEPP 2.3.7G and DEPP 4.1.7G.
- 6.2 This First Supervisory Notice is given under section 55Y(4) and in accordance with section 55Y(5) of the Act.
- 6.3 The following statutory rights are important.

### **Representations**

- 6.4 The Firm has the right to make written representations to the Authority (whether or not it refers this matter to the Tribunal). The Firm may also request to make oral representations but the Authority will only consider this in exceptional circumstances according to DEPP 2.3.1AG. The deadline for providing written representations and notifying the Authority that the Firm wishes to make oral representations is **2 December 2022** or such later date as may be permitted by the Authority. Any notification or representations should be sent to the SPC Decision Making Secretariat ([SPCDecisionMakingSecretariat@fca.org.uk](mailto:SPCDecisionMakingSecretariat@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. 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 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 or on behalf of the Firm and filed with a copy of this First Supervisory Notice. The Tribunal's contact details are: The Upper Tribunal, Tax and Chancery Chamber, 5<sup>th</sup> Floor, Rolls Building, Fetter Lane, London EC4A 1NL (telephone: 020 7612 9730; email: [uttc@hmcts.gsi.gov.uk](mailto:uttc@hmcts.gsi.gov.uk)).
- 6.7 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>
- 6.8 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 SPC Decision Making Secretariat ([SPCDecisionMakingSecretariat@fca.org.uk](mailto:SPCDecisionMakingSecretariat@fca.org.uk)).

### **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 the First Supervisory Notice takes effect, to publish such information about the matter to which the notice relates as it considers appropriate.

### **Authority contacts**

- 6.11 Any questions regarding this matter or the executive procedures decision-making process should be directed to the SPC Decision Making Secretariat ([SPCDecisionMakingSecretariat@fca.org.uk](mailto:SPCDecisionMakingSecretariat@fca.org.uk)).

### **Decision made under Executive Procedures Director, Consumer Investments**

## **Annex**

### **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 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.
5. Section 55Y(3) of the Act allows a requirement to take effect immediately (or on a specified date) if the Authority, having regard to the ground on which it is exercising its own-initiative power, reasonably considers that it is necessary for the requirement to take effect immediately (or on that date).
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**

#### **The Enforcement Guide**

7. 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.
8. 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)).

9. 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)).
10. 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)).
11. 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.
12. 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.
13. 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.
14. 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.
15. 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.
16. EG 8.3.4(2) includes the nature and extent of any false or inaccurate information provided by the firm. Whether false or inaccurate information warrants the Authority's exercise of its own-initiative powers will depend on matters such as (a) the impact of the information on the Authority's view of the firm's compliance with the regulatory requirements to which it is subject, the firm's suitability to conduct regulated activities, or the likelihood that the firm's business may be being used in

connection with financial crime, (b) whether the information appears to have been provided in an attempt knowingly to mislead the Authority, rather than through inadvertence, and (c) whether the matters to which false or inaccurate information relates indicate there is a risk to customer assets or to the other interests of the firm's actual or potential customers.

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(6) includes the risk that the firm's business may be used or has been used to facilitate financial crime, including money laundering.
20. EG 8.3.4(7) includes the risk that the firm's conduct or business presents to the financial system and to confidence in the financial system.
21. 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.
22. 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.