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## FIRST SUPERVISORY NOTICE

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**To:** **MRA Property Investments Limited**

**Reference Number:** **311410**

**Address:** **Regus, 116 Quayside, Newcastle upon Tyne, Tyne and Wear NE1 3DY**

**Date:** **10 October 2024**

### 1 ACTION

- 1.1 For the reasons given in this First Supervisory Notice, and pursuant to section 55L(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 MRA Property Investments Limited ("**the Firm**") with immediate effect.

#### Asset restriction

- (1) Save as set out in Requirement (2), the Firm must not, without the prior written consent of the Authority, take any action which has, or may have the effect of disposing of, withdrawing, transferring, dealing with or diminishing the value of any assets it holds or receives, for itself or on behalf of another (whether in the United Kingdom or elsewhere). For the avoidance of doubt, only the Firm can seek such written consent from the Authority (any such request to be accompanied by appropriate supporting evidence) pursuant to the terms of this Requirement.
- (2) 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).

(3) For the purposes of Requirement (2) 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,

(b) Any income or sums collected and received by the Firm on behalf of any third parties and which are owed to such third parties,

(c) Any and all salaries of the Firm's staff, excluding the Firm's Director or SMF, where such salaries have been agreed prior to the imposition of the Requirements.

(4) For the avoidance of doubt, for the purposes of Requirement (2) 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 Requirement (3)(c) above, any payment to the Firm's shareholders, directors, officers, employees, and/or 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.

#### Restriction on carrying out regulated activities

(5) The Firm must immediately cease carrying on all regulated activities for which it has a Part 4A permission, other than where it has the express written consent of the Authority to undertake any such activity.

#### Notification requirements

(6) The Firm must, within 14 days of service of this notice, (1) write to all its clients (in relation to both its regulated and unregulated business); and (2) use its best endeavours to write to all of Firm A's clients or investors whose properties or investments the Firm has agreed to manage, informing them of the imposition of these Requirements and their effects. The wording of this communication (and the method of delivery) is to first be agreed in advance with the Authority. The method of delivery must be agreed in advance by the Authority.

(7) Once the notifications referred to at Requirement (6) above have been made, within 24 hours, the Firm must supply to the Authority:

(a) Copies of the template notifications sent to all recipients,

(b) A list of all parties to whom notifications have been sent, and

(c) Confirmation that, to the best of its knowledge, the Firm has sent the specified notifications to all relevant parties.

### Records retention

(8) The Firm must secure all books and records and preserve all information, including material held via online/cloud-based systems to which the Firm has access, in relation to regulated and unregulated activities carried on by it. These include but are not limited to all: (1) client lists; (2) communications with clients; and (3) financial records.

(9) The Authority must be notified within 24 hours of service of this notice that the Firm has secured these books and records, which must be retained in a form and at a location within the UK. This is so that the records can be provided to the Authority, or to a person named by the Authority, promptly upon its request.

1.2 These Requirements replace all other requirements imposed on the Firm pursuant to section 55L(5)(a) of the Act.

1.3 These Requirements 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**

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 sections 55L(2) and 55L(3)(a) of the Act to impose the Requirements (as defined below) on the Firm because:

(1) it is failing, or is likely to fail, to satisfy the Effective Supervision Threshold Condition pursuant to paragraph 2C of Schedule 6 to the Act,

(2) it is failing, or is likely to fail, to satisfy the Appropriate Resources Threshold Condition pursuant to paragraph 2D of Schedule 6 to the Act,

(3) it is failing, or is likely to fail, to satisfy the Suitability Threshold Condition pursuant to paragraph 2E of Schedule 6 to the Act, and

(4) it is desirable to do so in order to advance one or more of the Authority's operational objectives, which includes securing an appropriate degree of protection for consumers pursuant to section 1C of the Act.

2.2 The Authority considers that the Firm is failing, or likely to fail, to meet the Appropriate Resources, the Suitability and the Effective Supervision Threshold Conditions. Specifically:

- (1) The Firm has repeatedly failed to respond to requests for information from the Authority, including failing to respond to an information requirement issued under section 165 of the Act;
  - (2) The Authority has serious concerns that monies invested via the Firm, from its customers, may not be being used for their intended purpose. The Authority has sought an explanation from the Firm as to this matter and in relation to transactions between the Firm's bank accounts and what appear to be accounts belonging to the Firm's sole director and senior management function holder (the "Firm's Director"). The Firm has repeatedly failed to respond to requests for information relating to these matters, despite them being evidently material to the Authority and to the Firm's customers;
  - (3) The Authority is not satisfied that the Firm is being managed in a way that ensures that its affairs are conducted in a sound and prudent manner and has serious concerns as to whether the Firm is a fit and proper person.
  - (4) The Authority is concerned that the Firm does not have the appropriate non-financial resources on the basis that the Firm's Director is not responding to requests for information by the Authority and others.
- 2.3 The Authority considers therefore that the Firm cannot be effectively supervised, nor can the Authority be satisfied that it has appropriate financial resources or is suitable.
- 2.4 The Authority considers that the Requirements are a proportionate and appropriate means to address the current and immediate risks and are desirable in order to advance the Authority's operational objective of securing an appropriate degree of protection for consumers.
- 2.5 The Authority considers that imposition of the Requirements should take immediate effect because the matters set out in this First Supervisory Notice give rise to serious concerns 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;

"the Firm" means MRA Property Investments Limited;

"FSN" means a First Supervisory Notice;

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

“Part 4A permission” means permission to conduct regulated activities, granted by the Authority under Part 4A of the Act;

“Requirements” means the requirements imposed on the Firm’s Part 4A Permission pursuant to this First Supervisory Notice and as contained in section 1 above; and

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

## **4 FACTS AND MATTERS**

### **Background**

- 4.1 The Firm was incorporated on 24 May 2002 and authorised on 14 January 2004. The Firm has permissions to advise on investments (except pension transfers and opt outs), arrange deals in investments, make arrangements with a view to transactions in investments and to advise on peer-to-peer arrangements. The Firm is also permitted to hold and control client money.
- 4.2 The Firm also conducts unregulated business activity. The Authority understands this to be the management of real estate on a fee or contract basis.
- 4.3 The Firm has one individual approved to hold the executive director senior management function.
- 4.4 As part of its unregulated business, the Authority understands that the Firm manages between approximately 80 and 100 properties. This activity includes, so the Authority understands, managing properties on behalf of three types of clients: private individual landlords, portfolio landlords, and properties owned by a third-party.
- 4.5 The Firm’s Director is also the sole director and chief executive of a firm (“**Firm A**”), which was incorporated on 7 March 2016. Firm A offers a crowdfunding solution for prospective investors. Firm A was an Appointed Representative (“**AR**”) of a Principal Firm (“**Firm B**”) from 7 April 2016 until 22 August 2024. Firm A is no longer registered with the Authority and can no longer carry-on regulated activities.

### The investment proposition offered by Firm A and relating to the Firm

- 4.6 Firm A was an AR of Firm B and undertook the regulated activity of crowdfunding. According to its website, Firm A sought investment to acquire residential property via a special purpose vehicle (“**SPV**”) which would then own the property interest. Investors would own shares in the SPV proportionate to their investment. Each SPV would then let the relevant property to residential tenants. Rental income collected on any tenanted property would be paid monthly to investors after deducting Firm A’s management fee.
- 4.7 According to Firm A’s website, each property would be sold after a specified period of time (usually between one and five years from the date of purchase) after which

investors would be paid in proportion to their investments, less some disbursements.

- 4.8 Investors in a particular project would, via Firm A's website, open an e-money account/wallet with an e-money firm ("**Firm C**"), registered in Luxembourg. After investing, the investor would be issued e-money credited to their e-money wallet. The e-money equal to the amount of their investment would then be allocated to the relevant e-money wallet that related specifically to that property and which had been created by Firm A.
- 4.9 Firm B informed the Authority that, whilst Firm A was an AR, it also issued unregulated loan notes, which were offered as providing a 12% return per annum on sums invested. It appears that the loan notes were issued via Firm A's website, although it is unclear what the sums raised from issuing the loan notes were used for. The Authority understands from Firm B that at least £1.5m worth of unsecured loan notes have been issued.
- 4.10 The Authority has sought information from the Firm in relation to a definitive list of investors in any loan note and the amount invested in Firm A's loan notes. The Firm has failed to respond to these requests for information. Although Firm B has provided the Authority with certain information it had obtained in relation to these loan notes, including that it understands there may have been 636 separate investment transactions across 149 different loan notes issued by Firm A, it is unclear how many individual investors may have participated in any loan note issuance by Firm A.
- 4.11 From a review of the transfers out of the project e-money wallets, 4.24 it appears to the Authority that all the transfers out were actioned by Firm A, with the majority of these transfers being made to bank accounts in the name of the Firm and Firm A.
- 4.12 The Authority understands that Firm A's online platform has been disabled and, consequently, Firm A is no longer able to source investment via its website.

### **Failings and risks identified**

#### *Failure to respond to information requests*

- 4.13 On 30 July 2024, Firm B informed the Authority that it had concerns about the about the activities of Firm A. In particular, the Authority was informed, among other things, that:
- (1) Firm B was unable to make contact with, and therefore obtain information from, the Firm's Director;
  - (2) Firm B had obtained evidence of Firm A issuing unregulated loan notes to retail customers to the value of at least £1.5m. Firm B explained that it understood the loan notes were issued by Firm A to raise money, by way of loan;
  - (3) Firm B had received numerous complaints from customers about the non-

payment of rental income and other investments for July 2024.

4.14 The following attempts have been made to contact the Firm, the Firm's Director and Firm A:

- (1) The Authority understands that on 11 July 2024, Firm B spoke with the Firm's Director, who asked not to attend a meeting that Firm B had requested in relation to Firm A.
- (2) The Authority understands that on 30 July 2024, Firm B was informed that the Firm's Director was not able to work at present due to personal reasons.
- (3) On 5 August 2024, Firm B informed the Authority that the Firm's Director had denied its request for certain individuals at Firm B to visit him.
- (4) On 19 August 2024, the Authority sent an email to the Firm at a known email address requesting information about Firm A and requesting availability for a call. A letter was also sent via recorded delivery to Firm A's registered office on 20 August 2024, and delivery was confirmed the following day. No responses were received.
- (5) On 20 August 2024 the Authority spoke to an individual understood to be known to the Firm's Director, and who the Authority understands to be a consultant engaged by the Firm. The individual informed the Authority that they could also not contact the Firm's Director.
- (6) On 30 August 2024, the Authority sent a section 165 information requirement to the Firm at its email address asking for an acknowledgement by 2 September, and a full response by 6 September 2024. No response was received.
- (7) On 3 September 2024, the Authority resent the section 165 information requirement to several other email addresses known to belong to the Firm and/or its management. No response was received.
- (8) On 4 September 2024, the Authority attempted to contact the Firm's Director on various telephone numbers, but there was no answer.
- (9) Also on 4 September 2024, the Authority spoke to an employee at the Firm. The employee informed the Authority that they also had not been able to contact the Firm's Director. Among other things, the individual also informed the Authority that their understanding was that the Firm's Director was the only individual with access to the Firm's bank accounts and that they understood that neither Firm A's investors, nor private landlords, had been paid monies owed to them since June 2024.
- (10) On 20 September 2024, following contact by the Authority with an individual connected to the Firm's Director, the Firm's Director contacted the Authority later that day. The Firm's Director requested that the Authority send them an email with requests for information and any questions the Authority

had.

(11) On 20 September 2024, the Authority resent the section 165 information requirements and additional questions to the Firm's Director's known email addresses and requested a response by 25 September 2024. No response has been received by the Authority as at the date of this Notice.

#### Analysis of the Firm's bank accounts

- 4.15 The Authority's analysis of the Firm's bank accounts shows that for the period 22 August 2022 to 22 August 2024, it appears that a total of £3,772,245.82 was received into the Firm's client account (with account number ending 5505) comprising, amongst others, rental income in the amount of £945,598.37. The Authority understands that this figure represents rental income owed to Firm A's investors as well as to other persons whose properties the Firm manages.
- 4.16 The evidence obtained by the Authority suggests that the Firm's Director continues to have access to the Firm's bank accounts and that several transfers have been made from the Firm's client account (where rental income is received) to the Firm's office account (from which business expenses are paid) using online banking. In total, £42,922 has been transferred in this way, over nine transactions in the period from 1 July 2024 to 22 August 2024. The Authority notes that in this period the Firm has failed to respond to requests for information from Firm B and despite the Authority's attempts to make contact with the Firm from 19 August 2024.
- 4.17 One such transfer was made on 15 August 2024, for the sum of £11,400 into the Firm's client account. On the same day, a direct debit collected the sum of £11,029 from the Firm's office account; this sum represented the balance due on the Firm's credit card account as of 8 August 2024. The Authority is concerned the Firm therefore used monies from the Firm's client account to pay the Firm's credit card account.
- 4.18 The Firm's credit card account currently has three card holders. The Authority does not know who one such card holder is nor their relationship to the Firm. Credit card statements break down spending by individual cardholders, and the Authority has reviewed all transactions for the period 1 July 2024 to 22 August 2024. This review shows that the Firm's Director has withdrawn cash of £5,736.77 in this period. The Authority notes that one cash withdrawal was made in Icelandic Krona, hence the unrounded amount.
- 4.19 In addition, the credit card statements evidence a number of transactions which appear both attributable to the Firm's Director and relate to a trip to Iceland. The Authority has identified no evidence to suggest these payments had any business purpose and, in view of the provenance of the funds, has serious concerns in relation to them.
- 4.20 The Authority has reviewed these transactions and has not been able to identify how such costs are linked to the property rental business and therefore has serious concerns in respect to the purpose of these transactions.



- 4.21 The Authority notes that these transactions and the trip occurred at or just after the point at which Firm B engaged with the Firm's Director in relation to the matters contained within this notice (see paragraph 4.14).

*Analysis of the Firm's Director's personal account*

- 4.22 The Authority has identified various matters relating to transactions made between the Firm's office account and an account in the name of the Firm's Director. For example, between 22 August 2022 and 20 August 2024, £145,220 has been transferred from the Firm's office account to the Firm's Director's personal account. In addition, cheques to the value of £181,100 were issued from the Firm's client and office accounts during the period 7 September 2022 and 14 February 2024. These cheques were all subsequently paid into the Firm's Director's personal account.
- 4.23 The Firm's Financial Accounts for the year ending 31 March 2023, show a balance on the director's loan account of £359,336. Since 1 April 2023, a further £162,910 has been transferred from the Firm's accounts to the Firm's Director's personal account. It is not clear whether these withdrawals relate to further sums being lent by the Firm to the Firm's Director, such that the Director's loan account has increased by this sum, or whether they relate to another purpose. The Firm's failure to respond to requests for information from the Authority has meant that the Authority has not been able to establish the exact balance on the Directors' loan account and is not able to assess whether any plans for repayment exist.

*The use of investor funds*

- 4.24 The Authority understands that Firm A may have issued unsecured loan notes to the value of at least £1.5m over an unknown period to various investors. The loan note investments are described to investors (on Firm A's website) as 'Property Development Projects' and allocated a numerical project identifier (or "ID"). This numerical ID corresponds to an e-money wallet set up by Firm A with Firm C. For example, the 'Property Development Project' with the ID of 152165 (advertised on Firm A's website) appears to match an e-money wallet number ending 3896. Unlike investments for specific properties, the relevant e-money wallets pertaining to the issuance of loan notes do not appear to have a specific property name in their description with Firm C.

*Development Project 152165*

- 4.25 Firm B provided the Authority with investor documentation it received from investors. This includes a document titled "Property Development Project 152165" – Loan Note Instrument consisting of £50,000 fixed rate unsecured loan note" issued by Firm A. The document purports to be a deed and includes reference to "2022" although the document is neither signed nor dated.
- 4.26 The document sets out "agreed terms" applicable to the loan note which include the following (1) the interest rate is 12% per annum; (2) the principal amount of the notes is limited to £50,000; and (3) notes are issued to noteholders for any amount in multiples of £500". The document does not specify what the sums raised

from the issuance of the loan notes will be used for, nor does it set out clearly if interest will be paid periodically before the notes are redeemed or, alternatively, at the end of the term of the note.

- 4.27 Another document is titled "Development 152165 Overview". This document appears to be a screenshot of the investor's Firm A investor dashboard. It shows that the relevant investor has invested £2000 (4%) into a specific Property Development Project 152165. It also shows that the investment timeframe for the project is 12 months, and that the project completion date is 12 months from 1 May 2024. The screenshot does not make clear what specific property the funds are to be invested in, apart from an unspecified reference to "a Freehold 2 or 3-bedroom mews or semi-detached house in the Newcastle-upon-Tyne area". Finally, the screenshot indicates that the investor's funds are to be used as part of a crowdfunding project (to the value of £50,000) to purchase the property: "*we are looking to raise £50,000 to part fund the purchase, refurbishment and sale of ...*".
- 4.28 From an analysis of the e-money wallet for this Property Development Project, it appears that circa 18 investors contributed EUR 18,483.00 to this e-money development wallet (set up by Firm A with Firm C on 11 October 2022) over the period 12 to 30 October 2022. On 15 March 2023 EUR 18,339.00 was transferred from this e-money wallet to Firm A's bank account before the full value of the loan note of £50,000 was reached.
- 4.29 When the funds were received into Firm A's account, £3,000 was paid to Firm B, which appears to relate to the monthly fee charged by Firm B to provide AR services to Firm A. In the following month, a further £3,578.71 was spent by Firm A on Google Ads before funds were transferred into the Firm's office account. From there, it appears that the funds were used to pay for multiple car leases and to settle the Firm's April 2024 credit card bill.
- 4.30 The Authority is therefore concerned that the Firm has received investor money and the money has not been used in accordance with its stated purpose. The Authority has been unable to obtain clarification from the Firm despite multiple attempts.
- 4.31 In the absence of a response from the Firm, the Authority is also concerned about the transfer of funds between Firm A and the Firm, which represents a significant co-mingling of funds between two different legal entities. Whilst it is possible the Firm provides property management services to Firm A, it is not clear why investor funds in the Firm A's e-money wallets are transferred to the Firm.
- 4.32 Given that the Firm has not responded to requests for information and in view of the evidence described in this Notice, the Authority considers it necessary to take action to secure funds in the Firm's bank accounts, and prevent their dissipation, until it can be satisfied that client monies have been appropriately secured.
- 4.33 From 30 July 2024 connection to Firm A's website was disabled, preventing further investments of funds in Firm A. However, the Firm continues to receive significant rental income into its client account and continues to have access to these funds.

The Authority considers that there is a significant risk of dissipation of assets, including those which belong to investors, in view of the evidence described above.

#### Outstanding FCA Fees

- 4.34 As an authorised firm, the Firm is required to pay an annual fee to the Authority. The annual fees payable by an authorised firm will depend, in part, on the scale of the firm's regulated activities. As of 1 October 2024, the Firm has failed to pay fees owed by it to the Authority amounting to £4,900.81. This sum is made up of outstanding invoices for annual fees of £1,698.15 (due 7 July 2023), £1,952.66 (due 9 August 2024) and 5 late payment/submission fees of £250 each for the period 4 July 2023 to 6 August 2024.

## **5 CONCLUSION**

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

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

#### Breach of Threshold Conditions

- 5.2 The Authority has concluded, on the basis of the facts and matters described above, that it is necessary to exercise the powers under section 55L of the Act and impose requirements on the Firm because it is failing, or likely to fail, to satisfy the Threshold Conditions.
- 5.3 The Threshold Conditions are minimum requirements that firms need to meet to be authorised and to continue carrying on regulated activities. Section 55L of the Act permits the Authority to impose requirements on a firm's Part 4A permission, because the firm:
- (1) is failing, or is likely to fail, to satisfy the Effective Supervision Threshold Condition pursuant to section 2C of Schedule 6 of the Act,
  - (2) is failing, or is likely to fail, to satisfy the Appropriate Resources Threshold Condition pursuant to paragraph 2D of Schedule 6 to the Act, and
  - (3) is failing, or is likely to fail, to satisfy the Suitability Threshold Condition pursuant to section 2E of Schedule 6 of the Act.
- 5.4 The Authority considers that the Firm is failing, or is likely to fail, to meet the Threshold Conditions. Specifically:
- (1) The Firm has repeatedly failed to respond to requests for information from the Authority. The Firm's Director is the only individual holding a senior management function at the Firm and is not responding to the Authority's attempts to obtain information from the Firm. The Authority makes particular functions within a firm a senior management function, to enable the Authority to know who the firm's most senior decision makers are and to make sure

firms clearly allocated responsibility to those key individuals. The Firm's failure to respond to requests for information from the Authority, particularly given the nature of the concerns to which those information requests relate, suggests that the Firm cannot be effectively supervised by the Authority.

- (2) Between 22 August 2022 and 5 September 2024, £340,144 was transferred from the Firm's bank accounts to the Firm's Director's personal account. The Authority has not, for the reasons described above, been able to obtain an explanation from the Firm as to these payments. Absent further information which explains why these payments are justified and which demonstrates that those that have invested through the Firm (or may do so) are not at risk of losing their money owing to the conduct of the Firm, the Authority is not satisfied that the Firm is being managed in a way to ensure that its affairs are conducted in a sound and prudent manner.

#### The Authority's operational objective of consumer protection

- 5.5 The Firm has permission from the Authority to conduct a range of regulated activities. The Authority considers that the concerns relating to the Firm's suitability and the Authority's ability to effectively supervise it raise serious questions about the risks that the Firm may present to consumers that the Firm may come into contact with and which the Firm is, currently, able to undertake a range of regulated activities on behalf of. Consequently, the Authority considers that the action proposed, including the action to prevent the Firm from conducting regulated activities absent the express written consent of the Authority, is desirable in order to secure an appropriate degree of protection for consumers.
- 5.6 The Authority has concluded, in light of the matters set out above, that it is necessary to exercise its own initiative power by imposing the Requirements under S55L(3)(a) of the Act.
- 5.7 The Authority considers that the Requirements are a proportionate and appropriate means to address the current and immediate risks and are desirable in order to advance the Authority's operational objective of consumer protection.

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

- 5.8 It is necessary to impose the Requirements to take immediate effect given the seriousness of the risks and the need to protect consumers.
- 5.9 The Authority considers that it is necessary for the Requirements to remain in place until varied or cancelled by the Authority (either on the application of the Firm or of the Authority's own volition).

## **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 28 October 2024 or such later date as may be permitted by the Authority. Any notification or representations should be sent to the EDM Decision Making Secretariat ([EDMcaseinbox@fca.org.uk](mailto:EDMcaseinbox@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, 5th 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 EDM Decision Making Secretariat ([EDMcaseinbox@fca.org.uk](mailto:EDMcaseinbox@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 generally or the executive procedures decision-making process should be directed to the SPC Decision Making Secretariat ([EDMcaseinbox@fca.org.uk](mailto:EDMcaseinbox@fca.org.uk)).

### **Director, Supervision, Policy and Competition**

## **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 55J of the Act to vary a firm's permission and/or 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 variation of permission or 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 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 a variation of a Part 4A permission under or an imposition of a requirement is appropriate and sets out a non-exhaustive list of factors the Authority may consider, these include:
  - a. EG 8.3.4(4) concerning 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.
  - b. EG 8.3.4(8) concerning 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.
15. 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.

#### Threshold Conditions

16. The section of the Handbook entitled "Threshold Conditions" (COND) gives guidance on threshold conditions. COND 1.2.3G provides that the Authority may exercise its own-initiative powers under section 55L and/or section 55J of the Act if, among other things, a firm is failing to satisfy any of the Threshold Conditions or is likely to do so.
  17. COND 1.3.2G states that the Authority will consider whether a firm satisfies, and will continue to satisfy, the Threshold Conditions in the context of the size, nature, scale and complexity of the business which the firm carries on or will carry on if the relevant application is granted.
- 7.COND 2.3.1A (para 2C, Sch. 6) states that the firm:
- (1) [...] *must be capable of being effectively supervised by the FCA having regard to all the circumstances including – [...]*
    - (c) *The way in which the firm's business is organised; [...]*
    - (f) *If the Firm has close links with another person (CL)-*
      - (i) *the nature of the relationship between the Firm and CL;*
      - (ii) *whether those links are or that relationship is likely to prevent the FCA's effective supervision of the Firm; [...]*
18. COND 2.3.3G states that in assessing the Threshold Conditions set out in paragraphs 2C and 3B of Schedule 6 to the Act (which includes the Effective Supervision Threshold Condition), factors which the FCA will take into consideration include, among other things, whether:

*(1) it is likely that the FCA will receive adequate information from the firm, and those persons with whom the firm has close links, to enable it to determine whether the firm is complying with the requirements and standards under the regulatory system for which the FCA is responsible and to identify and assess the impact on its statutory objectives; this will include consideration of whether the firm is ready, willing and organised to comply with Principle 11 (Relations with regulators) and the rules in SUP on the provision of information to the FCA; [...]*

19. COND 2.4.1A (para 2D, Sch. 6 of the Act) states that:

*(1) The resources of [a firm] must be appropriate in relation to the regulated activities that it carries on or seeks to carry on.*

*(2) The matters which are relevant in determining whether the firm has appropriate resources include: [...]*

*(a) the nature and scale of the business carried on, or to be carried on by [a firm];*

*(b) the risks to the continuity of the services provided by, or to be provided by [a firm].*

*(3) Financial resources – [...] The matters which are relevant in determining whether the firm has appropriate financial resources include*

*(a) the provision [the firm] makes and, if [the firm] is a member of a group, which other members of the group make, in respect of liabilities; and*

*(b) the means by which [the firm] manages and, if [the firm] is a member of a group, by which other members of the group manage, the incidence of risk in connection with [the firm]'s business.*

20. COND 2.5.6G states that the FCA may have regard to include, but are not limited to, whether:

- 1. the firm has been open and co-operative in all its dealings with the FCA and any other regulatory body (see Principle 11 (Relations with regulators)) and is ready, willing and organised to comply with the requirements and standards under the regulatory system (such as the detailed requirements of SYSC and, in relation to a firm not carrying on, or seeking to carry on, a PRA-regulated activity only, the Prudential Standards part of the FCA Handbook) in addition to other legal, regulatory and professional obligations; the relevant requirements and standards will depend on the circumstances of each case, including the regulated activities which the firm has permission, or is seeking permission, to carry on [...]*