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## **FIRST SUPERVISORY NOTICE**

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**To: Probitas Fidelis Limited ('Probitas') ('The Firm')**

**FRN: 596481**

**Dated: 16 December 2021**

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

### **ACTION**

1. For the reasons given in this notice, and pursuant to regulation 12(1) of the PSR, the Authority has decided to vary the authorisation granted to Probitas by imposing with immediate effect the following requirements:
  - a) Probitas must not without prior written consent from the Authority carry out any of the activities for which it has been authorised under the PSR, namely money remittance. For the avoidance of doubt this requirement applies to business carried out on behalf of existing clients;
  - b) Probitas must set out in a prominent place on all of its websites and must email all of its clients a statement that it is no longer permitted to provide payment services;
  - c) Probitas must not on-board any new payment services users;

- d) Probitas must not become or apply to become the EMD Agent of any firm for which it does not already hold that status as of the date of this notice without the prior written consent of the Authority; and
- e) Probitas must secure all books and records and preserve information and systems relating to its authorised activities and must retain these in a form and at location to be notified to the Authority in writing within 48 hours of the issue of this notice such that they can be provided to the Authority, or to a person named by the Authority, promptly on its request.

## **REASONS FOR ACTION**

- 2. On the basis of the facts and matters described below, the Authority considers that the variation to Probitas's authorisation is necessary because it appears to the Authority that the Firm no longer meets, or is unlikely to continue to meet, the conditions for authorisation in the PSR, including the conditions detailed in regulation 6(6)(b)-(c), (7)(b) and (8).
- 3. The PSR requires that Probitas be included on a register maintained by HMRC pursuant to the MLR. However, HMRC has cancelled the Firm's registration on the grounds that it is not fit and proper. This means the Firm does not meet the conditions of authorisation and also that it is unlawful for it to provide payment services. These are sufficient grounds for the proposed variation. The Authority is concerned by the circumstances in which the Firm has been deemed not to be fit and proper, including that it may have breached terms of a suspension of its registration imposed by HMRC and, at the same time, an undertaking agreed with the Authority.
- 4. In the circumstances, Probitas poses a risk to trust in payment systems should it be permitted to provide payment services.

## DEFINITIONS

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

- a) "the Act" means the Financial Services and Markets Act 2000;
- b) "API" means Authorised Payment Institution, a firm authorised under the PSR to provide Payment Services;
- c) "the Authority" means the Financial Conduct Authority;
- d) "conditions of authorisation" mean the minimum conditions under the PSR which a firm must meet in order to be authorised to provide payment services
- e) "EG" means the Authority's Enforcement Guide;
- f) "EMD Agent" means the status of a firm permitted to act as the agent of a principal firm pursuant to the Electronic Money Directive;
- g) "HMRC" means Her Majesty's Revenue & Customs;
- h) "MLR" means the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017;
- i) "Probitas"/"the Firm" mean Probitas Fidelis Limited
- j) "the PSR" means the Payment Services Regulations 2017; and
- k) "the Tribunal" means the Upper Tribunal (Tax and Chancery Chamber).

## FACTS AND MATTERS

### Background

6. Probitas was registered as an API on 12 July 2018. The Firm is authorised to provide a single payment service, namely money remittance. Requirements in place since that date mean that the firm is not permitted to provide payment services to individuals but it has a number of business customers.

### **Suspension and cancellation of registration on HMRC's Supervised Business Register**

7. The Firm was formerly registered with HMRC, on the HMRC Supervised Business Register. HMRC provided money laundering supervision of the Firm, pursuant to the MLR. On 22 December 2020, HMRC suspended the Firm's registration due to financial crime concerns. Probitas did not immediately notify the Authority of the nature of the concerns.
8. The Authority learnt of the matter in January 2021 and contacted the Firm about it. The Firm appeared to admit that it had been providing payment services despite the terms of the suspension, though it claimed not to be aware of the suspension itself at that time. On 29 January 2021, the Firm signed an undertaking to the effect that it would return customer funds and refrain from providing payment

services and taking on new payment services customers. The Firm did provide evidence that it had returned customer funds.

9. HMRC's suspension remained in force and was renewed for a further 3 months on 26 April 2021. During this time HMRC continued to liaise with the Firm regarding its initial financial crime concerns (which the firm took steps to rectify) as well as: the fitness and propriety of certain directors and senior staff; the suitability of its Anti-money laundering policies and procedures; and its adherence to the MLR.
10. On 22 June 2021, HMRC notified Probitas that its Anti-money laundering policies and procedures were not compliant with the MLR (though the Firm challenged this conclusion). On 22 July 2021, HMRC notified the firm that it had concluded it had breached the terms of the suspension by making prohibited transactions. As a result, it was deemed that the firm and certain senior individuals were not fit and proper. HMRC therefore informed the firm that, pursuant to Regulation 60 of the MLR, its registration on the HMRC Supervised Businesses Register was cancelled.
11. Probitas exercised its right to challenge that decision via HMRC's Appeals and Review Team. In July and August 2021, the Firm apprised the Authority of developments including by providing letters sent to HMRC by its legal representatives. The Firm submitted detailed representations and evidence to HMRC.
12. On 22 October 2021, HMRC notified Probitas that, after consideration of the representations and evidence submitted, its appeal had been rejected. HMRC concluded that Probitas had breached the terms of the suspension by acting as a money remitter and that it was therefore not fit and proper. The dates of the transactions specified by HMRC also suggest that Probitas breached the terms of the undertaking it signed with the Authority.

## **FAILINGS AND RISKS TO OPERATIONAL OBJECTIVES**

13. The regulatory provisions relevant to this First Supervisory Notice are set out in the Annex.
14. From the facts and matters described above, and having regard to its regulatory objectives, it appears to the Authority that:
  - a) Probitas no longer meets, or is unlikely to meet, the conditions for authorisation set out in 6(6)(b)-(c), (7)(b) and (8) of the PSR. In particular, Probitas no longer complies with a requirement to be registered in a register maintained under the MLR. It also appears as though Probitas does not have effective procedures to identify, manage, monitor and report financial crime and conduct risks and the internal control mechanisms to manage them – this is evidenced, amongst other things, by its apparent breaches of the suspension and undertaking. Further, it appears from the Firm's conduct as though certain directors and persons responsible for managing the firm are not of good repute and do not have the appropriate knowledge and experience;
  - b) It is unlawful for Probitas to provide payment services as a result of the action taken by HMRC under Regulation 60 of the MLR; and

- c) Probitas poses a threat to trust in payment systems by virtue of its apparent willingness to breach the MLR, undertakings and to provide payment services when not permitted to do so.
15. Each of the issues identified at (a)-(c) above is a sufficient and separate ground for varying the Firm's authorisation by imposing the proposed requirements. The Authority considers that these requirements are appropriate and proportionate in order to advance its objective of protecting and enhancing the integrity of the UK financial system. The Authority considers that these requirements should be imposed immediately.

## **PROCEDURAL MATTERS**

### **Decision Maker**

16. The decision which gave rise to the obligation to give this First Supervisory Notice was made by an Authority staff member under executive procedures.
17. This First Supervisory Notice is given to Probitas under regulation 12(6) of the Regulations and in accordance with regulation 12(7) of the PSR.

### **The Tribunal**

18. 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.
19. 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)).
20. 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>
21. 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 Joe MacDonald at the Financial Conduct Authority, 12 Endeavour Square, London, E20 1J

## **Representations**

22. The firm has the right to make written representations to the Authority. The Authority will consider oral representations only in exceptional circumstances where it is determined that prohibiting oral representations will likely impact upon the fairness of the decision. The deadline for providing written representations and notifying the Authority that the Firm wishes to make oral representations is 6 January 2022 or such later date as may be permitted by the Authority. The Authority must be informed – by 6 January 2022 – in writing of any request to make oral representations. The address for doing so is:

Supervision, Policy and Competition Decision Making Secretariat  
The Financial Conduct Authority  
12 Endeavour Square  
London  
E20 1JN  
Email: [SPCDecisionMakingSecretariat@fca.org.uk](mailto:SPCDecisionMakingSecretariat@fca.org.uk)

## **Confidentiality and Publicity**

23. Paragraph 10 of Schedule 6 to the PSR provides that section 391 of the Act shall apply to supervisory notices given under regulation 11(6) of the Regulations. Section 391(5) requires the Authority, when the First Supervisory Notice takes effect (and this First Supervisory Notice takes immediate effect), to publish such information about the matter as it considers appropriate.
24. Probitas 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 advice on its contents).

## **Contacts**

25. Any questions regarding the procedure of the Executive Decision Maker should be directed to the Decision Making Secretariat by email:  
[SPCDecisionMakingSecretariat@fca.org.uk](mailto:SPCDecisionMakingSecretariat@fca.org.uk)

## **ANNEX**

### **RELEVANT STATUTORY PROVISIONS**

1. By sections 1B to 1H of the Act, the Authority has operational objectives which include securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.
2. Regulation 6 of the PSR details the conditions for authorisation which an AMI must meet. These include:

(6) The applicant must satisfy the Authority that, taking into account the need to ensure the sound and prudent conduct of the affairs of the institution, it has—

(b) effective procedures to identify, manage, monitor and report any risks to which it might be exposed; and

(c) adequate internal control mechanisms, including sound administrative, risk management and accounting procedures,

(7) The applicant must satisfy the Authority that—

(b) the directors and persons responsible for the management of its electronic money and payment services business are of good repute and possess appropriate knowledge and experience to issue electronic money and provide payment services;

(8) The applicant must comply with a requirement of the MLR to be included in a register maintained under those regulations where such a requirement applies.
3. Regulation 7(1) of the PSR provides that the Authority may include in the authorisation of an AMI such requirements as it considers appropriate. Regulation 7(2) of the PSR provides that a requirement may, in particular, be imposed so as to require the person concerned to (a) take a specified action; (b) refrain from taking a specified action.
4. Regulation 8 of the PSR provides that the Authority may, on the application of an AMI vary that person's authorisation by, among other things, imposing a requirement such as may, under regulation 7 of the PSR, be included in an authorisation.
5. Regulation 12(1)(a) of the PSR provides that the Authority may vary a person's authorisation in any of the ways mentioned in regulation 8 if it appears to the Authority that—(a) the person no longer meets, or is unlikely to continue to meet, any of the conditions set out in regulation 6(4) to (9) (conditions for authorisation).
6. Regulation 12(1)(c) of the PSR provides that the Authority may vary a person's authorisation if it appears to the Authority that the person would constitute a threat to the stability of, or trust in, a payment system by continuing to provide a particular payment service or payment services.

7. Regulation 12(1)(e) of the PSR provides that the Authority may vary a person's authorisation if it appears that the person's provision of a particular payment service is otherwise unlawful including where such provision of services is unlawful because the person's registration in a register maintained under the MLR has been cancelled under Regulation 60 of the MLR.
8. Regulation 11(2) of the PSR provides that a variation under this regulation may be expressed to take effect (a) immediately, if the notice given under paragraph (6) states that that is the case or (b) on such date as may be specified in the notice. Regulation 11(3) of the Regulations provides that a variation may be expressed to take effect immediately or on a specified date only if the Authority, having regard to the ground on which it is exercising the power under paragraph (1), reasonably considers that it is necessary for the variation to take effect immediately or, as the case may be, on that date.
9. Regulation 11(6) of the PSR provides that, where the Authority proposes to vary a person's authorisation under this regulation, it must give the person notice.
10. Regulation 37 of the PSR provides that, where it becomes apparent to an electronic money institution that there is, or is likely to be, a significant change in circumstances which is relevant to the fulfilment of the conditions of authorisation, the firm must provide the Authority with details without undue delay. Regulation 37(2) states that an electronic money institution must inform the Authority of any material change in the measures
11. Section 391 of the Act, as varied by paragraph 10 of Schedule 6 to the PSR, provides that:
  - a. When a supervisory notice takes effect, the [Authority] must publish such information about the matter to which the notice relates as it considers appropriate.
  - b. The [Authority] may not publish information under this section if in its opinion, publication of the information would, be a) unfair to the person with respect to whom the action was taken or proposed to be taken, (b) prejudicial to the interests of consumers...
  - c. Information is to be published under this section in such manner as the [Authority] considers appropriate."

## **RELEVANT HANDBOOK PROVISIONS**

12. 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.
13. EG 19.20 outlines the Authority's approach to enforcing the provisions of the PSR. EG 19.20.5 provides that the PSR, for the most part, mirror the Authority's investigative, sanctioning and regulatory powers under the Act and that the Authority has decided to adopt procedures and policies in relation to the use of those powers akin to those it has under the Act.
14. The Authority considers that the powers under regulation 12(1) of the PSR are similar to those under sections 55J and 55L of the Act and that the provisions of EG



8 “Variation and cancellation of permission and imposition of requirements on the FCA's own initiative and intervention against incoming firms” are applicable.

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

15. EG 8.2.1 provides that the Authority will have regard to its statutory objectives and the range of regulatory tools that are available to it, when it considers how it should deal with a concern about a firm. The Authority will also have regard to: (1) the responsibilities of a firm's management to deal with concerns about the firm or about the way its business is being or has been run; and (2) the principle that a restriction imposed on a firm should be proportionate to the objectives the Authority is seeking to achieve.
16. EG 8.2.3 provides that the Authority may exercise its formal powers under section 55J or 55L of the Act, where the Authority has serious concerns about a firm or the way its business is being or has been conducted. Further, EG 8.2.3 suggests that a requirement can be imposed where its imposition reflects the importance the Authority attaches to the need for the Firm to address its concerns.

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

17. 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.
18. EG 8.3.2 provides that the circumstances in which the Authority will consider exercising its own initiative power as a matter of urgency include where the information available to it indicates serious concerns about the firm or its business that need to be addressed immediately (EG 8.3.2(1)).
19. EG 8.3.3 sets out a non-exhaustive list of situations in which the Authority will consider in exercising its own-initiative power as a matter of urgency. EG 8.3.3(2) states that the Authority will consider using these powers where it has information that a firm's conduct has put it at risk of being used for the purposes of financial crime, or otherwise involved in crime. EG 8.3.3(4) refers to circumstances suggesting a serious problem within a firm or with a firm's controllers that calls into question the firm's ability to meet (for an AMI) the conditions of authorisation.
20. EG 8.3.4 states that the Authority will consider the full circumstances of each case when it decides whether an urgent imposition of a requirement is appropriate and sets out a non-exhaustive list of factors which will determine whether the urgent exercise of the Authority's own-initiative power is appropriate, including: the seriousness of the firm's failings (EG 8.3.4(4)); the risk that the firm may be used to facilitate financial crime (EG 8.3.4(6)); the risk that the firm's conduct or business presents to the financial system and confidence in it; the firm's conduct, including whether it brought the matter to the Authority's attention (EG 8.3.4(8)); and the impact which the use of the Authority's own-initiative powers will have on the firm's business and on its customers (EG 8.3.4(9)).