
FIRST SUPERVISORY NOTICE

To: **Roark Holdings Ltd**

Reference Number: **782818**

Address:
**The Old Dairy
12 Stephen Road
Headington
Oxford
Oxfordshire
OX3 9AY**

Date: **10 March 2023**

1 ACTION

1.1 For the reasons given in this First Supervisory Notice, and pursuant to regulation 12(1) of the Payment Services Regulations 2017, the Financial Conduct Authority has decided to vary the authorisation granted to Roark Holdings Ltd pursuant to Part 2 of the PSRs by imposing the following Requirements on the Firm with immediate effect:

Business Restrictions

- a) Roark must immediately cease carrying on all activities for which it has been granted authorisation under the PSRs, other than where it has the express written consent of the Authority;

- b) Roark must not on-board any new customers;

Client funds

- c) In respect of all Roark's clients, any positive cash balance held by a client resident in the United Kingdom must be paid to a bank or payment account held in the client's name as soon as practicable and, in any event, by 20 March 2023;

Notification Requirements

- d) Roark must, within 72 hours of the receipt of this notice, write to all clients informing them of the imposition of these Requirements and their effects, and that it will be taking all reasonable steps to return all balances held by Roark on their behalf. The wording of this communication is to be first agreed with the Authority. The method of delivery must be agreed in advance by the Authority;
- e) Once the notifications referred to in (d) above have been made, within 24 hours, Roark must supply to the Authority:
 - i) Copies of the template notifications sent to all recipients;
 - ii) A list of all parties to whom notifications have been sent; and
 - iii) Confirmation that, to the best of its knowledge, Roark has sent the specified notifications to all relevant parties

Record Retention

- f) Roark 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 activities carried on by it and, in addition, regulated activities carried out for or in relation to customers with whom it is not authorised to deal. These books and records must be retained in a form and at a location within the UK to be notified to the Authority within 24 hours of the receipt of this notice. The records must be retained in a form and at a location such that they can be provided to the Authority, or to a person named by the Authority, promptly upon its request;
- 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 On 21 September 2020, Individual 1 completed a Change in Control Notification in relation to the Firm. It was submitted to the FCA on 24 September 2020. The Notification stated that Individual 1 was to be the new sole director and shareholder of Roark. No further parties were declared as proposed controllers in the Notification or accompanying documents submitted to the Authority. WhatsApp message downloads, which the Authority has since become aware of, indicate that prior to submitting the Notification to the Authority, Individual 1 had agreed with two other individuals, Individual 2 and Individual 3, to each acquire equal shareholdings in Roark.
- 2.2 The Authority has also obtained evidence that shows Individual 2 made representations to a third party on 12 January 2022, as part of a personal mortgage application, that stated he held a 33.33% shareholding in the Firm.

- 2.3 This information was withheld from the Authority when Roark's Notification was submitted, and the Firm therefore failed to inform the Authority of a major change in circumstances.
- 2.4 Due to withholding this information from the Authority in the Notification, the Authority is not satisfied that Individual 1 is a fit and proper person. The information withheld from the Authority meant that the Authority was not able to assess whether Individual 2 and Individual 3 were fit and proper and/or were of good repute and possessing appropriate knowledge and experience to provide payment services, when considering the Notification. The consequence of withholding this information was that it created a very serious risk that the Authority would be misled.
- 2.5 The Authority therefore considers it is necessary to vary Roark's authorisation, pursuant to regulation 12(1) of the PSRs, by imposing the Requirements on the basis that the Firm is no longer meeting one or more of the conditions under regulation 6 of the PSRs and on the basis that the Firm did not inform the Authority of a major change in circumstances which were relevant to its meeting those conditions, as required under regulation 37 of the PSRs. Further, the Authority considers that this variation is desirable in order to protect the interests of consumers. Further, the Authority has very significant concerns that the Firm may have failed to comply with its obligations under Principle 11 and that it constitutes a threat to the stability of, or trust in, a payment system should it be able to continue to provide the payment services it has authorisation for.

3 DEFINITIONS

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

“Appropriate Resources Threshold Condition” means the condition set out in Paragraph 2D of Schedule 6 of the Act and COND 2.5;

“the Act” means the Financial Services and Markets Act 2000;

“API” means Authorised Payment Institution, a firm authorised under the PSRs to provide Payment Services;

“the Authority” means the Financial Conduct Authority;

“conditions of authorisation” mean the minimum conditions under the PSRs which a firm must meet in order to be authorised to provide payment services;

“EG” means the Authority’s Enforcement Guide;

“the Notification” means the s.178 Financial Services and Markets Act 2000 Change in Control Notification application in relation to Roark dated 21 September 2020;

“Roark”/“the Firm” mean Roark Holdings Ltd;

“the PSRs” means the Payment Services Regulations 2017;

“Requirements” means the requirements set out at paragraph 1.1 (a)-(f) of this First Supervisory Notice;

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

4 FACTS AND MATTERS

Background

- 4.1 Roark was incorporated on 23 June 2017. It was registered on 16 April 2018 as an authorised payment institution under the Payment Services Directive to provide payment services. Roark's authorisations as a payment institution under the PSRs are:
- i. Money remittance
 - ii. Issuing and/or acquiring of payment instruments
 - iii. Executing payment transactions (no credit line)
- 4.2 Roark holds a 'passport' that enables it to provide financial products or services, set up a base, or carry on its permitted activities in Gibraltar – specifically:
- i. Execution of payment transactions, including transfers of funds on a payment account with the user's payment service provider or with another payment service provider:- execution of direct debits, including one-off direct debits,- execution of payment transactions through a payment card or a similar device,- execution of credit transfers, including standing orders.
 - ii. Issuing and/or acquiring of payment instruments.
 - iii. Money remittance.
- 4.3 According to Companies House records, Individual 1 was appointed the sole director and significant controller of Roark on 30 December 2020. According to those records, he remains sole director and significant controller to the date of this application. For the reasons contained in this Notice, the Authority considers that these records do not reflect the manner in which Roark is managed or how its shares are held.

Withholding information from the Authority

- 4.4 The Authority has obtained and reviewed a WhatsApp group chat between Individual 1, Individual 2 and Individual 3. The WhatsApp messages span from 21 April 2020 to 14 December 2020. In these messages the three individuals discuss collectively acquiring Roark in the time preceding the Notification application on 24 September 2020, whilst the Notification application is pending, and also after the application has been approved by the Authority on 27 November 2020.
- 4.5 On 3 June 2020, Individual 3 suggested he had reached an agreement to acquire 33% of an FCA regulated firm and offered Individual 2 and Individual 1 the opportunity to partner with him.
- 4.6 On 4 June 2020, Individual 2 suggested that they jointly offer \$200,000 to take over 100% of Roark and split it 3 ways. Individual 3 and Individual 1 agreed to this proposal.
- 4.7 On 19 August 2020, as the three individuals came closer to submitting the Notification to the Authority, further messages were sent between the individuals regarding how control of Roark would be held. For example, Individual 3 suggested that "we keep it simple" and include just Individual 1's name on the Notification and that "we just have an agreement in the backend" as regards the shareholding and management of the Firm. Individual 2 agreed, noting that they ought to just include Individual 1's name as the shareholder and director of the Firm "just to get

the control” and that the other individuals would then “just need to inform the FCA we are in” as “no special authorisations” would be required.

4.8 On 25 August 2020, the trio agreed to remove Individual 3’s name from a “contract” if the Authority asked for it. Based on WhatsApp messages between the three individuals on 17 and 20 July 2020, the Authority considers this “contract” related to the purchase of Roark that both Individual 1 and Individual 3 signed as “Buyers”. The messages show that this removal of Individual 3’s name was proposed seemingly to reduce the risk that the Authority may subsequently request a copy and raise questions as to the role and identity of Individual 3. Further, on 24 September 2020, when the documents in support of the Notification were provided to the Authority, a share purchase agreement for the Firm (dated 17 July 2020, and electronically signed on 17 September 2020) included only the name of Individual 1 as “Buyer” of the Roark shares. The Authority was not sent any further contracts as a part of the Notification application.

4.9 On 21 September 2020, Individual 1 signed the Notification application in relation to Roark. On 24 September 2020, the Notification was emailed to the Authority.

4.10 Section 7.1 of the Notification form specifically sets out who must be declared by the proposed controller:

“You must send the FCA/PRA control structure chart(s) that show the position of the target firm(s) undergoing the change in control and all controllers after the proposed change in control. These chart(s) should show all the entities within the structure and include:

- *all entities in the group*
- *parent undertakings*
- *any undertaking(s)/subsidiaries other than the applicant firm*
- *any other close links*
- *anyone acting in concert*
- *percentages of shareholdings and types of shares*
- *percentages of voting power*
- *percentages of control through right to share in capital, profits or liability for losses*
- *anyone with significant influence”*

4.11 In summary, Roark provided the following information to the Authority by way of the Notification submitted on 24 September 2020:

- i. Individual 1 was to be the proposed sole director and 100% direct shareholder of Roark;
- ii. No further controllers were declared - including concert parties, percentages of shareholdings and types of share, percentages of voting power, or anyone with significant influence;
- iii. No plans to change Individual 1’s level of control following the acquisition in the foreseeable future were declared; and
- iv. Individual 1 signed the declaration of truth on page 31 of the Notification.

4.12 The Authority has also reviewed an email that Individual 2 sent to his mortgage broker on 12 January 2022. In that email, Individual 2 stated that he “indirectly” held 33.33% of Roark and Individual 1 could write to confirm this.

4.13 The information as to the role and shared ownership of Individuals 2 and 3 was not disclosed in the Notification, or at any stage thereafter.

- 4.14 On 27 November 2020, the Authority approved the change of control set out in the Notification. In response, the individuals exchanged messages with each other, with one noting that “we’re in business”.

5 FAILINGS AND RISKS IDENTIFIED

- 5.1 The regulatory provisions relevant to this First Supervisory Notice are set out in the Annex.
- 5.2 From the facts and matters described above, and having regard to its regulatory objectives, it appears to the Authority that Roark is unable to satisfy the Authority that it meets the conditions for authorisation in regulation 6(7) of the PSRs.
- 5.3 The Firm failed to provide the FCA with details of a significant change in circumstances as to the close links that the Firm had with Individual 2 and Individual 3, as required under PSRs at regulation 37(1)(a)(i).
- 5.4 The Firm has been subject to the Authority’s Principles for Businesses (the “Principles”) since before the Notification was submitted, and at all points thereafter. The Firm was therefore required, pursuant to Principle 11, to deal with the Authority in an open and cooperative way and to disclose to the Authority appropriately anything relating to the Firm of which the Authority would reasonably expect notice. The evidence obtained strongly suggests that the Firm withheld information that was plainly material to the Authority and also that the Notification contained material inaccuracies. Consequently, the Authority has very significant concerns that the Firm may have failed to comply with its obligations under Principle 11. The Authority therefore considers that the Firm constitutes a threat to the stability of, or trust in, a payment system by continuing to provide the payment services it has authorisation for.
- 5.5 Due to withholding this information from the Authority in the Notification, the Authority is not satisfied that Individual 1 is a fit and proper person. The information withheld from the Authority meant that the Authority was not able to assess whether Individual 2 and Individual 3 were fit and proper and/or were of good repute and possessing appropriate knowledge and experience to provide payment services, when considering the Notification.
- 5.6 Given these concerns, the Authority considers the Requirements are desirable in order to protect the interests of consumers.
- 5.7 The issues identified at 5.2 – 5.6 above are sufficient and separate grounds 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.

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 The decision which gave rise to the obligation to give this First Supervisory Notice

was made by an Authority staff member under executive procedures.

6.3 This First Supervisory Notice is given to Roark under regulation 12(6) of the Regulations and in accordance with regulation 12(7) of the PSRs.

6.4 The following statutory rights are important.

Representations

6.5 The Firm the right to make written representations to the Authority (whether or not it refers this matter to the Tribunal). The Firms 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 29 March 2023 or such later date as may be permitted by the Authority. Any notification or representations should be sent to:

Supervision, Policy and Competition Decision Making Secretariat

The Financial Conduct Authority

12 Endeavour Square

London

E20 1JN

Email: SPCDecisionMakingSecretariat@fca.org.uk and louise.marfany@fca.org.uk

The Tribunal

6.6 The Firms have 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.

6.7 A reference to the Tribunal can be made by way of a reference notice (Form FTC3) signed by or on behalf of the Firms 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).

6.8 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>

6.9 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).

Confidentiality and publicity

6.10 Paragraph 10 of Schedule 6 to the PSRs 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.

6.11 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).

Authority contacts

- 6.12 Any questions regarding the executive procedures decision-making process should be directed to the SPC Decision Making Secretariat (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 2 of the PSRs refers to Article 4(1)(36) of the capital requirements regulation for a definition of "qualifying holding" for the purposes of the PSRs:
Article 4(1)(36): a direct or indirect holding in an undertaking which represents 10% or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of that undertaking.
3. Regulation 6 of the PSRs details the conditions for authorisation which an AMI must meet. These include:
(7) The applicant must satisfy the Authority that—
 - (a) any persons having a qualifying holding in it are fit and proper persons having regard to the need to ensure the sound and prudent conduct of the affairs of an authorised payment institution; and
 - (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;
4. Regulation 7(1) of the PSRs provides that the Authority may include in the authorisation of an AMI such requirements as it considers appropriate. Regulation 7(2) of the PSRs 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.
5. Regulation 8 of the PSRs 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 PSRs, be included in an authorisation.
6. Regulation 12(1)(a) of the PSRs 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).
7. Regulation 12(1)(d) of the PSRs provides that the Authority may vary a person's authorisation if it appears to the Authority that the variation is desirable in order to protect the interests of consumers.
8. Regulation 11(2) of the PSRs 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 PSRs provides that, where the Authority proposes to vary a person's authorisation under this regulation, it must give the person notice

10. PSRs Regulation 37 states:
 - (1) Where it becomes apparent to an authorised payment institution or a small payment institution that there is, or is likely to be, a significant change in circumstances which is relevant to—
 - (a) in the case of an authorised payment institution—
 - (i) its fulfilment of any of the conditions set out in regulation 6(4) to (9) (conditions for authorisation) and, if applicable, the requirement in regulation 22(1) (capital requirements) to maintain own funds;
 - (ii) the payment services which it seeks to carry on in exercise of its passport rights;
 - [..]

it must provide the FCA with details of the change without undue delay, or, in the case of a substantial change in circumstances which has not yet taken place, details of the likely change a reasonable period before it takes place.
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) 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.
 - (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 PSRs 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 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)).
16. EG 8.2.3 states that in the course of its the Authority 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)).

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 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.
19. 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.
20. EG 8.3.4 states that the Authority will consider the full circumstances of each case when it decides whether an imposition of a requirement is appropriate and sets out a non-exhaustive list of factors the Authority may consider, these include:

EG 8.3.4 (1) The extent of any loss, or risk of loss, or other adverse effect on *consumers*. The more serious the loss or potential loss or other adverse effect, the more likely it is that the *FCA's* exercise of *own-initiative powers* will be appropriate, to protect the consumers' interests.

EG 8.3.4 (2) The extent to which *customer* assets appear to be at risk. Exercise of the *FCA's own-initiative power* may be appropriate where the information available to the *FCA* suggests that *customer* assets held by, or to the order of, the *firm* may be at risk.

EG 8.3.4 (4) The seriousness of any suspected breach of the requirements of the legislation or the *rules* and the steps that need to be taken to correct that breach.

21. 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.

PRIN

22. The purpose of the Principles is set out at PRIN 1.1.2: *The Principles are a general statement of the fundamental obligations of firms and the other persons to whom they apply under the regulatory system. They derive their authority from the FCA's rule-making powers as set out in the Act, including as applied by the Payment Services Regulations and the Electronic Money Regulations, and reflect the statutory objectives.*
23. PRIN 3.1.1A states that PRIN applies to (1) to an electronic money institution, an authorised payment institution, a small payment institution or a registered account information service provider.
24. PRIN 2.1 sets out the Principles:
11 Relations with regulators
A firm must deal with its regulators in an open and cooperative way, and must disclose to the FCA appropriately anything relating to the firm of which that regulator would reasonably expect notice.