
FIRST SUPERVISORY NOTICE

To: **RCWatches Ltd**

Reference Number: **987078**

Address: **70 Hatton Garden
London
EC1N 8JT**

Date: **20 December 2023**

1 ACTION

- 1.1 For the reasons given in this First Supervisory Notice, and pursuant to sections 55J(1)(a), 55J(1)(c)(i) and 55J(2)(a)(ii) and sections 55L(2)(a) and (3)(a) of the Financial Services and Markets Act 2000 ("the Act"), the Financial Conduct Authority ("the Authority") has decided to impose on RCWatches Ltd ("the Firm") a variation of the Firm's Part 4A permission to perform regulated activities ("the Variation") and the following requirements ("the Requirements") with immediate effect.
- 1.2 The Authority has decided to vary with immediate effect the Part 4A permissions granted to the Firm by removing all regulated activities from those to which the permission relates.
- 1.3 The effect of the Variation is that the Firm no longer has permission to conduct regulated activity.
- 1.4 The Authority has also decided to impose the following Requirements:

Assets requirement

- (1) Save as set out in sub-paragraphs (2) and (3) below, the Firm must not, without the prior written consent of the Authority, in any way dispose of, withdraw, transfer, deal with or diminish the value of any of its own assets, and any funds

it holds for, or to the order of, its customers or investors (whether in the United Kingdom or elsewhere), whether held by the Firm as at the date of the imposition of the Requirements or acquired thereafter;

- (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 avoidance of doubt, for the purposes of sub-paragraph (2) above, the following would be in the ordinary and proper course of business:
 - a. Any fees incurred or paid in exchange for professional advisory services provided to the Firm; or
 - b. Any salaries of the Firm's staff, including to its directors, contractors or any other employees, where such salaries have been agreed prior to the imposition of the Requirements.
- (4) For the avoidance of doubt, for the purposes of sub-paragraph (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 sub-paragraph (3)(b) above, any payment to the Firm's shareholders, directors, officers, employees, any connected entities or persons;
 - c. The making of any gift or loan by the Firm to any party; or
 - d. The entry into any financial reconstruction, sale of any part of the Firm (whether share or asset based) or reorganisation.
- (5) Sub-paragraphs (1) to (4) constitute an assets requirement within the meaning of section 55P(4)(a) of the Act.

Notification requirements

- (6) By close of business on 3 January 2024, the Firm must publish in a prominent place on every website in its name (or that it operates) in a form to be agreed in advance with the Authority, a notice setting out the terms and effects of the Requirements and Variation;
- (7) The Firm must, by 17:00 on 4 January 2024, notify any investor, potential investor, or other relevant person directly affected by the Requirements of the terms and effect of the Requirements and Variation. The wording of this communication and the method of delivery must be agreed in advance with the Authority;
- (8) Once the notifications referred to in paragraphs (6) and (7) 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.

- (9) The Firm must provide to the Authority, by no later than 12 noon each Friday until such time as is notified otherwise in writing by the Authority (starting from the first Friday after the imposition of the Requirements), account statements for all of the Firm's bank accounts, e-money accounts and cryptoasset accounts showing all transactions for those accounts for the preceding seven days;

Records Retention

- (10) The Firm must secure and preserve all records and/or information (physical or electronic) relating to its business, including payment, electronic money and digital services in their original form, or in a copy, provided it is identical to the source material. These must be retained in a form and at a location within the United Kingdom, to be notified to the Authority in writing by 5pm on 27 December 2023, such that they can be provided to the Authority, or a person named by the Authority, promptly on its request;
- (11) The Firm must provide written confirmation to the Authority that it is in compliance with the Requirements and the Variation by 5 January 2024.
- 1.5 These Requirements and the Variation shall take immediate effect and remain in force unless and until varied or cancelled by the Authority (either on the application of the Firm or of the Authority's own volition).

2 REASONS FOR ACTION

Summary

- 2.1 The Authority has concluded, on the basis of the facts and matters described below that, in respect of the Firm, it is necessary to exercise its power under section 55L(2)(a) and (3)(a) of the Act to impose the Requirements, and to exercise its power under section 55J(1) and (2)(a) of the Act to impose the Variation, on the Firm because it is failing, or is likely to fail, to satisfy the Threshold Conditions.
- 2.2 Section 55L of the Act permits the Authority to impose Requirements on the Firm, and section 55J of the Act permits the Authority to impose the Variation on the Firm, each because:
- 1) it is failing, or is likely to fail, to satisfy the Suitability Threshold Condition pursuant to section 2E of Schedule 6 of the Act; and
 - 2) it is desirable to exercise the power 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 sections 1C of the Act.

Suitability Threshold Condition

- 2.3 The Authority has identified serious concerns relating to the Firm in that its conduct appears to demonstrate that it poses a significant risk of harm to consumers. Specifically, the Authority has serious concerns that the Firm is not a fit and proper person in relation to the regulated activities which it carries on or seeks to carry on as required by the Threshold Conditions at paragraph 2E of Schedule 6 of the Act.
- 2.4 The Authority considers that the imposition of the Requirements and the Variation should take immediate effect because the matters set out in this First Supervisory

Notice demonstrate that the Firm is unable to manage its affairs in a sound and prudent manner and is putting consumers at risk. The Authority considers that the Requirements and Variation should 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).

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 Closely Connected Person" means a person closely connected with the SMF;

"the Firm" means RCWatches Ltd;

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

"the Requirements" means the terms imposed on the Firm by this First Supervisory Notice as outlined in section 1 above;

"the SMF" means the individual that holds the Senior Management Function at the Firm;

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

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

"the Variation" means the terms imposed on the Firm by this First Supervisory Notice as outlined in section 1 above.

4 FACTS AND MATTERS

Background

4.1 The Firm was incorporated on 9 March 2015. It was authorised on 23 May 2023 with the following permissions:

- i. Credit broking (limited to secondary broking); and
- ii. Agreeing to carry on a regulated activity.

4.2 The Firm has a sole Director who is also the SMF of the Firm.

4.3 The Firm's website (www.rcwatches.com) describes its business model as *"initially trading as a wholesale trade business supplying luxury timepieces within the watch industry"* with *"85% business to business and sporadic retail customers"*. The Firm's *"post pandemic business has seen ... sales figures throughout the trade and retail market"* and their *"primary aim is raising capital to grow and expand our business, whilst raising our profile and promoting our brand, both in the UK and overseas"*.

Failings and risks identified

Information provided to the Authority by the Firm before and after authorisation

The Firm's Part 4A application

- 4.4 On 14 November 2022, the Firm applied to be authorised by the Authority under Part 4A of the Act (FRN 987078) with the following permissions:
- i. Credit broking limited to secondary broking;
 - ii. Debt adjusting limited to relevant credit activities as defined in paragraph 2G of Schedule 6 of the Act;
 - iii. Debt counselling limited to relevant credit activities as defined in paragraph 2G of Schedule 6 of the Act; and
 - iv. Agreeing to carry on a regulated activity.
- 4.5 The Authority's Authorisations Division ("Authorisations") undertakes the review on any application by a firm for authorisation by the Authority. Members of the Authorisations team therefore conducted a review of the Firm's application and, in doing so, asked the Firm, and the individual that was being proposed to manage the Firm, for further information to understand the Firm's business activities, who would manage it, and matters relating to the risks it might pose.
- 4.6 On 25 November 2022, Authorisations asked the Firm to provide further information which amongst other things included questions in respect of:
- i. the Firm's business activities and why it needed debt permissions;
 - ii. the extent to which the Firm undertook any unregulated financial services related activities and, if so, requested details of this activity including expected revenue;
 - iii. the reason the Firm was seeking authorisation;
 - iv. the identity of the individual(s) that would be carrying out the day-to-day running of the business and whether they were the same as the person that had applied to hold the only senior management function role at the Firm;
 - v. whether the SMF had held a senior management function role at any other regulated business;- and
 - vi. the background, skills and experience of the SMF.
- 4.7 On 29 November 2022, the Firm informed the Authority (among other things) that it did not need the relevant debt permissions and would not be undertaking unregulated financial services save for unregulated sales of wristwatches. In relation to the SMF, the Firm also stated that they carry "*out the running of the day to day business as sole Director and shareholder at the firm*", that they had never previously performed a SMF role but that they had been running the Firm since 2015. The Firm also stated that it planned to engage external compliance consultants to support the SMF in the discharge of their senior management function role and related responsibilities going forward. The Authority notes that, as at 29 November 2022, the Firm appeared to have two shareholders, including the SMF.
- 4.8 In certain places in the email from the Firm dated 29 November 2022, the Firm referred to the SMF by two different titles. The Authority considers that, given that the references in the Firm's email relate to the individual that would perform the senior management function at the Firm and the various measures that would support them in delivering that role, in addition to other information which appeared

to identify the SMF, it is clear that the Firm's email of 29 November 2022 could only reasonably be understood to be referring to the SMF throughout. No other individual has applied for a senior management function at the Firm as at the date of this Notice.

- 4.9 Also on 29 November 2022, the Firm provided the Authority with financial projections, indicating that it was projecting revenue for "*unregulated financial Services*" of £159,359 in the "*Current Period*", £1,800,000 as "*Y2 Forecast*", which would increase to £5,000,000 in the "*Y3 Forecast*".
- 4.10 Following further correspondence between the Authority and the Firm relating to aspects of the Firm's application, on 26 January 2023, the Authority asked the Firm for information on the number of employees it had, on the revenue projections supplied on 29 November 2022 and for other information on aspects of the Firm's business model.
- 4.11 The Firm, via its compliance advisor, responded to the Authority on 1 February 2023, stating that the response was on behalf of an individual with the same name as the SMF but a different title. For the reasons stated at paragraph 4.8, the Authority considers this could only be reasonably be understood to have been a reference to the SMF. The Firm's response explained, among other things, that it has two employees, that it had "*sourced external capital from a handful of private investors*" to enable it to "*make further stock purchases to expand our inventory which in turn will generate further sales*", and that the Firm had received funding from the SMF. The Firm's response also enclosed revised financial projections to address the Authority's queries, which stated that the Firm had no income from "*Unregulated Financial Services*" up to and including its "*Y3 Forecast*".
- 4.12 Having raised further questions as to the Firm's financial position, on 28 March 2023, the Firm provided the Authority with copies of its profit and loss account and balance sheet. Neither recorded the Firm engaging in or intending to conduct unregulated financial services. On 14 April and 18 April 2023, there was further correspondence between the Authority and the Firm in relation to the Firm's source of funds, and it was explained to the Authority by the Firm that the "*majority*" of the funding received by the Firm had emanated from the SMF. During a telephone call between the SMF and the Authority on 5 May 2023, the Firm informed the Authority that it was not looking for third party investment into the Firm.
- 4.13 On 23 May 2023, Authorisations granted the Firm's application to conduct regulated activities.

The Firm's variation of permissions application

- 4.14 Three weeks later, on 14 June 2023, the Firm applied to vary its Part 4A permissions to also conduct the regulated activities of debt adjusting and debt counselling.
- 4.15 In response to this application, the Authority queried whether the Firm was undertaking unregulated financial services activity and, on 15 June 2023, the Firm (via its compliance advisor) stated that it was not. The Firm had also provided a further set of financial projections, albeit noted that the "*requested debt permissions will not alter any of the financials.*"
- 4.16 The Authority sought to contact the Firm on 30 June, 4 July, 6 July, 10 July, 15 July and 20 July 2023, to understand why the Firm was seeking the additional permissions it had previously noted it did not need. The Firm's compliance advisor did respond to the Authority on 4 July 2023 and by telephone on 6 July 2023, but did not provide the necessary information in respect of the Firm's revised

application.

- 4.17 On 3 August 2023, the SMF informed the Authority that the Firm did not need the new permissions and therefore was withdrawing the application.

Further engagement with the Firm

- 4.18 On 21 August 2023, the Authority identified that a website, www.rcwatches-invest.com, purported to be operated by the Firm and was offering an investment. Further to certain press coverage relating to the website, on 24 August 2023 the Authority emailed the Firm to enquire whether the website was operated by the Firm, and if it was not, to obtain the Firm's consent to publish a consumer alert about the fact that a website appeared to be operating as a suspected clone of the Firm.
- 4.19 On 29 August 2023, having received no response from the Firm, the Authority sent an email to the Firm's compliance advisor, who had liaised with the Authority during the Firm's Part 4A application, to ask whether they could confirm whether the website was being operated by the Firm and reiterating the request made to the Firm on 24 August 2023.
- 4.20 Later on 29 August 2023, the SMF informed the Authority by email that the Firm was operating the website but that it had asked the relevant provider "*to have this page removed*". The SMF stated the Firm "*were completely unaware that was still live*" adding that the provider "*advised us [they were] mid stages creating a website for another client and used ours as a base*". The SMF did not indicate that the details contained in the website related to an investment opportunity that the Firm was offering at the time.
- 4.21 On the basis of the information received from the Firm, the Authority decided it was not necessary to issue a consumer alert and communicated to the Firm, on 1 September 2023, that the matter would instead be addressed through supervisory engagement.
- 4.22 On 4 September 2023, despite the earlier correspondence with the Firm via the SMF, the Firm's compliance consultant sent an email to the Authority stating that they were responding "*on behalf of the [Firm]*" and that the website and the Firm "*are not linked at all*", and that "*No, [the Firm does] not object*" to the publication of a consumer alert in respect of the operation of a suspected clone website. The Authority explained that the information received from the Firm's compliance consultant was contradictory to that received from the Firm, and was then informed by the compliance consultant that they had responded in error.

Supervision engagement with the Firm

- 4.23 Given various matters in respect of which the Authority had become aware following the Firm's authorisation, including the contradictory information relating to the Firm's website, the Authority sought to arrange to meet with the SMF.
- 4.24 Between 14 September 2023 and 24 October 2023, there was correspondence between the Firm (including, from 27 September 2023, via its legal representative) and the Authority in respect of a proposed meeting, including:
- i. Following attempts by the Authority to contact the Firm, and emails exchanged with the Firm, a meeting was provisionally arranged for 2

- October 2023;
 - ii. On 27 September 2023, the Firm's legal representative stated that the Firm considered it preferable to respond to any questions the Authority may have in writing rather than to first meet in person;
 - iii. On 29 September 2023, the Firm's legal representative stated the SMF *"would like to attend with his lawyer present"* which would therefore necessitate a delay to the proposed timing for any meeting;
 - iv. A series of emails were exchanged in which a meeting was proposed, at the request of the Firm, to take place on 17 October, during which the Authority emphasised that it considered it important for the meeting to take place;
 - v. Further emails were exchanged in which the Authority sought to arrange a meeting for 27 October 2023, which the Firm's legal representative confirmed that they were available to attend;
 - vi. On 24 October 2023, the Authority asked the Firm's legal representative to confirm that the SMF would attend the proposed meeting.
- 4.25 On 25 October 2023, the Firm's legal representative informed the Authority that whilst the Firm's *"sole director has always been [the SMF] the individual running the day-to-day business is [the Closely Connected Person]."* The email then stated that *"for [the SMF], [the Firm] has always been a sideline business interest"* because they had another full-time occupation and that the Firm's clients would be aware of the role of the Closely Connected Person. The email then explained that the Firm had issued a *"corporate bond"* to *"raise funds for the business"* from *"HNW investors/sophisticated investors/self-certified sophisticated investors"*.
- 4.26 On 26 October 2023, the Authority spoke with the Firm's legal representative. During the call, the Firm's legal representative stated that *"the business itself is clearly not, overall, run by [the SMF]"* and reiterated the fact that the SMF was not managing the business and that the Closely Connected Person was.
- 4.27 The Firm's legal representative then sent a further email to the Authority on 26 October 2023, which stated that they would be attending the scheduled meeting with the Authority along with the Closely Connected Person. The email also stated that *"...it was made very clear to [Authorisations] back in May, as part of the authorisation application, that [the SMF] was entirely 'hands off'. Picking up on your suggestion we believe this can be a useful bridge to an application to change the designated SMF particularly in circumstances where the permission has not yet been exercised."*
- 4.28 The Authority has reviewed its records relating to the Firm's authorisation and received no information to suggest that the SMF was to be *"entirely 'hands off'"* as regards the management of the Firm. This is also contradicted by the statements made by the Firm during the authorisations process (see paragraph 4.7, including where the Firm explained that the SMF *"carries out the running of the day to day business as sole Director..."*) and also, as should have been obvious to the Firm, at odds with how individuals who apply for a SMF role are expected to conduct themselves. The SMF was the only senior management function holder at the Firm and the assertions made during the authorisations process (see above) demonstrate, in the Authority's view, that it is not credible for the Firm to now suggest that it was known to the Authority that the SMF would be *"entirely 'hands off'"* in the management of the business.
- 4.29 Due to the apparent unwillingness of the SMF to attend the meeting scheduled for 27 October 2023, the Authority informed the Firm that it still wished to meet the SMF but that, if they were unavailable, the proposed meeting would be cancelled.

The Authority also provided the details to the Firm through which an application to add and remove a senior management function holder would need to be made.

The Authority's feedback to the Firm

4.30 On 9 November 2023, the Authority wrote to the Firm setting out its concerns about the Firm's conduct (the "9 November Letter"). The 9 November Letter referred to, among other things:

- i. the Firm and the SMF had each made declarations to the Authority as part of the authorisation applications that they understood that the provision of false or misleading information was a serious matter and had, for example, also made clear that the Firm and the SMF should not "*assume that the appropriate regulator will itself identify such information during the assessment*" and that if there was "*any doubt*" about the relevance of certain information, each was under an obligation to provide it.
- ii. The 9 November Letter referred to the contradictory statements made by the Firm and on its behalf as regards the role of the SMF and the Closely Connected Person.
- iii. Further, the 9 November Letter referred to statements made by the Firm on 29 November 2022, 18 April, 5 May and 15 June 2023 (see, for example, paragraphs 4.7 and 4.12 above) that the Firm would not be performing any unregulated financial activities, which were subsequently contradicted with those made by the Firm's legal representative on 25 October 2023 (see paragraph 4.25 above) about the fact that the Firm was issuing a corporate bond to high-net worth and sophisticated investors. The 9 November Letter also referred to the concerns arising from the website which the Authority had engaged with the Firm about in August 2023.
- iv. The Firm was, as a consequence, invited to apply to cancel its permissions held under Part 4A of the Act.

4.31 On 16 November 2023, the Firm via its legal representative offered an undertaking to the Authority to not conduct regulated activities until the Closely Connected Person had made an application to become a senior management function holder and upon the determination of this application. The Firm's response indicated that it did "*not propose at this stage to engage in a detailed response in relation to*" the description of and conclusions drawn in relation to the engagement between the Firm and the Authority during the authorisations application process. However, the Firm did state that the references in the Firm's email of 29 November 2022 (see paragraph 4.7 above) to an individual with a different title to the SMF were, in fact, references to the Closely Connected Person and were not references to the SMF.

4.32 In the email of 16 November 2023, the Firm's legal representative also noted that the Firm had been advised by its compliance consultant at the time of the application for authorisation that only the SMF could apply to be a senior management function holder on the basis that they were the only appointed director of the Firm.

Requests for further information

4.33 On 22 November 2023, the Authority sought further information from the Firm

pursuant to an information requirement issued under section 165 of the Act. The information requirement requested information about the Closely Connected Person, copies of the bank statements for the Firm's accounts, details of investors in the Firm's corporate bond and copies of materials provided to investors for that investment.

4.34 On 30 November 2023, the Firm responded to the information requirement. In this response, the Firm stated (among other things):

- i. With regard to a request that the Firm provide documentary evidence supporting its claim that it had been advised by its compliance consultant that only the SMF could be a senior management function holder, *"the majority of the advice [the Firm] received was via telephone consultation. We attach the full thread of email correspondence between our client and the FCA in November 2022 which [the Firm's compliance consultant] is copied into. We will repeat that [the Firm] erroneously understood, from those conversations with [the Firm's compliance consultant], that [the SMF], because he was the sole director, was the only person eligible to be an SMF."*
- ii. The Closely Connected Person had been involved in the SMF's business for a number of years.
- iii. It had not used its credit broking permission but was, notwithstanding this, unwilling to apply to cancel its Part 4A permission as *"there is no consumer detriment or crystallised risk"*.

4.35 The Authority does not consider that the Firm's further explanations regarding the information provided by the Firm during the authorisations process adequately explain the inconsistencies between what the Firm provided to the Authority during the authorisations process compared the information provided in October 2023.

The Firm's corporate bond

Information received from the Firm relating to investors

4.36 Also on 30 November 2023, the Firm provided a document named *"CLIENT RECORDS"* to the Authority, which stated the Firm had 13 clients who had made 17 investments into the Firm's corporate bond between 11 November 2022 and 28 October 2023. Those investments were either made in US Dollars or Sterling totalling \$265,000 and £214,500 respectively. Nine of those clients appear to be located in the UK (who collectively invested £64,500), one appears to be located in Ireland and the remaining three clients appear to be located in the Philippines.

4.37 The Authority notes that the first investment is recorded as occurring on 11 November 2022, three days before 14 November 2022, being the date that the Firm submitted the application for authorisation. In addition, a further five investments are recorded as being made before 23 May 2023, being the date that the application was determined. This information contradicts statements made by the Firm on 29 November 2022, 18 April, and 5 May and 15 June 2023 (see paragraphs 4.7 and 4.12 above) that it was not conducting any unregulated financial services. The Authority has not received a reasonable explanation from the Firm for this failure to disclose this information in respect of which the Authority reasonably expected notice. This is particularly concerning given the number of occasions that the Authority sought confirmation from the Firm as to whether it was conducting any unregulated financial service.

- 4.38 The application form for the corporate bond states that only restricted, sophisticated, high-net worth and self-certified sophisticated investors can invest with the Firm. The materials provided by the Firm show all investors were categorised as high net worth, restricted, sophisticated or self-certified sophisticated investors. However, the due diligence conducted before the investment was made appears only to verify an investor's identity rather than confirming they meet the relevant criteria to be categorised as they have been, and the Authority has not seen evidence of the Firm conducting an appropriateness assessment.

The Firm's Information Memorandum

- 4.39 The Firm's response of 30 November 2023 also enclosed a copy of an information memorandum purporting to relate to the corporate bond issued by the Firm (the "IM"). The IM states, among other things:

- i. it is "ACCURATE AS OF JULY 2022" (page 33);
- ii. it relates to an "OFFER FOR SUBSCRIPTION IN [the Firm's] PRIVATE CORPORATE BOND CAPITAL RAISE OF UP TO £2,500,000" (page 1);
- iii. details of the Firm including "FCA NUMBER: 987078";
- iv. That the corporate bond "[q]ualifies as an Unregulated Private Corporate Bond and may therefore only be promoted to Investment Professionals or Advisors, Certified High Net Worth Individuals and Certified Sophisticated investors as detailed in COBs 4.12" (page 5);
- v. The "Directors" of the Firm had taken all reasonable care to ensure that the information contained in the IM is "in accordance with the facts and does not omit anything likely to affect the importance of such information" and that the "Directors" had taken all reasonable care to ensure that every statement of fact or opinion included in the IM is true and not misleading "given the form and context in which it appears" (page 5). The Authority understands that the SMF has been the only formally appointed company director of the Firm; and
- vi. the bond represents an "opportunity to fund company expansion in a private Series B Corporate Bond" (page 29).

- 4.40 The IM also refers to the bond being offered via two different bond products, with different terms, applicable interest rates and interest repayment arrangements: one product is a 2-year bond with interest payable "bi-annually" at a rate of 8.35% per annum; the other product is a 5-year bond with interest compounded annually and payable at a rate of 10.62% per annum.

- 4.41 In describing risks associated with the bond, the IM refers to the "Reliance on key staff", which it particularises to mean: "[t]he continued success of the Company will depend in large part upon the skill and expertise of the Company's director and senior management". The IM is seemingly referring to the SMF, as the only company director, in this regard. The IM expressly refers to the role of the SMF as being the "CEO" and also sets out the role of others, including the Closely Connected Person (referred to as being in a "sales" role). The IM appears to be contradicted by the subsequent assertions made on the Firm's behalf on 25 October 2023 and 26 October 2023 in which it was stated that "...the individual running the day-to-day business is [the Closely Connected Person]" and that "for [the SMF], [the Firm] has always been a sideline business interest" and that they were "entirely hands-off".

4.42 The IM describes what the Firm would use monies raised through the bond issuance for, including using the monies:

- i. For *"additional advertising, marketing (including social media marketing), construction of a new online website and acquisition of stock"* which would *"dramatically increase our sales revenue and accelerate our sales growth in the consumer retail market"*.
- ii. From 2023 onwards, the additional capital would be *"partly channelled into expanding our in-house marketing, digital marketing and advertising"* to *"enable us to grow market share and develop brand recognition"*.
- iii. To *"strengthen our buying power"* and infers that the Firm will sponsor events *"at high profile golf clubs and Motorsport racing events"*.
- iv. From 2024, the Firm would *"seek a further UK boutique"* to *"extend our exposure and client base"* and would *"seek to launch an asset backed alternative investment watch fund"*.

4.43 The IM also refers to the *"minimum investment"* as being £10,000, and that investors could be *"any individual who is over the age of 18 or a trust, company or charity"*, but on the proviso that an investor was one of a *"certified high net worth investor"*, *"certified sophisticated investor"*, *"self-certified sophisticated investor"* or a *"certified restricted investor"*. The Authority has identified that there are several investments which are below the £10,000 minimum investment level stated in the IM.

4.44 The IM notes that the investment in the bond would not be covered by the Financial Services Compensation Scheme and was not a financial product regulated by the Authority, but that the Firm *"do use FCA regulated escrow providers along with security trustees for your added security"*. The Authority understands the reference in the IM to the Firm using a *"regulated escrow provider"* suggests that the money invested by investors will be held by a third-party escrow agent and that the reference to a *"security trustee"* is to a third-party trustee that would hold any security the investors would obtain through their investment on trust and for the benefit of the investors. The Authority considers that the IM, in stating that these entities would be used by the Firm *"for your added security"* can reasonably be understood to suggest that the Firm had put in place extra measures to provide security for an investor, which the Authority considers is likely to have been stated to provide an investor with greater assurance as to the prospects of invested funds being held securely. The Authority's analysis of the Firm's business bank accounts indicates that investment funds are paid directly to the Firm and not via an escrow provider. The Authority has not identified other evidence to suggest that a third-party trustee does, in fact, provide a service to the investors in the bond (in relation to any security interests or otherwise).

4.45 Information received from the Firm indicates that an investor would typically receive certain documentation upon investing, including a *"Bond Certificate"* and *"Confirmation Agreement"*, indicating the full investment amount and repayment terms.

4.46 The Authority notes that the IM includes certain financial projections up to 2026, which are described as *"Conservative"* and *"Targeted"*. The financial projections in the IM appear to be materially different to the information provided by the Firm to the Authority on during the authorisations process (including on 29 November 2022, 1 February 2023 and 15 June 2023). For example:

- i. total revenue for 2021 was stated to be £2,655,274 in the IM, whereas information provided to the Authority in connection with the authorisations application indicated revenue of £159,359 in the "*Historic Period*". The Authority cannot definitively deduce which "period" the term "historic period" is intended to refer to in this context, but considers that it is reasonably likely to refer to the period leading up to the application for authorisation (and therefore likely to include at least some of 2021);
- ii. costs of sales for 2021 was stated to be £4,606,129 in the IM, whereas information provided to the Authority in connection with the authorisations application indicated cost of sales to be £222,139 in the "*Historic Period*";
- iii. gross profit for 2021 was stated to be £756,145 in the IM, whereas information provided to Authorisations in connection with the authorisations application indicated a loss of £62,780 in the "*Historic Period*";
- iv. tax paid for 2021 was stated to be £100,222.22 in the IM, whereas information provided to the Authority in connection with the authorisations application indicated that no tax was paid in the "*Historic Period*"; and
- v. profit after tax for 2021 was stated to be £456,567.90, whereas information provided to the Authority in connection with the authorisations application indicated that the Firm incurred a loss after tax of £155,192 in the "*Historic Period*".

4.47 Further, the abridged financial accounts for the Firm filed at Companies House on 16 July 2023 for the year ending 31 March 2023 do not appear to be consistent with either the information contained in the IM or the information provided to the Authority as part of the authorisations application. Moreover, no reference is made in the Firm's accounts for the year ending 31 March 2023 to the bonds issued by the Firm.

4.48 The Authority notes that it is either unclear whether the information contained in the different sources relates to the same time period (such as in the IM which refers to "2021", whereas the Firm provided to the Authority in connection with the authorisations process refers to the "*historic period*"), and that the Firm's abridged financial accounts relate to the year ending 31 March 2023. The information is, however, starkly different between each set of documents, and the financial projections contained in the IM appear to be significantly higher than the financial projections contained in information submitted as part of the authorisations application. Finally, the Authority notes that the bonds issued in the period up to 31 March 2023 are not referenced in the Firm's abridged accounts filed with Companies House.

Use of investor funds

4.49 The Firm's business bank accounts with Bank A and Bank B were provided to the Authority on 30 November, 4 December and 7 December 2023 in response to the Authority's information requirement dated 22 November 2023.

Interest repayments

4.50 The bank statements for the accounts held in the Firm's name with Bank A and Bank B indicate that some investors have received payments from the Firm. Five of the 13 investors that the Firm included on the list of investors provided to the Authority appear to have received a payment from the Firm since making their investment. The returns suggest that the amounts paid relate to interest owed to the investor as the payments are made six months after the investor made their

investment and are for an amount equivalent to the interest that would be owed to the investor had they purchased a 2-year bond offered by the Firm (with annual interest of 8.35%, payable twice yearly). Certain other documentation relating to these individual investors also suggests that this was what the Firm agreed to.

- 4.51 The Authority notes that some investors appear to have made their investment less than six months before the date the Authority received the information, such that interest payments due biannually may fall due after the date of this Notice. However, two other investors who invested on 19 May 2023 and 31 May 2023 respectively appear not to have received any interest payments up until 1 December 2023, despite opting to receive their interest payments on a biannual basis.

Use of sums invested

- 4.52 The bank statements for the Firm's business bank accounts held with Bank A and Bank B suggest a pattern of investor monies being received by the Firm followed by substantial payments being made, on the same day or shortly after, to the SMF, the Closely Connected Person and/or to a third party that appears to be either connected to the Firm or who is not otherwise referred to in the IM. The Authority has identified in some instances that sums are paid to a third-party individual ("Individual A") which are roughly equivalent to 35% of the funds invested by the investor and which contain a payment description including the name of the investor. The Authority is concerned that Individual A may have in some way introduced the investor to the Firm and received a fee for doing so, despite this fee not being disclosed by the Firm in the IM. In addition, the Authority has identified that, on the date of, or shortly after, an investor paying their investment into the Firm's business bank account, there are instances where payments are also made to another individual that the Authority understands to be connected to the Closely Connected Person ("Individual B"). The IM does not contain reference to payments of fees or commissions to the SMF, the Closely Connected Person or Individual B and it is unclear what these payments relate to.
- 4.53 The Firm's bank account statements for the account held with Bank A contain payments with descriptions such as "*watch*" and "*Watch accessories*", as well as several payments that appear to be to jewellers. The Authority has identified that, from 1 November 2021, approximately 10% of sums invested by investors are paid out from the Firm's bank account with Bank A for payments seemingly connected to the purchase of stock (equating to less than £43,000). The IM states, by way of comparison, that in 2021 the Firm spent £2,795,446 to purchase stock, with a further £9,500 in related servicing costs.
- 4.54 The Authority is concerned by the material difference between sums that appear to have been paid for the purchase of stock based on an analysis of the Firm's business bank account with Bank A, compared to what is stated in the IM.
- 4.55 As above, despite the IM referring to the Firm using a "*regulated escrow provider*" there is no indication from the Firm's bank statements for accounts held with Bank A or Bank B that a third-party is holding monies in escrow for investors. Instead, the accounts suggest that an investor's investment is paid directly to the Firm.

Information indicating the existence of other investors not disclosed by the Firm

- 4.56 The Firm provided to the Authority, pursuant to an information requirement, the

bank statements for the accounts held in its name with Bank A and Bank B from 30 November 2023. The Firm also provided the Authority with a list of investors on 30 November 2023. The Authority is concerned, based on the bank statements for the Firm's accounts it has received, that the Firm may have received monies from other individuals that are investors in the corporate bond, but who were not included on the list of investors provided to the Authority on 30 November 2023.

- 4.57 For example, there are eight payments made to the Firm's account, dated from 3 October 2023 to 24 November 2023, which contain payment descriptions in the same form as the payment descriptions for those payments received from known investors (including the investor's name and a reference in the same format). These payments received total £157,500 and were made to the Firm's account prior to 30 November 2023. The Authority is therefore concerned that these payments may have been made by other investors in the bond. The Authority is also concerned that other payments made into the accounts held with Bank A and Bank B may relate to sums received from individual investors.

5 CONCLUSION

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

Analysis of failings and risks

- 5.2 The analysis of failings and risks in this section are dealt with as follows:
- i. failure to comply with Threshold Conditions; and
 - ii. the Authority's operational objective of providing an appropriate degree of protection to consumers.

Failure to comply with the Threshold Conditions

- 5.3 The Threshold Conditions are minimum standards that firms need to meet in order to be authorised and to continue carrying on regulated activities. Section 55L of the Act permits the Authority to impose requirements on the Firm because the Firm is failing, or is likely to fail, to satisfy the Suitability Threshold Condition pursuant to section 2E of Schedule 6 of the Act. Section 55J of the Act permits the Authority to vary a Firm's Part 4A permission by removing a regulated activity from those to which the permission relates in the same circumstances as those envisaged under section 55L.
- 5.4 Supervision has serious concerns that the Firm is failing, or is likely to fail, to meet the Threshold Condition above as it is not a fit and proper person in relation to the regulated activities which it carries on or seeks to carry on.
- 5.5 Supervision has very serious concerns that the Firm has made false or misleading statements to the Authority and/or may not have been open and cooperative and disclosed to the Authority appropriately anything relating to the Firm of which the Authority would reasonably expect notice. Specifically:
- i. On 29 November 2022, the Firm stated during its application for authorisation (among other things) that the SMF "*carries out the running of the day to day business as sole Director*" of the Firm and "*manages all daily operations in running the business*". Despite this, on 25 October 2023, following attempts by the Authority to arrange an in-person meeting with the SMF, the Firm informed the Authority that although the

"sole director has always been [the SMF] the individual running the day-to-day business is [the Closely Connected Person]." The email then stated that "for [the SMF], [the Firm] has always been a sideline business interest" because they had another full-time occupation and that the Firm's clients would be aware of the role of the Closely Connected Person. The Authority makes certain functions within a firm a senior management function role so that it can know who a firm's most senior decision makers are and to make sure a firm clearly allocates responsibilities to those key individuals. The subsequent explanation provided by the Firm on 26 October 2023, to suggest that it was made "very clear" to the Authority that the SMF would be "entirely hands-off" is not consistent with what the Firm stated during the authorisations application process and is clearly contrary to the Authority stated public policy on the role of, and expectations on, those that hold senior management function roles. The Authority considers that the Firm's response to this issue is therefore unsubstantiated and not credible.

- ii. On 29 November 2022, 18 April, 5 May and 15 June 2023, the Firm informed the Authority that it was not conducting any unregulated financial services. Despite this, the Firm subsequently informed the Authority on 25 October 2023 that it was, in fact, offering investments in a corporate bond to investors. The evidence obtained also demonstrates that it first started doing so from 11 November 2022, prior to submitting its application to the Authority. Up until 25 October 2023 (and thereafter), the Firm must have known that the Firm was offering investments into a corporate bond, and the Authority considers it should have been obvious to the Firm that this matter should have been disclosed and information provided to the Authority in relation to it. This is particularly the case in light of specific and repeated questions from the Authority in relation to the issue of the Firm's unregulated financial service activities.

5.6 The Authority also has very serious concerns in respect of the information obtained by the Authority relating to the corporate bond, and that this suggests that the Firm may not be conducting its affairs in an appropriate manner having regard to the interests of consumers. The Authority is also concerned as to whether the Firm's business is being managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner. Specifically:

- i. The IM appears to contain a number of statements that may be misleading, including in relation to the role of the SMF, the use by the Firm of third-parties to support the issuance of the bond who are described as providing an investor with "added security", and in respect of the Firm's financial performance.
- ii. The bank statements for the Firm's business bank accounts held with Bank A and Bank B suggest a pattern of investor monies being received by the Firm followed by substantial payments being made, on the same day or shortly after, to the SMF, the Closely Connected Person and/or to a third party that appears to be either connected to the Firm or who is not otherwise referred to in the IM. The IM does not contain reference to payments of fees or commissions to the SMF or to the Closely Connected Person and it is unclear what these payments relate to.
- iii. The Authority is concerned, based on the bank statements for the Firm's accounts it has received, that the Firm may have received monies from

other individuals that are investors in the corporate bond, but who were not included on the list of investors provided to the Authority on 30 November 2023.

The Authority's operational objective of providing an appropriate degree of protection to consumers

- 5.7 The Authority's consumer protection objective requires the Authority to provide an appropriate degree of protection to consumers (Section 1C of the Act). The Authority considers that the Firm represents a serious and ongoing risk of harming consumers because of the matters described in this Notice.
- 5.8 Therefore, on the basis of the facts and matters set out above, it appears to the Authority that it is desirable to exercise the powers under sections 55J(2)(a) and 55L(3)(a) of the Act in order to advance the consumer protection objective.
- 5.9 The Authority considers that the Requirements and Variation are a proportionate and appropriate means to address the current and immediate risks.

Timing and duration of the Requirements

- 5.10 It is necessary to impose the Requirements and the Variation on an urgent basis given the seriousness of the risks and the need to protect consumers.
- 5.11 The Requirements and Variation 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).

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 **3 January 2024** 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

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).
- 6.7 Further information on the Tribunal, including guidance and the relevant forms to complete, can be found on the HM Courts and Tribunal Service website: <http://www.justice.gov.uk/forms/hmcts/tax-and-chancery-upper-tribunal>
- 6.8 The Firm should note that a copy of the reference notice (Form FTC3) must also be sent to the Authority at the same time as a reference is filed with the Tribunal. A copy of the reference notice should be sent to the SPC Decision Making Secretariat (SPCDecisionMakingSecretariat@fca.org.uk).

Confidentiality and publicity

- 6.9 The Firm should note that this First Supervisory Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining legal advice on its contents).
- 6.10 The Firm should note that section 391(5) of the Act requires the Authority, when the First Supervisory Notice takes effect, to publish such information about the matter to which the notice relates as it considers appropriate.

Authority contacts

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

Lucy Castledine
Decision made under Executive Procedures
Director, Consumer Investments

Annex

RELEVANT STATUTORY PROVISIONS

1. The Authority's operational objectives established in section 1B of the Act include securing an appropriate degree of protection for consumers, and protecting and enhancing the integrity of the UK financial system.
2. Section 55L of the Act allows the Authority to impose a new requirement on an authorised person if it appears to the Authority that the authorised person is failing, or likely to fail to satisfy the Threshold Conditions (section 55L(2)(a)), or it is desirable to exercise the power in order to advance one or more of the Authority's operational objectives (section 55L(2)(c)).
3. Section 55N of the Act allows a requirement to be imposed under section 55L of the Act so as to require the person concerned to take specified action (section 55N(1)(a)), or to refrain from taking specified action (section 55N(1)(b)).
4. Section 55P of the Act allows a requirement to be imposed under section 55L of the Act prohibiting the disposal of, or other dealing with, any of an authorised person's assets (whether in the UK or elsewhere), or restricting such disposals or dealings.
5. Section 55J of the Act allows the Authority to vary the Part 4A permission of 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 55J(1)), or it is desirable to exercise the power to advance one or more of the Authority's operational objectives (section 55J(1)(c)). The Authority may vary an authorised person's Part 4A permission by removing a regulated activity from those to which the permission relates (section 55J(2)(a)).
6. Section 55Y(3) of the Act allows a requirement or variation 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).
7. Section 391 of the Act provides that:

" [...]

(5) When a supervisory notice takes effect, the Authority must publish such information about the matter to which the notice relates as it considers appropriate.
(6) 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

8. 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.

9. EG 8.1.1 reflects the provisions of section 55L and of section 55J of the Act by stating that the Authority may use its own-initiative power to impose requirements on an authorised person, or vary an authorised person's Part 4A permission, 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)).
10. 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)).
11. 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 or under section 55L of the Act to vary a firm's permission or 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)).
12. EG 8.3.1 states that the Authority may impose a variation or a requirement so that it takes effect immediately or on a specified date if it reasonably considers it necessary for the variation or requirement to take effect immediately (or on the date specified), having regard to the ground on which it is exercising its own-initiative powers.
13. 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.
14. 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.
15. EG 8.3.4 states that the Authority will consider the full circumstances of each case when it decides whether an imposition of a variation or a requirement is appropriate and sets out a non-exhaustive list of factors the Authority may consider.

16. EG 8.3.4(1) includes the extent of any loss, or risk of loss, or other adverse effect on consumers. The more serious the loss or potential loss or other adverse effect, the more likely it is that the Authority's exercise of own-initiative powers will be appropriate, to protect the consumers' interests.
17. EG 8.3.4(2) includes the nature and extent of any false or inaccurate information provided by the firm. Whether false or inaccurate information warrants the Authority's exercise of its own-initiative powers will depend on matters such as (a) the impact of the information on the Authority's view of the firm's compliance with the regulatory requirements to which it is subject, the firm's suitability to conduct regulated activities, or the likelihood that the firm's business may be being used in connection with financial crime, (b) whether the information appears to have been provided in an attempt knowingly to mislead the Authority, rather than through inadvertence, and (c) whether the matters to which false or inaccurate information relates indicate there is a risk to customer assets or to the other interests of the firm's actual or potential customers.
18. EG 8.3.4(4) includes the seriousness of any suspected breach of the requirements of the legislation or the rules and the steps that need to be taken to correct that breach.
19. EG 8.3.4(8) includes the firm's conduct. The Authority will take into account whether the firm identified the issue, brought it promptly to the Authority's attention and what steps the firm has taken or is taking to address the issue.
20. 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.