

Following the appointment of joint administrators on 30 January 2019, on 7 February 2019 the direction referred to at paragraph 1(d) below was revoked

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## SECOND SUPERVISORY NOTICE

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**To:** London Capital & Finance plc

**Of:** The Old Coach House, Eridge Park, Eridge Green, Tunbridge Wells, East Sussex TN3 9JS

**FCA reference number:** 722603

**Dated:** 17 January 2019

### DIRECTION

1. By way of a First Supervisory Notice dated 10 December 2018 the Financial Conduct Authority ("the FCA") directed London Capital & Finance plc ("LCF") to immediately:
  - (a) Withdraw from its website ([www.londoncapitalandfinance.co.uk](http://www.londoncapitalandfinance.co.uk)) all communications relating to its "Fixed Rate ISA or Bond";
  - (b) Withdraw all other communications that relate to its "Fixed Rate ISA or Bond", whether those communications appear on Facebook, Youtube, [www.top-isa.rates.co.uk](http://www.top-isa.rates.co.uk), [www.best-savings-rate.co.uk](http://www.best-savings-rate.co.uk), as a result of Google searches or any other platform or advertising medium;
  - (c) Refrain from making any communications that in substance replicated the claims made on the firm's website about the "Fixed Rate ISA or Bond";
  - (d) Publish on its website the following statement prominently at the top of the homepage "The Financial Conduct Authority has directed London Capital & Finance plc to withdraw all of its existing marketing materials in relation to LCF's Fixed Rate ISA or Bond".
2. The above direction ("the Direction") was made for the reasons given below and pursuant to section 137S(5) of the Financial Services and Markets Act 2000 ("the Act").

3. On 13 December 2018 the FCA imposed a requirement on LCF under s55L of the Act such that "*LCF may not communicate or approve any invitation or inducement to engage in investment activity (i.e. financial promotion)*" (this requirement was amongst others imposed on receipt of a voluntary application by LCF).
4. Given that LCF is now not permitted to communicate or approve any financial promotions paragraphs 1(a) to (c) of the Direction are no longer necessary and are hereby revoked. Paragraph 1(d) of the Direction is not revoked.
5. The FCA's reasons for issuing the Direction are set out below and LCF's representations on the Direction are set out in Annex A to this Notice.

### **SUMMARY REASONS FOR ISSUING THE DIRECTION**

6. The FCA considers that LCF's communications in relation to its "*Fixed Rate ISA or Bond*" were misleading, not fair and not clear, in breach of FCA rule COBS 4.2.1R. The FCA considers the Direction was proportionate in the circumstances. In particular the FCA considers that the publication required under paragraph 1(d) above was a proportionate way at that stage of bringing the FCA's concerns to the attention of all investors and potential investors (including investors seeking to rollover their existing investments). Notwithstanding that the FCA now intends to publish such information about the details in this Notice as it considers appropriate, the FCA considers that the Direction in paragraph 1(d) should remain in place so that anyone viewing the LCF website is alerted to the FCA's concerns.

### **FACTS AND MATTERS CONCERNING THE PROMOTIONS**

#### The LCF Bonds are not ISA qualifying investments

7. LCF was marketing its bonds on its website with statements including the following:
  - (a) "*6.5% p.a. 2 year Fixed Rate ISA or Bond*";
  - (b) "*8.0% p.a. 3 year Fixed Rate ISA or Bond*";
  - (c) "*8.95% p.a. 5 year Fixed Rate ISA or Bond*";
  - (d) "*The interest on our innovative finance ISAs is tax free*";
  - (e) "*[LCF] is a leading provider of ISAs*"; and
  - (f) "*Our investments are non-transferable*".
8. In order for bonds to be qualifying investments for an innovative finance ISA they have to meet certain conditions, including that they are transferable (Regulation 8A(2) and (4) of the Individual Savings Account Regulations 1998/1870). LCF's website made clear that its Bonds are non-transferable. It therefore appears that LCF's Bonds do not qualify to be held in an ISA account and that investors were being misled by being told the interest they earn will be tax free.

Undue prominence given to the firm's FCA authorisation despite the bonds not being regulated or having FSCS protection

9. LCF's website prominently displayed the fact the firm is "Authorised and regulated by the FCA". Whilst two important caveats to this were contained on the website, namely that:

(a) "Whilst [LCF] is regulated by the FCA, the bonds offered herein are structured as corporate loans to [LCF] and are therefore not regulated by the FCA"

(b) "these bonds are not protected under the FSCS"

these important caveats were not given the same prominence as the statements about FCA authorisation. The website was therefore misleading.

Past performance warning insufficiently prominent

10. The website prominently proclaimed "Over £224 million invested to date, 100% track record". Whilst there was also a past performance warning on the website stating "Please note that past performance is not an indicator of future results" this was contained in a footnote in small text.
11. The FCA considers that the past performance warning was not prominent enough on the homepage, especially given the prominence of the "100% track record" statement. FCA rules make clear that an indication of past performance must satisfy certain conditions (COBS 4.6.2R (1-6)). In particular the FCA considers that LCF's footnoted warning about past performance not being an indicator of future results was not prominent as required by COBS 4.6.2(4)R.

Inappropriate comparison with cash savings

12. The website contained the headline "LOOKING FOR HIGHER RETURNS THAN THE HIGH STREET". This was comparing what is a high-risk investment (the LCF Bonds) with cash savings.
13. COBS 4.5.6R requires that "If information compares...relevant investments...a firm must ensure that the comparison is meaningful and presented in a fair and balanced way". Whilst the website does contain balancing statements, such as "Investing in bonds means your **capital is at risk** and payments are not guaranteed if borrowers default", in the FCA's view the balancing statements needed to be as prominent as the headline in order for this comparison to be fair, clear and not misleading.

Other communications that relate to LCF's "Fixed Rate ISA or Bond"

14. LCF's Bonds were also marketed via Facebook, Youtube, [www.top-isa.rates.co.uk](http://www.top-isa.rates.co.uk), [www.best-savings-rate.co.uk](http://www.best-savings-rate.co.uk) and Google searches in a way that linked to LCF's website.

## **PROCEDURE**

### **Decision Maker**

15. The decision which gave rise to the obligation to give this Notice was made by the Regulatory Transactions Committee.
16. This Notice is given to LCF pursuant to section 137S(8), (9) and (10) of the Act.

### **Publication**

17. In accordance with section 137S(11) of the Act, the period for making representations in relation to the Direction having ended, the FCA intends to publish such information about the matter as it considers appropriate.

### **Tribunal**

18. LCF has the right to refer the matter to which this Notice relates to the Tribunal. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, LCF has 28 days from the date on which this Notice is given to it to refer the matter to the Tribunal.
19. A reference to the Tribunal can be made by way of a reference notice (Form FTC3) signed by LCF and filed with a copy of this Notice. The Tribunal's contact details are: The Upper Tribunal, Tax and Chancery Chamber, 5th Floor, The Rolls Building, Fetter Lane, London EC4A 1NL (telephone: 020 7612 9730; email: uttc@hmcts.gsi.gov.uk).
20. For further information on the Tribunal LCF should refer to the HM Courts and Tribunal Service website. The following page includes guidance on making a reference to the Tribunal, the relevant form to complete (Form FTC3) and notes on that form:  
  
<http://www.justice.gov.uk/forms/hmcts/tax-and-chancery-upper-tribunal>
21. LCF should note that a copy of the reference notice (Form FTC3) must also be sent to the FCA at the same time as filing a reference with the Tribunal. A copy of the reference notice should be sent to Edmund Weighell at the FCA, email [edmund.weighell@fca.org.uk](mailto:edmund.weighell@fca.org.uk).

**Sarah Rapson**  
**Chair, Regulatory Transactions Committee**

## **ANNEX A – LCF’S REPRESENTATIONS ON THE DIRECTION**

This Annex sets out a summary of the representations made by LCF in relation to the issues dealt with under each of the subheadings in the “Fact and Matters Concerning the Promotions” section of the Notice, and the FCA’s response to those representations.

### **The LCF Bonds are not ISA qualifying investments**

#### LCF’s representations

LCF asserted that it had had conversations the Tax Incentivised Savings Association (TISA) and HM Revenue and Customs (HMRC) as part of LCF’s application to HMRC for permission to become an ISA manager. LCF stated that its understanding, in particular from HMRC, following those conversations was that the LCF Bond was an ISA qualifying investment. LCF stated that it considers it should not be unduly penalised if there has been a misunderstanding.

#### FCA’s response

*The purpose of the Direction was not to penalise LCF, it was to ensure that investors in LCF’s Bonds are not misled. The process of applying to be an ISA manager does not include an assessment by HMRC of whether investments to be managed are qualifying investments – this was LCF’s responsibility. LCF’s Bonds do not appear to qualify to be held in an innovative finance ISA account because, as was made clear on LCF’s website, they are non-transferable.*

### **Undue prominence given to the firm’s FCA authorisation despite the bonds not being regulated or having FSCS protection**

#### LCF’s representations

LCF stated that it agrees with the points made in the Notice and is prepared to remedy the issue going forward.

#### FCA’s response

*Whilst the acknowledgment of the problem is noted, the FCA will consider any application to lift the requirement imposed on LCF on 13 December 2018 (see paragraph 3 of the Notice – LCF may not communicate or approve any financial promotion) as and when such an application is received.*

### **Past performance warning insufficiently prominent**

#### LCF’s representations

LCF stated that it agrees that the past performance warning should be in larger font.

#### FCA’s response

*Whilst the acknowledgment of the problem is noted, the FCA will consider any application to lift the requirement imposed on LCF on 13 December 2018 (see paragraph 3 of the Notice – LCF may not communicate or approve any financial promotion) as and when such an application is received.*

## **Inappropriate comparison with cash savings**

### LCF's representations

LCF stated that it agrees that the relevant part of its website needed to be changed.

### FCA's response

*Whilst the acknowledgment of the problem is noted, the FCA will consider any application to lift the requirement imposed on LCF on 13 December 2018 (see paragraph 3 of the Notice – LCF may not communicate or approve any financial promotion) as and when such an application is received.*

## **Other communications that relate to LCF's "Fixed Rate ISA or Bond"**

### LCF's representations

LCF stated that it has little control over third party websites, claiming that the websites referred to at paragraph 14 above had "independently" removed references to the LCF Bonds following the FCA's Direction.

### FCA's response

*The FCA notes that the two websites removed the references to LCF's Bonds very shortly after the First Supervisory Notice was issued on 10 December 2018.*