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## **SECOND SUPERVISORY NOTICE**

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**To: P.F. (International) Limited**

**Of: Romilly House  
Central Park  
Petherton Road  
Bristol  
Somerset  
BS14 9BZ**

**FRN: 668963**

**Dated: 20 November 2018**

### **ACTION**

1. For the reasons given in this Notice, the Authority has decided not to rescind the variation of permission and the requirements that were notified to P.F. (International) Limited (the "Firm") in the First Supervisory Notice dated 31 July 2018 ("The First Supervisory Notice"). Accordingly, the Firm is not permitted to carry on any regulated activity.

2. The First Supervisory Notice notified the Firm of the Authority's decision:
- (a) pursuant to section 55J of the Financial Service and Markets Act 2000 (the "Act"), to vary the permission granted to the Firm, with effect from 31 July 2018, by removing the following regulated activities;
    - i. agreeing to carry on a regulated activity;
    - ii. credit broking; and
    - iii. entering into regulated credit agreements as lender (excluding high-cost short-term credit, bill of sale agreements, and home collected credit agreements);
  - (b) pursuant to section 55J of the Act, to vary the permission granted to the Firm, with effect from 1 November 2018, by removing the regulated activity of exercising / having the right to exercise lender's rights and duties under a regulated credit agreement (excluding high-cost short-term credit, bill of sale agreements, and home collected credit agreements); and
  - (c) pursuant to section 55L of the Act, to impose on the Firm, with effect from 31 July 2018, the following requirements:
    - a. The Firm must, if it proposes to sell its loan book to any third party, disclose the potential purchaser to the Authority at least 4 weeks prior to any sale;
    - b. The Firm must by 7 August 2018 at the latest, send the Authority a draft letter, which it proposes to send to each of its existing customers to whom it has lent funds and from whom funds remain outstanding under regulated agreements ("Existing Customers"), explaining to them the existence and:
      - i) effect of the First Supervisory Notice; and
      - ii) nature of the rights they have under the law.Within 5 working days of the Authority agreeing the content of the letter, the Firm must then send it to its Existing Customers; and
    - c. The Firm must supply the Authority with a list of the Existing Customers by 7 August 2018 at the latest.

## **REASONS FOR ACTION**

3. On the basis of the facts and matters described in this Notice, having taken into account the representations made by the Firm, the Authority considers that the variation of permission and the imposition of requirements set out in the First Supervisory Notice were necessary and appropriate. It appears to the Authority that:

- a) the Firm is failing to satisfy the threshold condition set out in paragraph 2E (suitability) of Schedule 6 to the Act; and
- b) the variation of permission and the requirements set out in the First Supervisory Notice are desirable in order to advance the Authority's consumer protection objective (set out in section 1C of the Act).

## **DEFINITIONS**

4. The definitions below are used in this Notice:

"the Act" means the Financial Services and Markets Act 2000;

"the Authority" means the Financial Conduct Authority;

"Existing Customers" means the Firm's customers to whom it has lent funds and from whom funds remain outstanding under regulated agreements

"the Firm" means P.F. (International) Limited

"the First-Tier Tribunal" means the First-Tier Tribunal (Consumer Credit) General Regulatory Chamber;

"the First Supervisory Notice" means the First Supervisory Notice given to the Firm and dated 31 July 2018;

"the Handbook" means the Authority's Handbook of rules and guidance;

"the OFT" means the Office of Fair Trading;

"the Requirement" means the requirement on the Firm's permissions which states: 'the Firm is not permitted to canvass regulated borrower-lender-supplier agreements or regulated consumer hire agreements off trade premises';

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

"X Ltd" means the company (whose name has been anonymised) with connections to the Firm described in paragraphs 19 and 20.

## **FACTS AND MATTERS RELIED ON**

### **Background**

5. The Firm is a small business based in Bristol. Its business model previously included selling premium vacuum cleaners door to door. Customers could purchase the cleaners by cash or on credit. The credit was either supplied directly by the Firm, or the Firm would broker credit to another lender. On 13 November 2018, the Firm told the Authority that it had ceased its sales activities. Accordingly, the Firm's current business appears to involve exercising rights (including by collecting payments) under the credit agreements it previously entered into, and servicing the vacuum cleaners that it previously sold.

6. On 1 October 2015, the Firm was authorised to conduct the following activities:
  - a) Agreeing to carry on a regulated activity;
  - b) Credit broking;
  - c) Entering into a regulated credit agreement as lender (excluding high-cost short-term credit, bill of sale agreements, and home collected credit agreements); and
  - d) Exercising/having the right to exercise the lender's rights and duties under a regulated credit agreement (excluding high-cost short-term credit, bill of sale agreements, and home collected credit agreements).

## **Failings**

### *Canvassing Off Trade Premises*

7. On 1 October 2015 (when the Firm was authorised), the Authority imposed the Requirement on the Firm. The Requirement states that the Firm is not permitted to canvass regulated borrower-lender-supplier agreements or regulated consumer hire agreements off trade premises.
8. The Firm has been trading in breach of this requirement from the time of its authorisation by attending the homes of consumers, without a prior appointment, with a view to persuading them to enter into credit agreements in order to purchase vacuum cleaners.

### *Affordability checks*

9. It appears to the Authority that the Firm has entered into consumer credit agreements without conducting adequate creditworthiness assessments, as it is required to do under CONC 5.2.1(R). For example:
  - a) On at least two occasions, the Firm entered into a consumer credit agreement despite being told by the customers that they could not afford the credit (for example, because they were unemployed); and
  - b) On a separate occasion, a consumer credit agreement caused a customer's bank account to become overdrawn and certain bills to go unpaid.

### *Principle 6*

10. Principle 6 requires the Firm to pay due regard to the interests of its customers and to treat them fairly. CONC 2.2.2(G) provides some examples of behaviour which is likely to contravene Principle 6. These examples include "*targeting customers with regulated credit agreements which are unsuitable for them, by virtue of their indebtedness, poor credit history, age, health, disability or any other reason*" and "*subjecting customers to high-pressure selling, aggressive or oppressive behaviour, or unfair coercion*".

11. The Authority considers that the Firm's sales practices are in contravention of Principle 6. The Authority has seen evidence that the Firm has engaged in some of the following practices:
  - a) Targeting customers with credit agreements which are unsuitable for them, by virtue of their age, poor credit history, indebtedness or disability; and
  - b) Subjecting customers to high-pressure selling, aggressive or oppressive behaviour.
12. For example, on one occasion, the Firm's representative remained at the home of a consumer who, on the day of the visit, had received news that a close relative had passed away that day. Despite being asked to leave by the customer on more than one occasion, the Firm's representative remained on the premises for approximately three hours and as a result, the customer entered into a consumer credit agreement for the purchase of a new vacuum cleaner so that the representative would leave her home.
13. On another occasion, the Firm entered into a credit agreement with a 78 year old man with reading difficulties in order to facilitate the purchase of a vacuum cleaner. The customer had already bought two vacuum cleaners on credit and spent thousands of pounds on servicing them over the previous six years. The credit agreement put the customer under financial stress and he did not understand the payments coming from his bank accounts.

#### *Principle 11*

14. Principle 11 requires a firm to be open and cooperative in its dealings with the Authority and chapter 15 of SUP includes detailed rules and guidance on information that firms should provide to the Authority.

#### Misleading the Authority

15. The Authority has been misled by the Firm on a number of occasions:
  - a) On 2 August 2017, in an application for a variation of permission to enable it to canvass off trade premises, the Firm represented to the Authority that it had not completed any credit agreements which would have required the permission which was being sought in the application. In fact, as the Firm must have known, it had entered into many such agreements.
  - b) On 9 August 2017, the Firm stated to the Authority that "*we believed we did have permission to canvass off trade premises*". However, given previous correspondence between the Firm and the Authority, the Authority considers that the Firm could not have reasonably believed that it had the right to canvass off trade premises. In particular, when the Firm initially submitted its application for authorisation, the Authority sought clarification from the Firm as to its business model and was told by the Firm that it would not be canvassing off trade premises. Accordingly, the Authority granted the Authorisation with the Requirement in place.
  - c) On 9 August 2017, in support of the statement at paragraph 15(b), the Firm told the Authority that it had permission to canvass off trade premises

whilst it was licensed by the OFT. However, correspondence between the Firm and the OFT shows that the Firm, having requested permission to canvass off trade premises in its application, was told by the OFT that a licence would not be granted on those terms. The Firm withdrew its request and was granted a licence without such permission. Accordingly, the Authority considers that the Firm must have known in August 2017 that it did not have permission to canvass off trade premises whilst licensed by the OFT.

- d) On 22 January 2018, the Firm stated that it only canvassed off trade premises for business brokered to another lender. However, witness statements provided by the Firm's customers show that the Firm entered into consumer credit agreements off trade premises where it was the lender.

#### Failure to notify the Authority of an investigation by another regulatory authority

- 16. SUP 15.3.15(R) requires a firm to notify the Authority of disciplinary measures or sanctions that have been imposed by any statutory or regulatory authority, competition authority, professional organisation or trade body (other than the Authority) or when the firm becomes aware that one of those bodies has started an investigation into its affairs. The Firm is under investigation by another regulatory authority in respect of the way that it conducts its business, and discovered that it was under investigation in March 2017, but failed to notify the Authority of this investigation.

#### Failure to inform the Authority it was breaching its requirement not to canvass off trade premises

- 17. On 19 June 2017, the Firm began drafting an application on the Authority's authorisation system to remove the requirement not to canvass off trade premises. The Firm therefore must have known that it was subject to this requirement. The Firm had been canvassing off trade premises while the requirement was in place, and breached Principle 11 by failing to notify the Authority that it was in breach of the requirement.

#### Unreliability of Firm's claims

- 18. The Firm has been unreliable in its dealings with the Authority. In particular:
  - a) The Firm indicated as early as 22 January 2018 that it no longer requires the permission to broker credit and that it was willing to cede this permission. However, as at 31 July 2018, it had not applied to the Authority to do so (although it has since stated that it does not intend challenge the Authority's decision to remove this regulated activity from the Firm's permission). This is despite having been invited by the Authority to submit the necessary application, and having been chased by the Authority on 26 April 2018, 16 May 2018 and 6 June 2018.
  - b) The Firm also indicated on 22 January 2018 that it intended to wind down its business and would surrender its permission when that was done, which at the time of writing was anticipated to be June/July 2018. The Firm has not applied to cancel its permission and it now appears that the Firm wishes to remain authorised.

- c) Upon learning that the Firm intended to wind its business down, the Authority sought clarification of various matters concerning the consequences of doing so on 13 March 2018. The Firm was set a deadline of 16 March 2018 to respond. The answers given by the Firm were inadequate and further clarification was sought on 16 May 2018, with a deadline of 18 May 2018. That correspondence was unanswered as at the date of the First Supervisory Notice.

#### *The Firm's connection to unfit persons*

19. The Firm is connected to a number of unfit persons; X Ltd, and two individuals (Mr A and Mr B) connected to X Ltd. The Firm has a financial connection to X Ltd, Mr A is the ultimate controller of X Ltd, and Mr B has carried out sales for both the Firm and X Ltd as well as service management functions for the Firm. Prior to October 2012, X Ltd operated a similar business model to the Firm. A key similarity was the sale of the same premium brand vacuum cleaners on credit. The OFT, which licensed X Ltd, determined that it was unfit and that its licence should be revoked. On referral to the First-Tier Tribunal, the decision was upheld. In the course of that decision, the First-Tier Tribunal also found that Mr A was unfit and that Mr B had engaged in unfair business practices.
20. The Firm's connections to X Ltd and the two individuals referred to above, as well as the findings of the OFT and the First-Tier Tribunal, call into question whether the Firm is fit and proper. This is particularly the case given that the Firm is carrying on substantially the same business model as that operated by X Ltd.

#### **CONCLUSION**

21. The statutory and regulatory provisions relevant to this Notice are referred to in Annex A
22. On the basis of the facts and matters set out above, the Authority considers that the Firm is not fit and proper having regard to all the circumstances. As a result, it appears to the Authority that the Firm is failing to satisfy the threshold condition in paragraph 2E of Schedule 6 to the Act (suitability).
23. In addition, the Authority considers that consumers are likely to continue to be harmed by the Firm's practices if it is permitted to trade with the permissions set out in paragraph 6. Accordingly, the Authority considers that the variation of permission and requirements set out in the First Supervisory Notice are appropriate and proportionate in order to advance its consumer protection objective.
24. The Authority, having regard to the grounds for taking the action set out in the First Supervisory Notice, reasonably considers that it was necessary that:
  - a) the action set out in paragraphs 1 and 3 of the First Supervisory Notice took effect immediately; and
  - b) the action proposed in paragraph 2 of the First Supervisory Notice took effect on 1 November 2018.

## **REPRESENTATIONS**

25. Annex B contains a brief summary of the key representations made by the Firm, and how they have been dealt with. In making the decision which gave rise to the obligation to give this notice, the Authority has taken into account all of the representations made by the Firm, whether or not set out in Annex B.

## **PROCEDURAL MATTERS**

26. This Second Supervisory Notice is given to the Firm under section 55Y(7) of the Act, and in accordance with section 55Y(9) of the Act.
27. The following paragraphs are important.

### **Decision Maker**

28. The decision which gave rise to the obligation to give this Second Supervisory Notice was made by the Regulatory Decisions Committee.

### **The Tribunal**

29. The Firm has the right to refer the matter to which this Second Supervisory Notice relates to the Tribunal. 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 Second Supervisory Notice is given to it to refer the matter to the Upper Tribunal.
30. A reference to the Tribunal can be made by way of a signed reference notice (Form FTC3) and filed with a copy of this Second Supervisory Notice. The Tribunal's contact details are: The Upper Tribunal, Tax and Chancery Chamber, Fifth Floor, Rolls Building, Fetter Lane, London, EC4A 1NL (telephone: 020 7612 9730; email: [uttc@hmcts.gsi.gov.uk](mailto:uttc@hmcts.gsi.gov.uk)).
31. For further information on the Upper Tribunal (including the power to vary time periods) you should refer to the HM Courts and Tribunals Service website which will provide guidance and the relevant form to complete. The relevant page on the HM Courts and Tribunals Service website can be accessed via the following link:  
  
<http://www.justice.gov.uk/forms/hmcts/tax-and-chancery-upper-tribunal>
32. A copy of Form FTC3 must also be sent to Rory Neary at the Authority, 12 Endeavour Square, London E20 1JN at the same time as filing a reference with the Upper Tribunal.

### **Publicity**

33. The Firm should note that section 391 of the Act requires the Authority, when this Notice takes effect, to publish such information about the matter as it considers appropriate.



**Contacts**

34. For more information concerning this matter generally, the Firm should contact Rory Neary at the Authority (direct line: 020 7066 7972).

**Alana Christopher, Deputy Company Secretary, on behalf of  
Tim Parkes  
Chair, Regulatory Decisions Committee**

## **ANNEX A**

### **RELEVANT STATUTORY PROVISIONS**

1. The Authority's operational objectives are set out in section 1B of the Act and include securing an appropriate degree of protection for consumers (section 1C).
2. Section 55J of the Act allows the Authority to remove a regulated activity from those to which an authorised person's Part 4A permission relates where it is desirable to do so in order to advance one or more of the Authority's operational objectives (section 55J(1)(c)) or where a firm is failing, or is likely to fail, to satisfy the threshold conditions for which the Authority is responsible (section 55J(1)(a)).
3. Section 55L of the Act allows the Authority to impose a requirement on an authorised person with a Part 4A permission where it is desirable to do so in order to advance one or more of the Authority's operational objectives (section 55L(2)(c) or where a firm is failing, or is likely to fail, to satisfy the threshold conditions for which the Authority is responsible (section 55L(2)(a)).
4. Section 55Y of the Act allows a requirement or variation imposed under the own-initiative requirement power or own initiative variation power to take effect immediately (or on a specified date) only 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).
5. 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) The [Authority] may not publish information under this section if in its opinion, publication of the information would be—

(a) unfair to the person with respect to whom the action was taken or proposed to be taken,

(b) prejudicial to the interests of consumers [...]

(7) Information is to be published under this section in such manner as the [Authority] considers appropriate.”
6. Paragraph 2E to Schedule 6 to the Act states that:

“A must be a fit and proper person having regard to all the circumstances, including-

[...]

(c) the need to ensure that A's affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers and the integrity of the UK financial system;

(d) whether A has complied and is complying with requirements imposed by the [Authority] in the exercise of its functions, or requests made by the [Authority], relating to the provision of information to the [Authority] and, where A has so complied or is so complying, the manner of that compliance;

(e) whether those who manage A's affairs have adequate skills and experience and have acted and may be expected to act with probity;

(f) whether A's business is being, or is to be, managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner";

[...]."

## **RELEVANT HANDBOOK PROVISIONS**

7. In exercising its power to impose requirements or variations of permission, the Authority must have regard to guidance published in the Handbook. The relevant main considerations in relation to the action specified above are set out below.

### **Guidance concerning the relevant threshold conditions**

8. Guidance on the threshold conditions is set out in the part of the Handbook entitled threshold conditions ("COND").

#### COND 2.5 – Suitability: Paragraph 2E of Schedule 6 to the Act

9. COND 2.5.1A(1) reproduces paragraph 2E of Schedule 6 to the Act ("the Suitability Threshold Condition") (as set out in part above).
10. COND 2.5.3G(1) states that the Authority may consider that a firm is not suitable because of doubts over the individual or collective suitability of persons connected with the firm.
11. COND 2.5.4G(2) provides examples of general considerations to which the Authority may have regard in assessing whether a firm will satisfy and continue to satisfy the Suitability Threshold Condition.
12. COND 2.5.6G provides that the Authority may have regard when assessing whether a firm will satisfy, and will continue to satisfy the threshold conditions, to whether the firm has been open and co-operative in all of its dealings with the Authority and is ready, willing and organised to comply with the requirements and standards under the regulatory system.

#### CONC – Consumer Credit Sourcebook

13. CONC 2.2.2G sets out a number of examples of behaviour by or on behalf of a firm which the Authority considers is likely to contravene Principle 6 including:

*"(1) targeting customers with regulated credit agreements which are unsuitable for them, by virtue of their indebtedness, poor credit history, age, health, disability or any other*

*reason;*

*(2) subjecting customers to high-pressure selling, aggressive or oppressive behaviour, or unfair coercion."*

14. CONC 5.2.1R requires firms to carry out adequate creditworthiness assessments prior to lending and lists factors which firms must consider.

#### PRIN – Principles for Businesses

15. PRIN 1.1.2G states that the Principles are a general statement of the fundamental obligations of firms under the regulatory system. PRIN includes:

Principle 6 - *"A firm must pay due regard to the interests of its customers and treat them fairly";* and

Principle 11 - *"A firm must deal with its regulators in an open and cooperative way, and must disclose to the [Authority] appropriately anything relating to the firm of which that regulator would reasonably expect notice".*

#### SUP – Supervision

16. Chapter 15 of SUP includes detailed rules and guidance on information that firms should provide in order to comply with Principle 11.
17. SUP 15.3.15R(3) provides that a firm must notify the Authority immediately if measures or sanctions have been imposed on the firm by any statutory or regulatory authority, competition authority, professional organisation or trade body (other than the Authority) or the firm becomes aware that one of those bodies has started an investigation into its affairs.

#### **OTHER RELEVANT REGULATORY PROVISIONS**

18. 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.
19. EG 8.1 reflects the provisions of sections 55J and 55L of the Act that the Authority may use its power to vary an authorised person's Part 4A permission or impose a requirement where a firm is failing or is likely to fail to satisfy the threshold conditions (EG 8.1(1)); or where it is desirable to exercise the power in order to advance one or more of its operational objectives (EG 8.1(3)).

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

20. EG 8.2.1 provides that the Authority will have regard to its statutory objectives and the range of regulatory tools that are available to it, when it considers how it should deal with a concern about a firm. The Authority will also have regard to: (1) the responsibilities of a firm's management to deal with concerns about the firm or about the way its business is being or has been run; and (2) the principle that a restriction imposed on a firm should be proportionate to the objectives the Authority is seeking to achieve.
21. EG 8.2.3 provides that the Authority will exercise its formal powers under section 55J or 55L of the Act, where the Authority considers it is appropriate to ensure a firm meets its

regulatory requirements. EG 8.2.3(1) and (2) specifies that the Authority may consider it appropriate to exercise its powers where it has serious concerns about a firm or the way its business is being or has been conducted and it is concerned that the consequences of a firm not taking the desired steps may be serious. EG 8.2.6 gives examples of the circumstances in which the Authority will consider varying a firm's Part 4A permission because it has serious concerns about a firm, or about the way its business is being or has been conducted. These include:

“(1) in relation to the grounds for exercising the power under section 55J(1)(a) or section 55L(2)(a) of the Act, the firm appears to be failing, or appears likely to fail, to satisfy the threshold conditions relating to one or more, or all, of its regulated activities, because for instance:

[...]

(b) the firm appears not to be a fit and proper person to carry on a regulated activity because:

[...]

(iii) it has breached requirements imposed on it by or under the Act (including the Principles and the rules), for example in respect of its disclosure or notification requirements, and the breaches are material in number or in individual seriousness;

[...]”

22. EG 8.5 states the circumstances in which the Authority will consider cancelling a firm's Part 4A permission using its own initial powers contained in sections 55J and 55Q respectively of the Act. These include where the Authority has very serious concerns about a firm or the way its business is or has been conducted (EG 8.5.1(1)).
23. EG 8.5.1 states examples of the types of circumstances in which the Authority may cancel a firm's Part 4A permission. These include repeated failures to comply with rules and requirements (EG 8.5.2(7); a failure to co-operate with the Authority which is of sufficient seriousness that the Authority ceases to be satisfied that the firm is fit and proper, for example failing to provide material information or take remedial action reasonably required by the Authority (EG 8.5.2(8)(b)).
24. EG 8.5.4 states that where the situation is so urgent and serious that the firm should immediately cease to carry on all regulated activities, the Authority may first vary the firm's Part 4A permission so that there is no longer any regulated activity for which the firm has a Part 4A permission. If it does this, the Authority will then have a duty to cancel the firm's Part 4A permission - once it is satisfied that it is no longer necessary to keep the Part 4A permission in force.
25. EG 8.5.5 states the Authority may decide to keep a firm's Part 4A permission in force to maintain the firm's status as an authorised person to use administrative enforcement powers against the firm.

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

26. 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.

27. EG 8.3.2 provides the circumstances in which the Authority will consider exercising its own initiative power as a matter of urgency. These include where the information available to it indicates serious concerns about the firm or its business that need to be addressed immediately and 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.

28. EG 8.3.3 sets out a non-exhaustive list of situations which the Authority will consider in exercising its own-initiative power as a matter of urgency. These include:

“(1) information indicating significant loss, risk of loss or other adverse effects for consumers, where action is necessary to protect their interests;

[...]

(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.”

29. EG 8.3.4 states that the Authority will consider the full circumstances of each case when it decides whether an urgent imposition of a requirement is appropriate and sets out a non-exhaustive list of factors which will determine whether the urgent exercise of the Authority's own-initiative power is an appropriate response to serious concerns, including:

“(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 [Authority]'s urgent exercise of own-initiative powers will be appropriate, to protect the consumers' interests.

[...]

(3) The nature and extent of any false or inaccurate information provided by the firm. Whether false or inaccurate information warrants the [Authority]'s urgent 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;

(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.

(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.

(5) The financial resources of the firm. Serious concerns may arise where it appears the firm may be required to pay significant amounts of compensation to consumers. In those cases, the extent to which the firm has the financial resources to do so will affect the [Authority]'s decision about whether exercise of the [Authority]'s own-initiative powers is appropriate to preserve the firm's assets, in the interests of the consumers. The [Authority] will take account of any insurance cover held by the firm. It will also consider the likelihood of the firm's assets being dissipated without the [Authority]'s intervention, and whether the exercise of the [Authority]'s power to petition for the winding up of the firm is more appropriate than the use of its own-initiative powers [...].

[...]

(8) The firm's conduct. The [Authority] will take into account:

(a) whether the firm identified the issue (and if so whether this was by chance or as a result of the firm's normal controls and monitoring);

(b) whether the firm brought the issue promptly to the [Authority]'s attention;

(c) the firm's past history, management ethos and compliance culture;

(d) steps that the firm has taken or is taking to address the issue.

(9) The impact that use of the [Authority's] own-initiative powers will have on the firm's business and on its customers.

[...]”

## ANNEX B

### REPRESENTATIONS

1. The Firm's representations (in italics) and the Authority's conclusions in respect of them are set out below.

#### Improvements made by the Firm to their procedures and structures and future operation

2. *The Authority's assertion that the Firm is not fit and proper does not accurately reflect the current situation. The Firm accepts that in the past there was a need to improve its procedures and systems. However, this situation had been rectified even before the First Supervisory Notice was issued by recruiting an employee to assist with administration and compliance. Significant alterations were made to the Firm's procedures which brought the Firm completely into compliance with the requirements for authorised firms. A good example of the newly introduced measures is the "verification phone call" with the help of which the Firm makes sure within the cancellation period that the customers are happy with their purchases (please see also paragraph 14 below).*
3. The Authority acknowledges that a person was hired by the Firm to carry out compliance functions. However, the Firm has made no attempt to provide any evidence of the improvements to its procedures it has made or their impact on the Firm's suitability, and specifically on the failings set out in the First Supervisory Notice. Accordingly, it appears to the Authority that the Firm is not fit and proper and does not meet the Threshold Condition in paragraph 2E of Schedule 6 to the Act (suitability).

#### Removing the Firm's permissions to exercise lender's rights is not in the interests of consumers

4. *The Firm is winding down its operations. It has ceased its sales activities, and is no longer a distributor of Kirby vacuum cleaners. The Firm therefore does not wish to contest the variation on its permission set out in paragraph 1 of the First Supervisory Notice.*
5. *However, the Firm continues to provide services to its customers. It is part of the business model that the vacuum cleaners are serviced annually by the Firm (free of charge in the first five years) and thanks to this servicing, the lifespan of the cleaners can reach 30 years. If, as a result of the variation imposed by paragraph 2 of the First Supervisory Notice, the Firm is not permitted to collect the debts it is owed, it will not be able to provide these services any more thereby causing detriment to its customers.*
6. *There has never been any complaint about the debt collection activities of the Firm. There is no reason why the Firm should not be allowed to receive monies owed to it, which in turn would allow it to continue to provide the annual service to its customers.*
7. For the reasons set out in this Notice, the Authority considers that the Firm is failing to satisfy the threshold condition in paragraph 2E (suitability) of Schedule 6 to the Act. Given the nature and breadth of the failings described in the Notice, the Authority is not satisfied that the Firm could carry out the regulated activities for which it had permission in a compliant manner, including the activity of exercising lenders' rights. This is the case,



even though the Authority has not specifically analysed the way in which the Firm has carried out its collecting activities to date.

8. The Firm has not provided the Authority with any evidence to support its assertion that it will not be able to carry out the annual servicing of vacuum cleaners. In any event, the Authority considers that the risk to consumers would be greater if the firm was permitted to exercise lender's rights, than the risk that the Firm's customers might not receive the annual service on their vacuum cleaners. In particular, the Authority is concerned that the Firm will continue to collect money from consumers in respect of credit agreements that might have been entered into in breach of the Authority's rules, especially in circumstances where the Firm, as at the date it made representations to the Authority, had not informed its customers of the effect of the First Supervisory Notice, or the nature of the rights they have under the law.

#### Canvassing off trade premises

9. *The Firm accepts that it concluded some credit agreements by canvassing off trade premises. However, of the approximately 3000 contracts that the Firm has concluded over the last three years, only a couple of dozen were concluded in breach of the requirement that prohibits the Firm from canvassing off trade premises. Even this statistically insignificant number of contracts was a result of a series of misunderstandings, rather than an intentional breach. In particular, the Firm believed that it was permitted to canvass off trade premises because:*
  - a. *it believed it could trade as an appointed representative of another lender (which it understood was permitted to canvass off trade premises); and*
  - b. *it understood from its compliance consultant (who submitted its application to the Authority for permission to carry on regulated activities) that it had applied for permission to canvass off trade premises, when in fact it had not.*

*When it realised that it did not have such a permission it immediately ceased its canvassing activities.*

10. Contemporaneous evidence demonstrates that the Firm received several emails that made it clear that its permission was subject to a requirement not to carry out canvassing off trade premises. Therefore, it should have been clear to the Firm that it was not permitted to canvass off trade premises. Its failure to comply with this requirement demonstrates that the Firm is either unwilling or unable to comply with the regulatory requirements to which it is subject.
11. The Authority does not accept that the Firm could have formed the belief that it could canvass off trade premises due to its relationship with another lender. The Authority's records do not show that the Firm has ever been an appointed representative of the lender in question.
12. Both the email sent to the Firm confirming its authorisation and the Authority's online register made it clear in short, simple terms that the Firm was not permitted to canvass

off trade premises. Therefore, the Authority does not agree that the Firm genuinely held the belief that it had permission to canvass off trade premises.

#### Affordability checks

13. *The Firm did not enter into credit agreements with new customers. Instead, credit was provided by another lender, and that lender was responsible for conducting affordability assessments. If an existing customer decided to purchase a new vacuum cleaner, the Firm would provide credit. The firm brokered approximately 1,200 credit agreements, and provided credit in respect of approximately 1,700 agreements. The Firm is only aware of about 20 complaints in respect of its credit business, and each one of those complaints has been resolved to the satisfaction of the customer.*
14. *Since early 2017, within 12 to 13 days after the sale of a vacuum cleaner, the Firm would call the customer to ask, among other things, whether they understood their payment obligations. That process cut down the number of complaints.*
15. The Firm has not addressed the Authority's concerns. In particular, the Firm has provided no evidence that it is carrying out creditworthiness assessments compliantly, or at all. Neither has it provided any evidence to demonstrate that it carried out adequate creditworthiness assessments in the examples in paragraph 9 of this Notice.

#### Principle 6

16. *The Firm has not deliberately targeted vulnerable customers. The Firm's business model involves sales agents and service engineers visiting customers. The Firm's agents have training and work from a standard script. Where the Firm has found out that one of its agents has acted in an inappropriate way, the agent is censured and receives training to address any issues. The Firm also aims to do everything it can for the customers after the event, which may include a full refund.*
17. *The manufacturer of the vacuum cleaners has a 'golden age' policy, whereby anyone over 67, or with certain disabilities, can cancel their purchase within 9 months. This is far in excess of any consumer protection legislation. The manufacturer also has a free compliance phone number. Customers can contact that number if they have any complaints, but do not wish to contact their distributor.*
18. The Authority has not found that the Firm deliberately targeted vulnerable customers. The Authority's finding is that the Firm entered into credit agreements that were unsuitable for certain customers, by virtue of their age, poor credit history, indebtedness or disability.
19. The Firm has provided no evidence to support its representations. In particular, it has not provided the standard sales scripts that it states its agents used, or any training materials or any evidence of an agent being censured. Nor has it provided any evidence

to address the examples described in paragraphs 12 and 13 of this Notice. The firm explained the lack of any documentary or other evidence as being due to its (small) size meaning that much was done by word of mouth with little record keeping.

20. The Authority does not consider that it is appropriate for the Firm to rely on the manufacturer's policies and compliance telephone line to ensure compliance with Principle 6. The Firm is responsible for its obligations under the regulatory system. Further, the manufacturer is not an authorised firm, the 'golden age' policy only relates to cancellation rights and, while the Authority has not seen details of this policy, as it is the manufacturer's policy, it may not cover the credit advanced by the distributor.

### Misleading the Authority

21. Canvassing off trade premises: *As set out in paragraph 9 of this Annex, the Firm was not aware that it was not permitted to canvass off trade premises. It therefore did not deliberately mislead the Authority in relation to this matter.*
22. Failure to notify the Authority of an investigation by another regulatory authority: *The Firm's understanding was that an investigation only had to be reported to the Authority if the investigating authority proposed to take action. To date, the investigating authority has not charged the Firm, or either of the individuals that were interviewed as part of the investigation.*
23. Unreliability of Firm's claims: *The Firm's director was caring for a family member and also had a medical condition. During this period, the Firm was run by another individual. This individual intended to apply to remove the Firm's broking permissions but, given the circumstances, he was under pressure and there was always something more pressing to deal with.*
24. Canvassing off trade premises: The Firm received several emails (from both the Authority and the OFT) which made it clear that the Firm was not permitted to canvass off trade premises. In light of these communications, which were with the Firm's director, the Authority considers that the Firm must have been aware of the requirement not to canvass off trade premises.
25. Failure to notify the Authority of an investigation by another regulatory authority: The obligation on the Firm to notify the Authority of the investigation is clear. However, the Firm failed to notify the Authority of the investigation. The investigation is ongoing, and the fact that the Firm has not been charged does not mitigate the breach.
26. Unreliability of the Firm's claims: The Firm's claims have proved to be unreliable, and ultimately resulted in the Authority taking the action to remove the Firm's permission to carry out regulated activities. Further, the Firm's conduct has taken place over a period of several months, during which, there have been a number of attempts by the Authority to obtain information (as described in paragraph 18 of the Notice). The Authority is not persuaded that the circumstances at the Firm justify the persistent failure to deal promptly with the Authority.

## The Firm's connection to unfit persons

27. X Ltd: *There is no suggestion that X Ltd has done anything wrong.*
28. Mr A: *There is no evidence that Mr A is unsuitable. Further, Mr A has no connection to the Firm. Mr A is involved in the distribution of vacuum cleaners as the official distributor in the Bristol area, and previously was the UK supervisor under the manufacturer's franchise model. However, the Firm has ceased its sales activities and Mr A ceased to be the UK supervisor last year.*
29. Mr B: *Mr B was only a sales agent, he was not involved in the management of the Firm. As the Firm no longer carries out sales activities, Mr B no longer has a role at the Firm.*
30. The Authority's concern with X Ltd, is that it was found to be unfit by the OFT and that Mr A owns 50% of the shares of, and therefore is in a position to exert significant influence over, X Ltd. X Ltd collects payments on behalf of the Firm under the credit agreements the Firm has entered into with its customers. X Ltd also provides the Firm with office space at a reduced rent.
31. The Authority's evidence that Mr A is unfit is the decision of the OFT and the First-Tier Tribunal (mentioned in paragraph 19 of the Notice). While Mr A's role in relation to the Firm might have changed since last year, the Authority is still satisfied that he has a connection to the Firm as a result of his shareholding in X Ltd, and his ongoing role in the vacuum cleaner franchise.
32. The Firm was unable to provide any evidence to demonstrate that Mr B had ceased his role in the Firm. The Firm said that this was due to the nature of his role; he was an independent contractor and was not given any formal written notice. Given that Mr B has held very similar positions in several businesses selling the same brand of vacuum cleaner, and given the lack of evidence to the contrary, the Authority remains satisfied that Mr B has a connection to the Firm.