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## **FIRST SUPERVISORY NOTICE**

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**To:** **National Westminster Bank plc**

**Of:** **5<sup>th</sup> Floor**

**280 Bishopsgate**

**London EC2M 4RB**

**FSA Reference Number:** **121878**

**Date:** **9 November 2011**

**TAKE NOTICE:** The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London, E14 5HS (“the FSA”) has taken the following action:

**1. ACTION**

- 1.1. For the reasons listed below and pursuant to section 45 of the Financial Services and Markets Act 2000 (“the Act”), the FSA has decided to vary the permission granted to National Westminster Bank plc (“the Firm”) pursuant to Part IV of the Act by imposing the following requirements on the Firm.
- 1.2. The Firm is required to refrain from taking any action, omitting to take any action or permitting any action to be taken which has, or may have, the effect of withdrawing money from the Account including in respect of any monies which may be deposited to

the Account after the date of this notice unless the FSA has confirmed, in writing, that it has no objection to those proposals.

1.3. The Firm is required to notify the FSA in writing immediately:

- a) if it receives any instruction to withdraw money from the Account, with a copy of that instruction;
- b) of whether any instruction to withdraw money from the Account has the authorisation of the Supervisory Commissioner of ARM, with a copy of that authorisation if in writing or details of that authorisation if oral;
- c) of all withdrawals and deposits to the Account, as they occur, together with the running account balance.

1.4. The Firm is required, by 10am on 10 November 2011, to:

- (a) acknowledge receipt of this notice and confirm that the Firm will comply with the requirements in this notice pending further proceedings in this matter; or
- (b) notify the FSA of any reason why the Firm will be unable to do so.

1.5. In this notice:

“Account” means that account bearing sort code 55-70-13 and account number 78322936 held in the name of Jarvis Investment Management Limited, but only in relation to those funds in the Account referable to the list of reference numbers given in the Appendix to this notice.

“ARM” means ARM Asset Backed Securities SA, a Luxembourg-based securitisation vehicle.

“CSSF” means the Luxembourg regulator – the Commission de Surveillance du Secteur Financier.

“Pending Investors” mean those consumers who handed over money to ARM whilst it could not issue bonds.

“Supervisory Commissioner” has the meaning in Article 29 of the Luxembourg Law of 22 March 2004 on securitisation being, in summary, the CSSF unless the Luxembourg district court dealing with commercial matters appoints one or more other persons as supervisory commissioners.

## **2. EFFECTIVE DATE**

- 2.1. These requirements take effect immediately.

## **3. REASONS FOR ACTION**

- 3.1. The FSA has concluded, on the basis of the facts and matters described below, that it is desirable to impose the requirements above in order to secure the appropriate degree of protection for consumers.
- 3.2. The FSA considers, on the basis of those facts and matters, that it is necessary, in order to secure the appropriate degree of protection for consumers, for the action specified above to take immediate effect.
- 3.3. The FSA makes it clear that there is no suggestion of any kind of misconduct in relation to the Firm in the context of any of the matters contained in this Notice.

### **Relevant Statutory Provisions**

- 3.4. The FSA's regulatory objectives established in section 2(2) of the Act include the protection of consumers.
- 3.5. By section 425A of the Act, consumer is defined, *inter alia*, as persons who use or have used services provided by authorised persons in carrying on regulated activities, or authorised persons who are investment firms, or credit institutions, in providing relevant ancillary services, or have relevant rights or interests in relation to any of those services, and have a right or interest which is derived from or is otherwise attributable to the use of the services by others.
- 3.6. By section 45 of the Act, the FSA may (among other things) exercise its power to vary an authorised person's Part IV permission in any of the ways mentioned in section 44(1)

of the Act where it is desirable to exercise that power in order to meet any of its regulatory objectives.

- 3.7. By section 45(4) of the Act the FSA's power to vary a Part IV permission extends to including any provision in the permission as varied that could be included if a fresh permission were being given in response to an application for authorisation.
- 3.8. By section 43(1) of the Act, a Part IV permission may include such requirements as the FSA considers appropriate. By section 43(2), a requirement may be imposed so as to require the person concerned to take specified action, or to refrain from taking specified action. By section 43(3), a requirement may extend to activities which are not regulated activities.
- 3.9. Section 53(3) of the Act allows such variations to take effect immediately if the FSA reasonably considers that it is necessary for the variations to take effect immediately.

#### **Relevant Regulatory Provisions**

- 3.10. The FSA's policy for exercising its own-initiative power to vary an authorised person's Part IV permission is set out in chapter 8 of the Enforcement Guide ("EG"), and chapter 7.3 of the Supervision Manual ("SUP"), which are part of the FSA Handbook.
- 3.11. EG 8.1(3) reflects the provisions of section 45 of the Act that the FSA may use its own-initiative power to vary or cancel the permission of an authorised firm where it is desirable to do so in order to meet any of its regulatory objectives.
- 3.12. EG 8.1B provides that the FSA will have regard to its regulatory 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 FSA will also have regard to the principle that a restriction imposed on a firm should be proportionate to the objectives the FSA is seeking to achieve.
- 3.13. EG 8.3 provides that the FSA will exercise its formal powers under section 45 of the Act, where the FSA considers it is appropriate to ensure a firm meets its regulatory requirements. EG 8.3(4) specifies that the FSA may consider it appropriate to exercise its powers where the imposition of a formal statutory requirement may assist the firm to

take steps which would otherwise be difficult because of legal obligations owed to third parties.

- 3.14. EG 8.6 to 8.9 set out the FSA's policy on exercising its own-initiative power to vary an authorised person's Part IV permission in urgent cases.
- 3.15. EG 8.8 provides a non-exhaustive list of situations that will give rise to such serious concerns and states that this is likely to include a situation where there is information indicating significant loss, risk of loss or other adverse effects for consumers, where action is necessary to protect their interests (EG 8.8(1)).
- 3.16. EG 8.9 provides a non-exhaustive list of the factors the FSA may consider when deciding whether an urgent variation of permission is appropriate and includes the extent of any loss or risk of loss or other adverse effect on consumers (EG 8.9(1)).
- 3.17. SUP 7 provides more information about the situations in which the FSA may decide to take formal action in the context of its supervision activities. SUP 7.3 provides further guidance on the criteria for varying a firm's permission. Further, SUP 7.3.4 provides that the FSA may vary a firm's permission with immediate effect where it considers that a delay may be prejudicial to the interests of consumers.

#### **4. FACTS AND MATTERS RELIED UPON**

- 4.1. The Firm is the provider of the Account specified in paragraph 1.5 above.
- 4.2. The Account contains Pending Investors' funds standing to the credit of Jarvis Investment Management Limited.
- 4.3. Since 2006, ARM had been in the business of offering to the public securities in the form of bonds backed by a portfolio of senior life settlements. The marketing process in the United Kingdom ("UK") was such that an FSA authorised firm acted as distributor of the bonds, approved the bond documentation and provided it to FSA authorised Independent Financial Advisers, who then advised the ultimate investors in the UK and arranged for the purchase of the bonds.

- 4.4. In this way, it is a reasonable inference that investors will have used the services of an FSA authorised person in carrying on regulated activities, or will have relevant rights or interests derived from or otherwise attributable to the use of such services by others.
- 4.5. In 2009, ARM applied to the CSSF, for authorisation as an authorised securitisation firm. The issuance of bonds was suspended by agreement between ARM and the CSSF pending resolution of the application for authorisation, but the bonds continued to be marketed to consumers. This resulted in a number of those consumers becoming Pending Investors.
- 4.6. The Pending Investors in effect handed over money for three different tranches of bonds, depending on when the money was handed over. The tranches are known as tranches 9 to 11.
- 4.7. The money was initially held by receiving agents on behalf of ARM and/ or the FSA authorised firm acting as distributor of the bonds. The money in respect of tranche 9 was transferred from the receiving agents to ARM's general account in Luxembourg, and has been used up in the course of ARM's business.
- 4.8. The money in respect of tranches 10 and 11 remains held by the receiving agents. A proportion of such money sits in the Account.
- 4.9. There is uncertainty as to the correct legal status of the pending investor money, and indeed whether English law or Luxembourg law applies to it. The FSA is of the opinion that this uncertainty could only properly be resolved by a Court decision.
- 4.10. ARM is currently subject to a suspension of payments resulting from the CSSF's decision to refuse ARM's application for authorisation. This appears to be a result of Article 28 of the Luxembourg law of 22 March 2004 on securitisation. This has been disputed by ARM, and a ruling is expected on 10 November 2011.
- 4.11. One possible outcome of this ruling is that the suspension of payments may be lifted, leaving ARM able to make use of the pending investor money currently held by the Firm.

## **5. CONCLUSIONS**

5.1. The facts and matters described above lead the FSA, having regard to its regulatory objectives, to the following conclusions:

- (1) There is a significant degree of risk to the Pending Investors money prior to resolution of the question over ownership of the money; and
- (2) The variation of the Firm's permission to impose the requirements detailed above should take immediate effect to address the FSA's serious concern that there is a risk of loss to consumers.

5.2. The FSA's reasons for making the variation and requirements effective immediately are that:

- (1) there are reasons to consider that the pending investors money may be dealt with by ARM in a manner inconsistent with the interests of those pending investors if the money is not protected; and
- (2) there is a risk that such protection as is currently afforded to the money, that is, the suspension of payments imposed on ARM, may fall away imminently; and
- (3) it is therefore necessary to put in place protection of that money immediately, having regard to the regulatory objective of consumer protection.

## **6. DECISION MAKER**

6.1. The decision which gave rise to the obligation to give this notice was made by the Chairman of the Regulatory Decisions Committee.

## **7. IMPORTANT**

7.1. This Supervisory Notice is given to the Firm under section 53(4) and in accordance with section 53(5) of the Act, and is being served on the Firm at the principal place of business last notified by you to the FSA. The following statutory rights are important.

## **The Tribunal**

- 7.2. The Firm has the right to refer the matter to which this notice relates to the Upper Tribunal (Tax and Chancery Chamber)(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 notice is given to refer the matter to the Tribunal. A reference to the Tribunal is made by way of a reference notice (Form FTC3) signed by the Firm (or on the Firm’s behalf) and filed with a copy of this notice. The Tribunal’s address is: The Upper Tribunal, Tax and Chancery Chamber, 45 Bedford Square, London WC1B 3DN (tel 020 7612 9700; email [financeandtaxappeals@tribunals.gsi.gov.uk](mailto:financeandtaxappeals@tribunals.gsi.gov.uk)). Further details are contained in “Making a Reference to the UPPER TRIBUNAL (Tax and Chancery Chamber)” which is available from the Upper Tribunal website:

<http://www.tribunals.gov.uk/financeandtax/FormsGuidance.htm>

- 7.3. The Firm should note that a copy of the reference notice (Form FTC3) must also be sent to the FSA at the same time as filing a reference with the Tribunal. A copy of the reference notice should be sent to Peter Lovegrove at the FSA, 25 The North Colonnade, Canary Wharf, London, E14 5HS.

## **Representations**

- 7.4. The Firm has the right to make written and oral representations to the FSA (whether or not it refers this matter to the Tribunal). If the Firm wishes to make written representations it must do by 13 December 2011 or such later date as may be permitted by the FSA. Written representations should be made to the Regulatory Decisions Committee and sent to Philip Bellars, Regulatory Decisions Committee Professional Support Services. The address of the Regulatory Decisions Committee Professional Support Services is: 25 The North Colonnade, Canary Wharf, London E14 5HS. If you wish to make oral representations, please inform Philip Bellars in writing of your intention to do so by 21 November 2011. If you do not notify the FSA by 21 November 2011 you will not, other than in exceptional circumstances, be able to make oral representations.



### **Access to evidence**

- 7.5. Section 394 of the Act does not apply to this Supervisory Notice.

### **Confidentiality and publicity**

- 7.6. The Firm should note that this Supervisory Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining advice on its contents).
- 7.7. The FSA is required by section 391(5) to 391(6) of the Act to publish such information about the matter to which this notice relates as it considers appropriate, unless such publication would in its opinion be unfair to the Firm to which the requirement applies or prejudicial to the interest of consumers.
- 7.8. In the opinion of the FSA, publication of such information would not be unfair to the Firm, nor would it be prejudicial to the interests of consumers.

### **FSA contacts**

- 7.9. If the Firm has any questions regarding the procedures of the Regulatory Decisions Committee, it should contact Philip Bellars (direct line: 0207 066 2894).
- 7.10. For more information concerning this matter generally, you should contact Simon Stokes in the FSA's Supervision Division (direct line: 0207 066 3124).

**Tim Herrington**

**Chairman, Regulatory Decisions Committee**

## APPENDIX

6004307	6004371	6005688	6005965
6004312	6004372	6005689	6005966
6004313	6004373	6005690	6005967
6004328	6004374	6005691	6005968
6004329	6004377	6005692	6005969
6004330	6004382	6005693	6006007
6004331	6004383	6005694	6006008
6004332	6004384	6005697	6006010
6004333	6004385	6005719	6006011
6004334	6004386	6005722	6006012
6004335	6004387	6005723	6006013
6004336	6004388	6005724	6006014
6004337	6004389	6005731	6006015
6004338	6004390	6005732	6006016
6004341	6004391	6005733	6006033
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6004343	6004393	6005735	6006219
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6004348	6004397	6005742	6006224
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6004350	6005623	6005744	6006226
6004351	6005624	6005746	6006227
6004352	6005627	6005747	6006242
6004353	6005638	6005748	6006243
6004354	6005643	6005749	6006244
6004355	6005644	6005750	6006246
6004356	6005658	6005752	6006250
6004357	6005659	6005753	6006251
6004358	6005660	6005755	6006396
6004359	6005661	6005770	6006420
6004360	6005675	6005791	6006585
6004361	6005676	6005833	6006586
6004362	6005677	6005843	6006677
6004363	6005678	6005858	6006678
6004364	6005679	6005890	6006679
6004365	6005683	6005928	6006681
6004366	6005684	6005961	6006688
6004367	6005685	6005962	
6004368	6005686	6005963	
6004369	6005687	6005964	
6004370			