Financial Conduct Authority

SECOND SUPERVISORY NOTICE

To: **Vantage Investment Group Limited**

Of: **Cavell House**
Stannard Place
St Crispins Road
Norwich
NR12 8QN

Permission Number: **482470**

Dated: **9 March 2016**

ACTION

1. For the reasons given below, having taken into account the representations made by the Firm and pursuant to 55L(2)(a) and (c) of the Financial Services and Markets Act 2000, the Authority has decided not to rescind the following requirements which were imposed on Vantage Investment Group Limited by a First Supervisory Notice dated 20 November 2015:

   (a) The Firm must cease to carry on any regulated activity and any business activity that is carried on in connection with a regulated activity, or held out as being for the purposes of a regulated activity (including not initiating any further such business).

   (b) The Firm must not dispose of, withdraw, transfer or deal with any client money without written consent from the Authority so long as this

requirement is in force. This includes any client money held in client bank accounts, client transactions accounts or any other accounts operated by or for the Firm and includes monies held in or credited to the Client Bank Account in any way (including any monies deposited into the accounts in the future).

(c) The Firm shall not dispose of, deal with or diminish the value of any of its assets without the prior consent from the Authority. For the avoidance of doubt, this means that, among other things, the Firm must not:

i. make any capital distribution;

ii. pay any amounts to the Firm's shareholders, employees, officers or partners or any persons connected thereto;

iii. make any gift or loan by the Firm to any party;

iv. enter into any financial reconstruction or financial reorganisation; or

v. take any other action which would have the effect of disposing of, or diminishing the value of, the assets.

(d) The Firm must immediately secure all books and records within its possession or power and preserve all information and systems within its possession or power that relate (in each case) to regulated activities carried on by it, and must retain these in a form and at a location such that they can be provided to the Authority promptly on its request. Within fourteen days of the date of this Notice, the Firm must provide written confirmation to the Authority, signed by each of the Directors, setting out: (i) what books and records it holds or controls, and their location; (ii) what books and records of the Firm are held by the police or any other third party outside the Firm's control and, to the best of its knowledge, their location.

(e) The Firm was required under the First Supervisory Notice to notify in writing all clients of the actions taken in compliance with the First Supervisory Notice). The Firm was to agree the wording with the Authority in advance and provide its supervisory contact with a copy of the written notification with a list of all the clients to whom the notification has been sent. To the extent these steps remain outstanding, the Firm must complete them immediately.

2. For the avoidance of doubt:

(a) Nothing in paragraph 1(a) prevents the Firm from carrying on any business with the prior express written permission of the Authority;

(b) Paragraph 1(b) is a requirement for the purposes of CASS 7A.2.2R(3). It came into force as soon as all of the monies which were required (pursuant to the First Supervisory Notice) to be transferred to the Client Bank Account from the Trading Account were received in the Client Bank Account. The coming into force of paragraph 1(b) caused a

primary pooling event with immediate effect for the purposes of the rule at CASS 7A.2.2R of the Handbook; and

(c) Paragraph 1(c) is an assets requirement pursuant to section 55P of the Act.

3. The First Supervisory Notice also imposed certain other requirements on the Firm. The Authority is satisfied that all the requirements imposed by the First Supervisory Notice were appropriate as at the date of that Notice. However, by correspondence dated 18 December 2015, the Authority agreed to rescind one of these requirements as it was no longer required. The Authority has also decided to rescind the requirements imposed by the First Supervisory Notice other than the Continuing Requirements, with effect from the date of this Notice, because it is satisfied that the Firm has complied with them in full and, therefore, they serve no further purpose. It has decided to amend the requirement set out in paragraph 1(d) of this Notice; it considers that this is appropriate in the light of representations made by the Firm as to the location and control of documentation.

REASONS FOR ACTION

4. On the basis of the facts and matters described below, the Authority considers that the imposition of the requirements set out in the First Supervisory Notice was necessary: (i) in order to advance the Authority's consumer protection objective; and (ii) because the Firm appeared to be failing to satisfy the Threshold Conditions relating to suitability, adequate resources, effective supervision and business model set out in Part 1B of Schedule 6 of FSMA 2000. The Authority considers that the imposition of the Continuing Requirements remains necessary, on the same basis.

5. In particular, the Authority is concerned to protect clients of the Firm from significant loss, risk of loss or other adverse effects. The Authority has serious concerns about the following matters:

(a) The underlying legal structure of the Fund remains informal and not documented, and the process for the issuance of Fund units is not clear or properly documented;

(b) Since January 2015, the Firm has not been able to evidence compliance with the Authority's CASS sourcebook in a number of significant respects. The Authority considers that the Firm does not have adequate internal controls in place to comply with the Authority's client money rules;

(c) The Firm does not possess the requisite permissions to undertake the regulated activities of 'Managing an Alternative Investment Fund' and 'Safeguarding and Administration of Assets', which would be required if the activities the Firm was in fact carrying out in relation to the Fund prior to the First Supervisory Notice were to resume.

(d) The Firm issued additional units to some customers for which no payment was made, leading to a dilution of investors' assets in the Fund, which meant that some customers were at risk of receiving less

than was appropriate if redeeming their investment in the Fund. The Firm has stated that it rectified this position by reducing its management charge for the relevant period and applying these funds to the investors that had received extra units, so that the Fund was not diluted. However, the Firm accepts that this was not adequately documented;

(e) The Firm's uncertain regulatory and financial position could have an adverse effect on the Firm's remaining consumers: some customers are at risk of receiving less than an appropriate amount in respect of their investment in the Fund. It is in the interests of the Firm's customers as a whole (acting equitably as between them) that the client funds held by the Firm be paid out to its customers in an orderly basis.

6. The Authority does not consider that the Firm will be able to address and remedy these concerns in the near future and become compliant with Authority rules. This causes an ongoing consumer risk.

7. The Authority has received a number of consumer complaints concerning, among other matters: a lack of client documentation; an undisclosed conflict of interest with T&TA (a connected entity operated by the Directors), a number of whose customers say they were recommended to invest in the Fund; and misclassification of customers as professional or high net worth.

8. The Authority has also concluded, on the basis of the facts and matters described below, that the Firm is failing, or is likely to fail, to satisfy Threshold Conditions 2C ("effective supervision"), 2D ("appropriate resources"), 2E ("suitability"), and 2F ("business model") in Part 1B of Schedule 6 to the Act.

Effective supervision

9. The Authority considers that the Firm is failing to satisfy the Threshold Condition in paragraph 2C to Schedule 6 to the Act (effective supervision).

10. The Authority is not satisfied that the Firm is capable of being effectively supervised, having regard to the way in which the Firm's business is organised. In a number of significant respects, the Firm has not been able to evidence business records to a competent or adequate standard to enable the Authority to determine whether the Firm is complying with regulatory requirements, and in particular certain requirements of the Authority's CASS sourcebook.

Appropriate resources

11. The Authority considers that the Firm is failing to satisfy the Threshold Condition in paragraph 2D of Schedule 6 to the Act (appropriate resources). The Authority is not satisfied that the resources of the Firm are appropriate in relation to the regulated activities it carries on. The means by which the Firm has managed the incidence of risk suggests that the Firm does not have appropriate financial resources:

(a) Some customers may not have received (and in the event of any future distribution may not at that stage receive) an appropriate amount when redeeming their investment in the Fund; and

(b) Prior to the issue of the First Supervisory Notice, there was a risk that events, including the number of redemptions that had occurred in a short period of time, would impact the ongoing future of the Firm.

12. In addition, due to the conduct of the Directors and the failings identified by the Authority during a visit to the Firm, the Authority considers that the Firm does not have appropriate non-financial resources, with regard to the skills and experience of those who manage the Firm's affairs.

Suitability

13. The Authority considers that the Firm is failing to satisfy the Threshold Condition in paragraph 2E of Schedule 6 to the Act (suitability). The Authority is not satisfied that the Firm is a fit and proper person, having regard to all the circumstances. In particular, the Authority does not consider that the Firm has been conducting its affairs in an appropriate manner, having regard in particular to the interest of consumers. Further, the Authority does not consider that 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.

14. In addition to the considerations mentioned above, the Authority is of the view that the Firm has failed to set up appropriate systems and controls to ensure the Fund is managed prudently because:

(a) the Firm could not adequately evidence that the documentation issued to clients was sufficient to enable them to ascertain the value of their holding; and

(b) the manner in which the Directors have managed the Fund, and the consumer complaints received by the Authority, raise concerns as to whether the Directors are able to conduct the affairs of the Firm with adequate skills and experience, or in a sound and prudent manner.

Business model

15. The Authority considers that the Firm is failing to satisfy the Threshold Condition in paragraph 2F of Schedule 6 to the Act (business model). The Authority is not satisfied that the Firm's business model is suitable for the regulated activities that it carried on prior to the issue of the First Supervisory Notice. For example, the Authority is concerned by:

(a) the fact that the underlying legal structure of the Fund remains informal and not documented, and the process for the issuance of Fund units is not clear or properly documented, which will cause a risk of loss to consumers or delay to the return of funds to consumers, should the Firm become insolvent;

(b) the number of consumer complaints received by the Authority which suggest that a number of consumers have been misclassified as professional or high net worth; and

(c) the fact that there were a material number of requests for redemptions from the Fund following recent police action, placing it in a precarious financial position.

DEFINITIONS

16. The definitions below are used in this First Supervisory Notice:

"AIFMD" means the Alternative Investment Fund Managers Directive;

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

"the Authority" means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority;

"Client Bank Account" means the HSBC client bank account a/c sort code 402085, a/c number 30014761;

"CASS" means the client asset rules as set out in the Authority's Handbook;

"CFD" means contract for differences;

"COND" means the part of the Handbook entitled Threshold Conditions;

"the Continuing Requirements" means the requirements set out in paragraph 1;

"the Directors" means Alan Richard Taylor and Russell Martin Taylor, the sole directors of Vantage Investment Group Limited;

"the Firm" means Vantage Investment Group Limited;

"the Fund" means the purported unregulated collective investment scheme, until August 2014 known as the 'Vantage Index Tracker Fund LP' and subsequently known as the Vantage Investment Group Fund;

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

"T&TA" means Taylor and Taylor Associates Limited;

"the Trading Account" means the IG trading account VS4082, held in the name of the Firm; and

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

FACTS AND MATTERS

Background

17. On 24 April 2008, the Firm was authorised to perform regulated activities relating to the investment, management and operation of the Fund and to invest in CFDs on behalf of professional clients only. Specifically, the Firm was authorised to conduct the following activities:

(a) arranging (bringing about) deals in investments;

(b) arranging, safeguarding and administration of assets;

(c) dealing in investments as an agent;

(d) establishing, operating or winding up an unregulated collective investment scheme;

(e) making arrangements with a view to transactions in investments;

(f) managing investments; and

(g) agreeing to carry on a regulated activity.

18. The Fund was purportedly managed for professional clients whose investments were unitised. Client money was received in the Client Bank Account, before being transferred to the Trading Account (account VS4082) with an executing broker and invested in CFDs.

19. The Firm confirmed to the Authority in its December 2014 Client Money and Asset Return that it held £8,581,000 of client money. According to the Skilled Person's Report, as of 3 September 2015, the value of the assets held in the Trading Account had dropped to £4,683,075. As of 29 October 2015, the Trading Account had £4,402,141 on account.

20. The Firm has two approved persons: Mr Russell Martin Taylor and Mr Alan Richard Taylor.

21. Alan Taylor holds the following controlled functions at the Firm:

(a) CF1 (director);

(b) CF10 (compliance oversight);

(c) CF10a (CASS Oversight); and

(d) CF30 (customer).

22. Russell Taylor holds the following controlled functions at the Firm:

(a) CF1 (director);

(b) CF11 (money laundering reporting); and

(c) CF30 (customer).

23. Russell and Alan Taylor are the sole directors and shareholders of the Firm. The Firm acts as the Fund's manager.

24. Russell and Alan Taylor are also the sole approved persons and directors of T&TA, an authorised person which, on the information available, appears to have advised clients to invest in the Fund without adequately disclosing a conflict of interest in relation to the Fund. On 2 June 2015, T&TA went into liquidation.

The Authority's Concerns

Events leading to voluntary requirements signed on 20 February 2015

25. On 29 January 2015, the Authority visited the Firm. The Authority's visit raised serious concerns relating to the Firm's compliance with the requirements of the Handbook and its Threshold Conditions relating to suitability, adequate resources and business model. Those concerns are (with the exception of those set out at paragraph 26(d) and (e) below) yet to be addressed and all remain relevant for the purposes of this Notice.

26. In particular, the Authority identified the following significant concerns:

    (a) The Directors were unable to evidence the Fund's underlying legal structure.

    (b) The Firm was unclear regarding the contractual status of the Trading Account used to receive client investment prior to executing a CFD.

    (c) The Firm appeared to have issued additional units to some customers for which no payment was made, without adjusting the overall value of the units in the Fund.

    (d) The Firm did not perform internal or external client money reconciliations in compliance with the Authority's rules, and the Directors were unable to distinguish between internal and external reconciliations.

    (e) The Firm was unable to demonstrate that it had provided clients with confirmation of the number of units which were allocated to each investment.

    (f) The Firm had made an inappropriate transfer of £900,000 from the Trading Account into the personal dealing account belonging to one of its Directors. According to the Firm, this was to 'take advantage of more advantageous trading positions'. While the money was repaid, the initial payment was in breach of the fiduciary duties of the Firm and the Directors.

27. Following the Authority's visit, the Firm notified the Authority on 2 February 2015 that it had breached CASS requirements and that, should substantial redemptions occur, it would have to apply a unit price adjustment/market value adjustment to restrict or reduce redemptions. The Firm stated that its invested CFD position strategy had "*failed significantly and a loss was crystallised*" because a "*significant and unusual move in the investment markets meant these positions were significantly on the wrong side of our expectations*". The Firm also informed the Authority that it was applying measures in accordance with its prospectus and implementing redemption restrictions for all accounts until unit adjustments had taken place.

28. However, considering the Authority's significant concerns as to how the Fund was managed, it was apparent that the Firm did not have adequate systems and controls to comply with the Handbook.

29. In light of the concerns, the Authority invited the Firm to agree a voluntary requirement to cease taking on new clients and investments and to put in place various reporting requirements.

30. On 20 February 2015, the Firm applied for the Authority to impose requirements under section 55L(5) of the Act to:

    (a) cease taking on new clients;

    (b) not accept any new investment from clients;

    (c) cease redemptions (for a limited time); and

    (d) submit regular reports to the Authority (for a limited time).

31. Between February and July 2015, the Authority and the Firm were in discussions with regard to the appointment of a skilled person to undertake a review under section 166 of the Act, and the scope of that review.

32. On 22 July 2015, a skilled person was appointed to undertake such a review. The skilled person was appointed to focus on: (a) which steps should be taken to ensure the proper establishment of arrangements for the proper operation of the Fund; and (b) the provisions governing the safeguarding and administration of client assets and the holding of client money within the Firm and the Fund.

Skilled person's report

33. On 2 November 2015, the skilled person provided a final report which contained the following findings:

    (a) The skilled person supported the conclusions reached by the Authority that the Fund had no formal, documented underlying legal structure;

    (b) The Trading Account was held in the name of the Firm and not in the name of the Fund or in the name of the Firm as manager of the Fund: the Fund was not identified;

    (c) The Firm was not performing internal or external client money reconciliations in compliance with the Authority's rules and had not applied CASS 6 to the Fund arrangement;

    (d) In addition to the £900,000 which had been inappropriately transferred as identified by the Authority, the Firm had made another payment from the Trading Account to the Client Bank Account. It is the understanding of the skilled person that this money was intended "to enable the company to take advantage of more favourable trading positions" and was repaid into the Trading Account following advice from the Firm's auditors. The skilled person commented that it was not clear why the proposed transaction was considered appropriate by the Firm;

(e) CFDs had been entered into for the benefit of the Fund and on behalf of the clients, but this was not reflected in any formal documentation of the underlying arrangements; and

(f) The Fund was subject to the AIFMD requirements and therefore by managing the Fund, the Firm was in breach of its permission, since it lacked the relevant permissions.

34. Due to the legal uncertainty surrounding the Fund, the uncertainty over the rights to the cash assets held within the Trading Account and the failure to operate the Trading Account in accordance with the Authority's custody rules and Principle 10 ("*A firm must arrange adequate protection for clients' assets when it is responsible for them*"), the skilled person concluded there would be a serious risk of loss to customers and delay in the return of client funds in the event of insolvency of the Firm. Specifically, it was the view of the skilled person that an insolvency practitioner would have to undertake a lengthy process to determine the status of the cash assets in the Trading Account, and to ascertain the ownership of the funds.

35. The skilled person recommended that documentation and legal arrangements governing the Fund be revised in order to clarify the status of the Fund.

Redemption of investments in Fund

36. As a result of the voluntary requirement imposed in February 2015, the Firm was unable to generate income from new business. The Authority understands that the Firm's principal source of income was through management charges in respect of the Fund.

37. According to the skilled person's report, as of 3 September 2015, the value of the assets held in the Trading Account had dropped to £4,683,075. As of 29 October 2015, the Trading Account had £4,402,141 on account.

38. On 22 October 2015, the Money Laundering Investigation Team of the Eastern Regional Special Operation Unit, a police unit, sent letters to known clients of the Firm and T&TA. The letter sought information from clients to establish whether they had knowingly or unknowingly suffered any major loss as a result of investing on the advice of T&TA or had funds invested in investments related to the Firm.

39. Between 26 October and 2 November 2015, seven consumers contacted the Authority to complain about the Firm, four of whom indicated that they had been prompted by the police letter.

40. On 3 November 2015, the Firm emailed the Authority stating that clients had been contacting it raising concerns and referring to contact they had received from the police. It expressed a concern that the remaining capital under management might be withdrawn within a relatively short period of time. It was stated that six or seven redemption requests had been made.

41. On 9 November 2015, the Firm notified the Authority that it had received 14 redemption requests from consumers since the police letter was sent, amounting to £776,782. The Firm also indicated that between 21 and 22 October, it had incurred further trading losses.

42. Given the above, the Authority considered that some customers were at risk of receiving less than the full return of the sums to which they were entitled in respect of the Fund.

Financial resources

43. As at the date of the First Supervisory Notice, the Authority was concerned that, in view of the material number of recent redemptions, the Firm's principal source of income, namely management charges, would be severely compromised if the Firm were allowed to continue to operate. The Authority was therefore concerned with the ongoing future of the Firm.

44. The latest audited accounts for the Firm filed at Companies House, for the year ending 31 August 2014, stated a net loss for the year of £928 and gave a figure of £7,713 for reserves within the Firm's profit and loss account. However, the financial returns to the Authority indicated retained earnings of £17,168.

45. The Firm's balance sheet consisted of Shareholders Funds of £127,713 and stated that most of the firm's £201,060 current assets were represented by a £149,000 loan to Vantage Property Capital Ltd, an associated company which has the same directors as the Firm.

46. The Independent Auditors' Report accompanying the 31 August 2014 accounts confirmed in respect of this 'Debtor': *'We are aware that the directors are in the process of liquidating the assets within that company and therefore they are not certain of the recoverability of this balance'*.

47. Furthermore, the Firm's auditor had disclaimed the accounts on the grounds of material uncertainty and therefore did not express an opinion on the accounts.

48. The latest (2014) unaudited accounts for the associated company Vantage Property Capital Ltd filed with Companies House showed under the heading 'Going Concern' that the company was relying on the directors of the company through loans and advances which were repayable on demand to be deemed a going concern.

49. These accounts stated that the company had an investment in "The Hideaways Club", a timeshare business. Accounts submitted for The Hideaways Club (UK) Ltd, dated 31 December 2014, an entity that it appeared to the Authority might be the source of Vantage Property UK Ltd's investment, stated: *'The ability of the company to meet its financial obligations is dependent on its parent company, The Hideaways Club Limited, continuing to be a going concern. The parent company financial statements have been prepared on a going concern basis despite the net deficit in shareholders funds of £2,524,014 following the shareholders confirmation of their willingness to provide that Company with financial support'*.

50. In view of the above the Authority, at the time of the First Supervisory Notice, considered it unlikely the loan made by the Firm to Vantage Property Capital Ltd was recoverable and questioned the ongoing prospects of solvency for the Firm. According to information provided by the Firm, since then the Directors have made arrangements which have resulted in the repayment of the loan of £149,000 to the Firm.

Consumer complaints

51. In addition to the two inappropriate transfers of client funds, the Authority is aware of a number of consumer complaints in relation to the Firm and investments in the Fund on the advice of T&TA. In summary, the complaints relate to:

    (a) clients being incorrectly classified as high net worth or professional clients;

    (b) failing to explain the high risk nature of the investment in the Fund;

    (c) failing to inform the clients of the conflict of interest between T&TA and the Firm; and

    (d) failing to provide adequate information on the Fund in order for the clients to make an informed decision.

Potential for loss to be suffered by *clients*

52. The Authority imposed the requirements in the First Supervisory Notice to protect some or all of the clients of the Firm from suffering further losses as a consequence of:

    (a) the issuing of additional units to some customers for which no payment was made, diluting the assets in the Fund. This dilution of the Fund meant that some customers were at risk of not receiving the full return of the sums to which they were entitled in respect of the Fund. The Firm has stated that it rectified this position by reducing its management charge for the relevant period and applying these funds to the investors that had received extra units, so that the Fund was not diluted. However, the Firm accepts that this was not adequately documented;

    (b) the lack of a formal, documented underlying legal Fund structure;

    (c) possible mass redemption caused in part by the police letter;

    (d) the Firm's inability consistently to calculate or explain how the unit price or the number of units are calculated for each consumer;

    (e) the precarious financial position in which the Firm found itself; and

    (f) the apparent low likelihood of the Firm becoming compliant with the Authority rules in the near future.

53. By imposing those requirements, the Authority sought to ensure an orderly return of funds to customers.

54. The Authority considers the requirements set out in the First Supervisory Notice were necessary despite the voluntary requirements agreed to by the Firm in February 2015, which were (following the expiry of the time-limited provisions) limited to not taking on new clients or accepting new investments from any clients. The purpose of these further requirements was to ensure preservation of client funds and to enable an orderly distribution of those funds in accordance with CASS rules. The Authority does not believe this is something the Firm could have

achieved without intervention by the Authority, in view of the concerns it had identified in relation to the Firm's compliance with the Threshold Conditions. The Authority considers the Continuing Requirements remain necessary, because the Firm has not demonstrated that it has addressed the Authority's concerns, such that consumers would be afforded the necessary degree of protection if the Firm were allowed to resume its regulated business (and connected business activities).

The Firm's proposals to remedy the Authority's concerns

55. On 17 November 2015, the Firm wrote to the Authority making a number of points, including a number of proposals to rectify the structural concerns identified by the Authority and the skilled person's report. The letter indicated that:

(a) since February 2015, the Firm had been able to generate capital growth for the Fund of £935,000;

(b) there had not been "*a further rush of withdrawal requests as [the Firm] had feared*";

(c) the Firm should be allowed more time to recover losses and for all other regulatory steps to be fulfilled;

(d) since February 2015 the Firm had taken steps to address the problems identified by the Authority during its visit;

(e) the Firm had already taken some of the remedial steps outlined in the skilled person's report, though the recommendations with regard to the legal status had not been addressed as the Firm believed it required "*the positive approval of the [Authority] before acting*";

(f) the Firm was not clear why during 2008 when it applied for authorisation, the Authority did not identify the permission which the Authority now states the Firm lacks in relation to AIFMD. The Firm intended to apply to vary its permission but was waiting for the Authority to "*agree to the report recommendations*";

(g) the Firm proposed to create a new company and rename the Firm as VIG Fund Ltd which would hold the balance of the Trading Account. The Firm envisaged this as a short term solution until advice regarding the legal structure could be obtained and implemented.

56. The Authority was not able to verify the assertions made by the Firm.

57. The Authority does not consider that the proposals put forward to address the legal arrangements governing the Fund were appropriate and the Firm had not provided any evidence to demonstrate that it was now compliant with the aspects of CASS stated in the letter. Further, the Authority considered that the fundamental issues within the Fund had not been addressed. This remains the position as at the date of this Notice, notwithstanding that the Firm has now provided evidence which indicates that it had achieved compliance with CASS in some respects; for example, in relation to reconciliations.

The current position of the Firm

58. It appears to the Authority that the Firm has, since the date of the First Supervisory Notice, complied in full with certain of the requirements in that Notice which consist of steps to be taken. For that reason, the Authority has decided to rescind all requirements in the First Supervisory Notice other than the Continuing Requirements.

59. The regulatory provisions relevant to this Second Supervisory Notice are set out in Annex A.

REPRESENTATIONS

60. 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.

FAILINGS

61. From the facts and matters described above, and having regard to its regulatory objectives and its concerns regarding the Firm's inability to meet and continue to meet the Threshold Conditions relating to effective supervision, suitability, adequate resources and business model, the Authority reached the following conclusions:

(a) As the Authority concluded following its January 2015 visit, the Firm was in contravention of numerous CASS rules. These included:

i. CASS 6 'Custody Assets' – the Firm had not applied the provisions of this chapter of the Authority's CASS Sourcebook to the cash assets of the Fund held within the Trading Account. The cash assets of the Fund were held in the Trading Account in the name of the Firm and not the Fund. Such assets were not clearly shown as belonging to the Fund: therefore there was a risk to the security of these assets and of loss to consumers or delay in the return of these assets to investors in the event of the Firm's insolvency. The Authority is of the opinion that the Firm would continue to be in contravention of CASS 6 'Custody Assets' (but for the effect of the First Supervisory Notice on the Trading Account);

ii. CASS 7.15 'Records, accounts and reconciliations' – the Firm did not undertake daily client money reconciliation in accordance with CASS 7.15.12-13R and CASS 7.15.15-17R. In its letter dated 17 November, the Firm asserted that it had adopted a "standard method" of daily CASS reconciliation following the draft skilled person's report (which it had sight of on 7 September 2015). The Firm had not provided evidence to substantiate this assertion and therefore the Authority was not able to verify whether the accounts reconciliation was being carried out in compliance with the CASS Sourcebook;

iii. CASS 7.15 'Records, accounts and reconciliations' – the Firm had not demonstrated that an external client money reconciliation was being

completed in accordance with the required methodology and frequency (CASS 7.15.20R, 7.15.22R, 7.15.23R and 7.15.27R). In its letter dated 17 November, the Firm asserted that it had taken remedial action in this regard. The Firm had not provided evidence to substantiate this assertion and therefore the Authority was not able to verify whether the Firm carried out external client reconciliation in compliance with the CASS Sourcebook;

iv. CASS 7.18 'Acknowledgement Letters' – the Firm operated one client money bank account at HSBC and the acknowledgment of trust letter for that account did not demonstrate compliance with the provisions of CASS 7.18.5-6 and CASS 7 Annex 2R; and

v. CASS 10 'CASS resolution pack' – the Firm had not demonstrated that it had a CASS resolution pack sufficient to enable an insolvency practitioner to locate records of client money or assets in the event of insolvency (CASS 10.1.1R, CASS 10.2.1R and CASS 10.3.1R). The Firm asserted in its letter dated 17 November that it "*now maintains a note on the master copy held at the office which notes document locations on the computer. [The Firm] also now attaches a memory stick to the hardcopy CASS Resolution Pack which holds the updated computer files, client RS bank details, investor value sheet and monthly transaction sheet*". The letter provided insufficient detail for the Authority properly to assess whether the Firm was compliant with the Authority's requirements. Further, no evidence was provided to substantiate this assertion. In particular, it was not clear whether the actions taken by the Firm were in line with the core content or the existing records requirements as outlined in CASS 10.2 and 10.3.

(b) It was apparent that the Firm did not have adequate internal controls in place to comply with the Authority's client money rules;

(c) The lack of a formal, documented legal structure, the lack of clarity as to the basis on which units had been issued and the lack of adequate business records had hindered the Authority's ability to determine whether the Firm has complied with the requirements and standards under the regulatory system. Also, in these respects the Firm's business model was not compatible with the Firm's affairs being conducted in a sound and prudent manner and in the interest of consumers;

(d) In the event of insolvency, the lack of formal legal structure could cause loss, or a significant delay in the return of funds to consumers;

(e) A significant loss (in the region of £8,000,000) had crystallised to the account in the Firm's name, purporting to be the Fund account, as a result of the Firm's investment strategy;

(f) The material uncertainty surrounding the Firm's financial accounts meant it was not possible to assess with any confidence whether the Firm's financial resources were sufficient to comply with regulatory requirements;

(g) The issuing of additional units to some customers for which no payment was made led to the dilution of the assets in the Fund. This dilution of the

Fund meant that some customers were at risk of receiving less than was appropriate if redeeming their investment in the Fund; and

(h) The conduct of the Directors with regard to the inappropriate transfer of funds and the consumer complaints received with regard to the Directors raised concerns with regard to the Firm's ability to ensure that its affairs were conducted in a sound and prudent manner.

62. Overall, although the Firm stated on 17 November that it had taken certain remedial steps, the Firm did not provide any evidence to substantiate this assertion and the Firm did not appear to have adequate systems and controls to comply with the Handbook.

63. Although the Directors indicated a desire to put in place steps to bring the Fund into compliance, they did not, prior to the issue of the First Supervisory Notice, take sufficient steps and the estimated timescales given to remedy this posed too great a risk to consumers' interests.

64. This remains the position following the issue of the First Supervisory Notice, notwithstanding further communications from the Firm, including the representations summarised in Annex B. The Firm has now provided evidence which the Authority accepts indicates that reconciliations with CASS were being carried out in accordance with CASS from September 2015; however, this is not sufficient to allay the Authority's concerns in relation to the matters set out at paragraph 61, save for those at paragraph 61(a) ii and iii;

65. For the reasons set out above, the Authority has concluded that the Firm is in breach of the effective supervision, appropriate resources, suitability and business model Threshold Conditions and that the Firm poses a risk to the Authority's operational consumer protection objective. It has concluded that it is desirable to exercise the Authority's own initiative power to keep in force the Continuing Requirements, preventing further consumer detriment and requiring the Firm to continue not to carry on regulated activities (or connected business activities) and preserve any further funds.

66. The Authority has decided to rescind the requirements imposed by the First Supervisory Notice other than the Continuing Requirements, with effect from the date of this Notice, because it is satisfied that the Firm has complied with them in full and, therefore, they serve no further purpose. The Authority believes that the Continuing Requirements are an appropriate and proportionate means to protect the risks posed to consumers who are customers of the Firm.

PROCEDURAL MATTERS

Decision Maker

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

68. This Second Supervisory Notice is given to the Firm under section 55Y(7) and (8) and in accordance with section 55Y(5) and (9) of the Act.

The Tribunal

69. The Firm has the right to refer the matter to which this Second Supervisory Notice relates to the Upper Tribunal. The Tax and Chancery Chamber is the part of the Upper 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 Second Supervisory Notice is given to it to refer the matter to the Upper Tribunal.

70. 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*).

71. For further information on the Upper Tribunal (including the power to vary time periods) you should refer to the HM Courts and Tribunal Service website which will provide guidance and the relevant form to complete. The relevant page on HM Courts and Tribunal Service website can be accessed via the following link:

http://www.justice.gov.uk/forms/hmcts/tax-and-chancery-upper-tribunal

72. A copy of Form FTC3 must also be sent to Edmund Weighell at the Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS at the same time as filing a reference with the Upper Tribunal.

Publicity

73. The Firm should note that section 391 of the Act requires the Authority, when the Second Supervisory Notice takes effect (and this Second Supervisory Notice takes immediate effect), to publish such information about the matter as it considers appropriate.

Contact

74. For more information concerning this matter generally, the Firm should contact Edmund Weighell at the Authority (direct line: 020 7006 9040).

Peter Hinchliffe
Deputy 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 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 where 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 or refrain from taking specified action (section 55N(1)).

4. Pursuant to 55P(4)(a) an assets requirement means a requirement prohibiting the disposal of, or other dealing with, any of the Firm's assets (whether in the United Kingdom or elsewhere) or restricting such disposals or dealings.

5. Section 55Y of the Act allows such a requirement imposed under the own-initiative requirement 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).

6. 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."

7. Paragraph 2C to schedule 6 to the Act states that:

> "A must be capable of being effectively supervised by the [Authority] having regard to all the circumstances including-

[…]

(c) the way in which A's business is organised;

[…]"

8. Paragraph 2D of Schedule 6 to the Act states that:

"(1) The resources of A must be appropriate in relation to the regulated activities that A carries on or seeks to carry on.

[…]

(3) …the matters which are relevant in determining whether A has appropriate financial resources include-

[…]

(b) the means by which A manages and, if A is a member of a group, by which other members of the group manage, the incidence of risk in connection to A's business.

(4) The matters which are relevant in determining whether A has appropriate non-financial resources include-

(a) the skills and experience of those who manage A's affairs;

[…]"

9. 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;

[…]

(e) whether those who manage A's affairs have adequate skills and experience and have acted an 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".

10. Paragraph 2F of Schedule 6 to the Act states that:

"(1) A's business model (that is, A's strategy for doing business) must be suitable for a person carrying on the regulated activities that A carries on or seeks to carry on.

(2) The matters which are relevant in determining whether A satisfies the condition in sub-paragraph (1) include-

(a) whether the business model is compatible with A's affairs being conducted, and continuing to be conducted, in a sound and prudent manner;

(b) the interests of consumers;

[…]"

RELEVANT HANDBOOK PROVISIONS

Guidance concerning the relevant Threshold Conditions

11. Guidance on the Threshold Conditions is set out in COND.

COND 2.3 – Effective Supervision: Paragraph 2C of Schedule 6 to the Act

12. COND 2.3.1A (1) reproduces paragraph 2C of Schedule 6 to the Act ("the Effective Supervision Threshold Condition") (as set out in part above).

13. COND 2.3.3G provides examples of general considerations to which the Authority may have regard in assessing whether a firm will satisfy and continue to satisfy the Effective Supervision Threshold Condition.

COND 2.4 Appropriate Resources: Paragraph 2D of Schedule 6 to the Act

14. COND 2.4.1A (1) reproduces paragraph 2D of Schedule 6 to the Act ("the Appropriate Resources Threshold Condition") (as set out in part above).

15. COND 2.4.4G(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 Appropriate Resources Threshold Condition.

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

16. COND 2.5.1A (1) reproduces paragraph 2E of Schedule 6 to the Act ("the Suitability Threshold Condition") (as set out in part above).

17. 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. COND 2.5.4G(2)(a) refers to whether the firm conducts, or will conduct, its business with integrity and in compliance with proper standards.

18. COND 2.5.6G provides examples of particular considerations to which the Authority may have regard in assessing whether a firm will satisfy and continue to satisfy the Suitability Threshold Condition. COND 2.5.6(4) refers to whether a firm or any person connected to the firm has contravened any provisions of the Act or the regulatory system, which include the Principles and other rules.

COND 2.7 – Business model: Paragraph 2F of Schedule 6 to the Act

19. COND 2.7.1 (1) reproduces paragraph 2F of Schedule 6 to the Act ("the Business Model Threshold Condition") (as set out in part above).

20. COND 2.7.8 G provides examples of general considerations to which the Authority may have regard in assessing whether a firm will satisfy and continue to satisfy the Business Model Threshold Condition.

OTHER RELEVANT REGULATORY PROVISIONS

21. 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.

22. EG 8.1 reflects the provisions of section 55L of the Act that the Authority may use its power to 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

23. EG 8.1B 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.

24. EG 8.3 provides that the Authority will exercise its formal powers under section 55L of the Act, where the Authority considers it is appropriate to ensure a firm meets its regulatory requirements. EG 8.3(1) 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.

25. EG 8.12 sets out examples of requirements that the Authority may consider imposing when exercising its own-initiative power in support of its enforcement function including: a requirement not to hold or control client money; a requirement that prohibits the disposal of, or other dealing with, any of the firm's assets (whether in the United Kingdom or elsewhere) or restricts those disposals or dealings; and a requirement that all or any of the firm's assets, or all or any assets belonging to investors but held by the firm to its order, must be transferred to a trustee approved by the Authority.

Use of the own-initiative powers in urgent cases

26. EG 8.6 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 8.7 sets out circumstances in which the Authority will consider exercising its own initiative power as a matter of urgency, including where the information available to it indicates serious concerns about the firm or its business that need to be addressed immediately (EG 8.7(1)).

28. EG 8.8 states that it is not possible to provide an exhaustive list of situations which may give rise to such serious concerns, but sets out a number of characteristics, one or more of which they are likely to include. These include (EG 8.8(1)) there is information indicating a significant loss, risk of loss or other adverse effects for consumers, where action is necessary to protect their interests.

29. EG 8.9 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 the Authority will consider, including: the extent of any consumer loss or risk of consumer loss or other adverse effect on consumers (EG 8.9(1)); the extent to which customer assets appear to be at risk (EG 8.9(2)); the financial resources of the firm (EG 8.9(5)); the firm's conduct (EG 8.9(6)); and the impact which the use of the Authority's own-initiative powers will have on the firm's business and on its consumers (EG 8.9(9).

ANNEX B

REPRESENTATIONS

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

There has been an unfair change of approach by the Authority

2. *In issuing the First Supervisory Notice, the Authority adopted a change of approach for which there was no justification. The Authority was aware by early 2015 of all substantive matters cited in the First Supervisory Notice as justification for its issue. When requiring the Firm to arrange for the skilled person's report, it had entered into a mutually agreed commitment and should have allowed the Firm to implement appropriate remedial action in accordance with the report, having made it clear that it expected the Firm not to pre-empt the terms of the final report and the Authority's own approval of the action to be taken. In the circumstances, the cost of the report was wasted and an unreasonable expense to the Fund (and investors).*

3. The Authority considers that the Firm's representations misunderstand the scope and purpose of the skilled person's report, and the responsibilities of the Authority. In deciding to issue the First Supervisory Notice (and this Notice) the Authority correctly took into account the totality of the Firm's circumstances and not merely the matters covered in the skilled person's report. That report was required by the Authority in order to provide it with information on a number of specific matters, and did not amount to any commitment by the Authority as to the action that it would, or would not, take or the matters to which it would, or would not, have regard.

4. As was set out in the First Supervisory Notice (and as is repeated in this Notice), the action taken by the Authority was the result of continuing concerns in a number of areas, as a result of which the Authority concluded that the requirements in the First Supervisory Notice needed to be imposed as a matter of urgency. The Authority's concerns were compounded by its review of the growing number of customer complaints received both by it and by the police, and by the requests for redemption received by the Firm. Prior to deciding to issue the First Supervisory Notice, the Authority invited the Firm to consider requesting further voluntary requirements to address its concerns (thus indicating that it considered further restrictions on the Firm to be appropriate) but the Firm did not do so. The First Supervisory Notice should not, therefore, have come as a surprise to the Firm.

The Authority has unfairly criticised the Firm for not having the correct permissions

5. *The Authority's criticism of the Firm for not having the correct permissions for its activities in relation to the Fund is unfair. The Authority initially directed the Firm*

as to which permissions were required at the time of its authorisation. The Authority was at all times in possession of all the relevant information; it identified specific concerns in January 2015 but made no request and issued no guidance in respect of any need to reconsider permissions. The final skilled person's report was the first occasion identifying the permissions that the Firm ought to apply for. Making any such application was dependent on the Authority's view as to the legal position set out in the report.

6. The Firm has been authorised since 2008. The Authority brought the issue of whether the Firm needed additional permissions to comply with AIFMD to its attention in a letter of 9 April 2015 following up on its visit to the Firm in January 2015. Further, AIFMD, which was fully implemented on 1 July 2015, has been widely publicised by the Authority. However, firms are responsible for satisfying themselves as to what permissions they need for the regulated activities they carry on, and should not rely on the Authority to advise them as to what permissions they require.

The Firm has demonstrated compliance with CASS

7. *The Firm had always conducted internal reconciliations, and it conducted external reconciliations from September 2015. From that date, both internal and external reconciliations followed CASS requirements. With its representations, the Firm provided evidence of this. It also pointed to a number of other improvements to its procedures for compliance with CASS which it had made since January 2015. The Authority's statement that the Firm had been unable to evidence compliance with CASS was inappropriate because it had never asked for such evidence.*

8. The Authority accepts that the Firm had made some improvements to its procedures for compliance with CASS: specifically, that its internal and external reconciliations were conducted in accordance with CASS from September 2015. However, the Firm did not provide any evidence of this until after the issue of the First Supervisory Notice, despite having ample opportunity to do so after being made aware of the Authority's concerns in this regard, particularly in the light of the skilled person's report, and despite its solicitors writing to address the matters raised in the report. In any event, the Authority considers that the evidence provided of minor improvements was insufficient to assuage fully its concerns as to the ability of the Firm to put in place adequate systems and controls for compliance with CASS.

The Fund was not diluted

9. *The Directors avoided the dilution of the Fund alleged by the Authority, by reducing the Firm's management charge for the relevant period and applying the additional available sum to those investors who had received extra units. The impact of this was that no investor was adversely affected. The Firm does not therefore accept that the Fund was diluted. It accepts that there ought to have been better and more comprehensive documentation covering these matters, but the Firm explained these matters to the Authority in February 2015 and if the*

Authority had been unhappy with the position the Firm could at that time have implemented any adjustments the Authority deemed necessary. The Authority did not consider this clerical error a point of major concern.

10. The Authority considers that this matter was significant: it should not be characterised as a "clerical error" and the Firm is not correct to conclude that the Authority did not consider it to be a point of major concern. The Authority notes that the Firm accepts that some units were issued without payment and that this was inadequately documented. The Authority considers that, by the means set out in paragraph 9 above, the Firm did not "avoid" the dilution of the Fund but, rather, rectified the dilution which had occurred. The Authority notes that the Firm accepts that there ought to have been better and more comprehensive documentation in relation to this matter.

The Firm received poor advice from professional advisers

11. *The Firm paid large sums of money, over four years, for the "failed and incompetent" services of firms of professional advisers which gave incorrect advice about certain of the compliance matters relied on by the Authority.*

12. The Authority has not seen any evidence that any of the relevant failings of the Firm were attributable to poor advice by the professional advisers concerned, and indeed has seen some evidence of the advisers having correctly advised the Firm in relation to certain of the matters concerned. In any event, the Firm and the Directors are responsible for its conduct and actions and cannot delegate responsibility to third parties for compliance. Further, the Firm does not allege that the advisers were responsible for all of the Firm's failings.

The customer complaints were not warranted

13. *The complaints made by customers of the Firm to the Authority and the police were not warranted:*

    (a) The Firm (and/or T&TA) disclosed the conflict of interest arising from the common directorship and ownership of those two entities in a number of ways: it was mentioned in T&TA's Terms and Conditions (under the heading "Conflict of Interest") that the Firm was owned and managed by the directors of T&TA; the head office of the Firm was given in the Firm's prospectus and account opening forms and was the same as that of T&TA until April 2015; the office building itself was marked clearly with signs for the two entities side by side. All but perhaps two investors attended the offices and they would not have failed to notice the signs; customers were informed of the common directorships during individual meetings. Some customers had informed the police that they were informed of the conflict of interest and it was improbable that this information would be applied inconsistently.

(b) Clients were not misclassified as high net worth or professional clients and the Fund was appropriate for all investors. The paperwork for each investor sets out how they come to be identified as high net worth or professional through a classification process originally agreed with the Authority in 2008, and the Authority ought to have indicated at the outset if that process was incorrect. All direct investors had to complete a questionnaire to ensure they understood the Fund and its risk. The Firm provided a sample of customer documentation to illustrate this. No customers were advised by the Firm to invest in the Fund and the circumstances of all T&TA's clients who were made aware of the potential to invest in the Fund made them suitable to consider the potential investment. The paperwork for all investors made clear disclosures as to the Fund, its objectives and risks. With one exception (where the paperwork was misplaced by the customer and the customer was provided with a copy), no investors complained that they had not received the Fund documentation.

14. While the Authority has not reached any concluded view on any of the individual customer complaints, the Firm's representations about them do not alleviate its concerns about the matters raised in them (and the Authority notes that the Firm has not engaged with the merits of the individual complaints in its representations). In relation to each of the Firm's particular representations on the complaints:

(a) The Authority accepts that the common ownership and management of the Firm and T&TA was mentioned in T&TA's Terms and Conditions, but this does not demonstrate that customers were aware of the conflict of interests. Most of the points raised in the Firm's representations are reliant on the customer deducing the common ownership and management, and their implications, rather than having them drawn to their attention. The Firm has not provided any evidence of customers being made aware of the position during client meetings, and accordingly the Authority is unable to reach any conclusion as to the extent to which this was done. If some investors were aware, that is not evidence of disclosure having been made adequately to all clients.

(b) The Authority considers the sample documentation provided by the Firm to be unsupportive of the Firm's representations regarding classification, as it appears insufficient to demonstrate the relevant client opting out of the retail category and does not meet the Authority's appropriateness test. The Authority has reached a similar conclusion with regard to papers relating to two other clients (a couple). Further, most investors in the Fund were investing through self-invested personal pensions held with a particular pension trustee firm. The terms agreed with that trustee firm included a term that the clients were to be treated as retail clients, unless otherwise agreed (and the trustee firm has confirmed that there was no agreement to

the contrary). To the extent that the Firm seeks to put the blame for any misclassification on the Authority, this represents (at best) a misunderstanding of the role of the Authority: the Firm is not entitled to rely on the Authority to direct it as to how to comply with the Authority's rules.

The Firm's financial position

15. *The Firm appreciates the Authority's concern over its financial position in the light of the police letter to customers and the redemption requests received, but the Authority should have engaged with the Firm to discuss its proposals to remedy the situation. The Firm had never been in a precarious financial position and the Authority did not have evidence to support the conclusion that it was. A substantial proportion of the Fund belonged to the Directors and their family, who were keen to support the Fund.*

16. The Authority considers that, as set out in this Notice, particularly paragraphs 43-50, it had good reason for its serious concern about the financial position of the Firm. As set out at paragraphs 55-57 of this Notice, the Firm's proposals to remedy its concerns were inadequate, and its assertions as to improvements unsupported. There was no reason to think that redemption requests would not continue or that they would be manageable, notwithstanding the substantial involvement of the Directors and their family. The Authority does not consider that the willingness of the Directors and their family to provide support to the Fund is sufficient to allay the Authority's concerns relating to the financial position of the Firm; in particular, it would not have prevented an unsustainable level of redemption requests, with the effect on the Firm referred to at paragraph 43 of this Notice.

17. As at the date of this Notice, the Authority's concerns remain.

The Firm had given customers confirmation of their investments

18. *The Firm had provided information to investors to confirm the number of units allocated to their investments, and the Authority had been given this information.*

19. In the First Supervisory Notice, and above at paragraph 25 of this Notice, the Authority acknowledged that this concern had been addressed by the Firm, but (as set out in that paragraph) the Firm's inability to demonstrate this during the Authority's visit in January 2015 remained a relevant concern.

Compliance with the Continuing Requirements

20. *The Firm has complied in full with certain of the Continuing Requirements, as follows:*

(a) All the Firm's records and computer data are held by the police, having been seized on October 2015 (see the requirement in paragraph 1(d)

of this Notice). Copies of certain records have been provided by the police.

(b) The letter to investors (see paragraph 1(e) of this Notice) has been issued to all investors.

21. The Authority has concluded that these requirements have not been fulfilled by the Firm.

(a) As the Firm states that it has been able to contact investors as required by the First Supervisory Notice, and that copies of information has been provided by the police, it is clear that not all the Firm's records are held by the police. Accordingly, the Firm has not complied with the requirement to inform the Authority of the location of records.

(b) The Firm has not provided to the Authority a list of clients who have received the letter required by paragraph 1(e) of this Notice, and therefore it has not complied with the requirement in that paragraph.