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## FINAL NOTICE

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**AR Capital LP  
Commercial House  
High Street  
Hadlow  
Kent  
TN11 0EE**

**2 November 2015**

### **ACTION**

1. By an application dated 17 October 2014 ("the Application") AR Capital LP ("AR Capital") applied under section 55A of the Financial Services and Markets Act 2000 ("the Act") for Part 4A permission to carry on the regulated activity of managing investments.
2. AR Capital will have one principal and adviser: Ashley Ryan Rudland ("Mr Rudland"). In addition to applying for Part 4A permission, the firm submitted an application for individual approval for Mr Rudland.
3. The Application is incomplete.
4. For the reasons listed below, the Authority has refused the Application.

### **SUMMARY OF REASONS**

5. By its Warning Notice dated 26 June 2015 ("the Warning Notice") the Authority gave notice that it proposed to refuse the Application and that AR Capital was entitled to make representations to the Authority about that proposed action.
6. As no representations have been received by the Authority from AR Capital within the time allowed by the Warning Notice, the default procedures in paragraph 2.3.2 of the Authority's Decision Procedure and Penalties Manual apply, permitting the Authority to treat the matters referred to in its Warning Notice as undisputed and, accordingly, to give a Decision Notice.
7. By its Decision notice dated 17 August 2015 ("the Decision Notice"), the Authority gave AR Capital notice that it had decided to take the action described above.

8. AR Capital had 28 days from the date the Decision Notice was given to refer the matter to the Upper Tribunal (formerly known as the Financial Services and Markets Tribunal). No referral was made to the Upper Tribunal within this period of time or to date.
9. Under section 390 (1) of the Act, the Authority, having decided to refuse the Application and there having been no reference of that decision to the Tribunal, must give AR Capital Final Notice of its refusal.
10. For the reasons set out herein the Authority cannot ensure that AR Capital will satisfy, and continue to satisfy, the threshold conditions set out in Schedule 6 of the Act. The Application does not contain sufficient information about AR Capital's business to allow the Authority to be satisfied that AR Capital will be able to meet and continue to meet threshold conditions 2D (Appropriate Resources) and 2E (Suitability). Further what information that was provided gives rise to significant concerns about the firm's ability to satisfy those conditions. The Authority considers that:
  - i. the information provided by the firm and engagement with the Authority generally indicates a lack of readiness, willingness and organisation to comply with the requirements and standards under the regulatory system;
  - ii. Mr Rudland, the sole approved person, does not have the required competence and capability to carry out the controlled functions applied for, because he has no financial services experience and had not obtained any of the investment management industry qualifications, set out in the Authority's Training and Competence Handbook;
  - iii. the information provided by the firm regarding its business plan including its compliance arrangements was materially deficient, such that the Authority is unable to ensure that its non-financial resources will be and continue to be adequate; and
  - iv. the firm lacks the required financial resources for the regulated activity it wishes to engage in.

## **DEFINITIONS**

11. The definitions below are used in this Final Notice.

"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

"MiFID" means the Markets in Financial Instruments Directive

## **FACTS AND MATTERS**

### **Background**

12. AR Capital sought Part 4A permission to manage investments in respect of regulated investments. As part of the Application, AR Capital submitted to the Authority a completed application form headed "Supplement for Investment Managers" ("the IM Form"). Section 2 headed "Scope of Permission required" asks the applicant firm to confirm its client type. AR Capital checked the "Professional" client option. However, in response to section 1.11 of the IM form, in which the firm was required to give details of the types of the intended investors in the funds it would be managing, AR Capital stated, "*Family, friends, private investors*

*and other third party (possibly high net worth) individuals.”* The Authority is not satisfied that the proposed clients of AR Capital will be limited to professional clients, and it is therefore likely that AR Capital’s customers would be retail clients.

### **Application Fee**

13. At Section 1 of the “Checklist & declaration” form, it states that the applicant firm must tick the relevant fee for the Application. It also states that the fee is not refundable, even if the applicant firm decides to withdraw its application. AR Capital selected the £5,000 fee for moderately complex applications.
14. The Authority wrote to AR Capital on 16 December 2014 highlighting deficiencies in the Application and informing the firm that it was minded to refuse the Application. AR Capital replied on 31 December 2014 stating that it accepted the Authority’s stance and sought a refund of the application fee. The Authority referred AR Capital to the guidance on fees, and informed it that the fee was not refundable; AR Capital replied that it wished to proceed with the Application given that a refund was not possible. It informed the Authority that it would be providing further information to address the deficiencies in the Application. The information was not provided.
15. The Authority sent emails to Mr Rudland on 26 January 2015 and 10 February 2015 seeking the outstanding information in order to complete its assessment of the Applicant. On 8 April 2015 the Authority sent AR Capital a letter setting out its concerns and seeking a response. To date, the Authority has received no response to communications sent to AR Capital.

### **Fitness and Propriety of sole director**

16. In section 1 of the IM Form headed “Regulatory Business Plan,” AR Capital set out Mr Rudland’s background and experience as follows:

*“Over the past 2 years I have been investing my personal savings in US equities. At this point family and friends asked me to manage for them...My background is in Software Architecture; I’ve been building software for over 13 years.”*

17. An Authority approved person who provides investment management services for retail clients must have one of the relevant qualifications set out in the Training and Competency Sourcebook of the Authority’s Handbook. Mr Rudland has not provided any information that suggests that he possesses any of these qualifications. Mr Rudland has also not provided any information to suggest that he has any financial services industry experience.
18. Where an investment management firm only has one individual who will perform the CF30 customer function, the Authority advises that such a firm has a locum arrangement with another Authority regulated firm, which has at least the same level of permissions, in the event of the incapacity of the sole CF30. AR Capital only has one proposed approved person and has not entered into a locum arrangement.

### **AR Capital’s Business Plan**

19. Overall the content of the Application indicates a lack of knowledge of the investment services industry and the regulatory framework on the part of AR Capital and therefore a lack of readiness, willingness and organisation to comply with the regulatory requirements. Sections of the Application which were deficient are set out below:

- i. AR Capital failed to apply for its sole approved person, Mr Rudland to perform the CF10 compliance oversight and CF11 money laundering reporting functions. These are required functions. Conversely, it has applied for Mr Rudland to perform CF1 and CF29 when these functions are not required. As a Limited Partnership, there is no requirement for the CF1 function. The CF29 function is not required when also applying for CF1.
- ii. AR Capital failed to apply for permission to deal in investments as an agent despite requiring permission for this regulated activity to effect an investment management decision. In addition, it states that it will be managing discretionary investment client portfolio, when the structure of the scheme as set out in its partnership agreement suggests it in fact intends to establish and manage a collective investment scheme.
- iii. At section 5.1 of the IM Form, AR Capital indicated that it had documented compliance procedures in place. AR Capital attached a document entitled "Compliance Monitoring Programme" which in summary states that investors would be subject to a money laundering check and be obliged to comply with "investment rules." The document fails to set out how customer classification checks will be conducted. Given that AR Capital only intends to deal with Professional clients, it would be essential to have proper checks in place to ensure that customers are appropriately classified.
- iv. At section 1.17 of the IM Form, in response to the question of whether it would be carrying on MiFID business, AR Capital replied "No" and stated that it meets the criteria set out in article 3 of MiFID. The article 3 exemption is only relevant to firms carrying on the regulated activities of arranging deals in investments and providing investment advice. According to the IM Form, AR Capital seeks to manage investments and is therefore not exempt.

20. On 8 April 2015, the Authority sought more information about the firm's business plan. The firm did not provide the Authority with any further information about its business plan.

#### **Insufficient Regulatory Capital**

21. The minimum base capital resources requirement for MiFID firms which are BIPRU firms is €50,000 (£36,000) as set out in GENPRU 2.1.47R. AR Capital states that its capital is £33,453. The lack of sufficient capital was drawn to AR Capital's attention in an email on 16 December 2014, and in a letter on 8 April 2015. To date, there is no indication that AR Capital will be increasing its capital.

#### **IMPACT ON THE THRESHOLD CONDITIONS**

22. The regulatory provisions relevant to this Final Notice are referred to in Annex A and the threshold conditions are set out in Schedule 6 of the Act.

#### **Threshold Condition 2D: Appropriate Resources**

23. In light of the lack of coherence in the Application, and the failure to respond to requests for information, the Authority is not satisfied that AR Capital is ready, willing and organised to comply with requirements and standards under the regulatory system. In addition, given the lack of expertise of the person who will manage AR Capital's affairs and lack of sufficient capital the Authority is not satisfied that AR Capital's resources, both non-financial and financial, are sufficient to enable AR Capital to comply with the Authority's requirements.

## **Threshold Condition 2E: Suitability**

24. Having regard to AR Capital's connection with Mr Rudland, the Authority cannot be satisfied that AR Capital's affairs will be managed by a person who has adequate skills and experience, and is therefore a fit and proper person. In addition, AR Capital's failure to comply with requests made by the Authority further suggests a lack of fitness and propriety.
25. The procedures proposed by AR Capital in its business plan are not compliant with the requirements and standards under the regulatory system and the regulatory activity for which it seeks permission. Therefore the Authority is not satisfied that AR Capital has considered and mitigated any risks AR Capital may pose to consumers. In addition, the business it intends to conduct appears to be at odds with the scope of permission sought.
26. On the basis of the facts and matters described above, the Authority has concluded that AR Capital will not satisfy, or continue to satisfy, the threshold conditions in relation to all of the regulated activities for which AR Capital would have permission if the application was granted.

## **IMPORTANT NOTICES**

27. This Final Notice is given under section 390 (1) of the Act.

### **Publication**

28. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Notice relates. Under those provisions, the Authority must publish such information about the matter to which this Notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to you or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
29. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

### **Authority contacts**

30. For more information concerning this matter generally, contact Karen Avis, Manager, Permissions Department at the Authority (direct line: 020 7066 3380/ email: karen.avis@fca.org.uk).

**Graeme McLean**  
**Chair of the Regulatory Transactions Committee**

## **ANNEX A – REGULATORY PROVISIONS RELEVANT TO THIS FINAL NOTICE**

### **Relevant Statutory Provisions**

1. Section 55A(1) of the Act provides for an application for permission to carry on one or more regulated activities to be made to the appropriate regulator. Section 55A(2) defines the “appropriate regulator” for different applications.
2. Section 55B(3) of the Act provides that, in giving or varying permission, imposing or varying a requirement, or giving consent, under any provision of Part 4A of the Act, each regulator must ensure that the person concerned will satisfy, and continue to satisfy, in relation to all of the regulated activities for which the person has or will have permission, the threshold conditions for which that regulator is responsible.
3. Schedule 6 of the Act specifies that paragraphs 2B to 2F of Schedule 6 set out the Threshold Conditions that are relevant to the discharge by the Authority of its functions in relation to the Application.

### **Relevant provisions of the Authority’s Handbook**

4. In exercising its powers in relation to the granting of a Part 4A permission, the Authority must have regard to guidance published in the Authority Handbook, including the part titled Threshold Conditions (“COND”). The main considerations in relation to the action specified are set out below.

### **Threshold Condition 2D: Appropriate Resources**

5. COND 1.3.2G(2) states that, in relation to threshold conditions 2D to 2F, the Authority will consider whether a firm is ready, willing and organised to comply on a continuing basis with the requirements and standards under the regulatory system which will apply to the firm if it is granted Part 4A permission.
6. COND 2.4.2G(2) states that the Authority will interpret the term 'appropriate' as meaning sufficient in terms of quantity, quality and availability, and 'resources' as including all financial resources (though only in the case of firms not carrying on, or seeking to carry on, a PRA-regulated activity), non-financial resources and means of managing its resources; for example, capital, provisions against liabilities, holdings of or access to cash and other liquid assets, human resources and effective means by which to manage risks.
7. COND 2.4.1A(4) states that the resources of the Applicant must be appropriate in relation to the regulated activities that the Applicant carries on or seeks to carry on. The matters which are relevant in determining whether the Applicant has appropriate non-financial resources include:
  - (1) the skills and experience of those who manage the Applicant’s affairs;
  - (2) whether the Applicant’s non-financial resources are sufficient to enable the Applicant to comply with:
    - requirements imposed or likely to be imposed on the Applicant by the Authority in the course of the exercise of its functions; and
    - any other requirement in relation to whose contravention the Authority would be the appropriate regulator.

## **Threshold Condition 2E: Suitability**

8. COND 2.5.1A(1) states that the Applicant must be a fit and proper person having regard to all the circumstances, including, amongst other things:
  - (1) the Applicant's connection with any person;
  - (2) the need to ensure that the Applicant'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;
  - (3) whether the Applicant 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 the Applicant has so complied or is so complying, the manner of that compliance;
  - (4) whether those who manage the Applicant's affairs have adequate skills and experience and act with probity; and
  - (5) whether the Applicant'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.
9. In addition, COND 2.5.4(2)G states that the Authority may have regard to a number of factors when assessing whether the Applicant will satisfy, and continue to satisfy, this threshold condition including whether:
  - (1) the Applicant will conduct its business with integrity and in compliance with proper standards;
  - (2) the Applicant has, or will have, a competent and prudent management; and,
  - (3) the Applicant can demonstrate that it will conduct its affairs with the exercise of due skill, care and diligence.
10. In addition, COND 2.5.6G states that the Authority may have regard to a number of factors when assessing whether the Applicant will satisfy, and continue to satisfy, this threshold condition including whether:
  - (1) the Applicant has been co-operative in all its dealings with the Authority and is ready, willing and organised to comply with the requirements and standards under the regulatory system;
  - (2) the Applicant has made arrangements to put in place an adequate system of internal control to comply with the requirements and standards for which the Authority is responsible under the regulatory system; and,
  - (3) the Applicant has put in place procedures which are reasonably designed to ensure that it has made employees aware of, and compliant with, those requirements and standards under the regulatory system that apply to the firm for which Authority is responsible and the regulated activities for which it has, or will have permission; and

- (4) the Applicant has put in place procedures which are reasonably designed to ensure that its approved persons are aware of those requirements and standards under the regulatory system applicable to them; and
- (5) the governing body of the Applicant is made up of individuals with an appropriate range of skills and experience to understand, operate and manage the firm's regulated activities.