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## SECOND SUPERVISORY NOTICE

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**To:** SK8 Financial Services Limited

**Of:** 248 Finney Lane  
Heald Green  
Cheadle  
Cheshire  
SK8 3DY

**Firm  
Reference  
Number:** 230129

**Dated:** 24 February 2014

### **ACTION**

1. For the reasons given below, having taken into account the representations made by the firm and pursuant to section 55J of the Act, the Authority has decided not to rescind the variation of the permission granted to SK8 pursuant to Part 4A of the Act. By a First Supervisory Notice dated 10 December 2013, the Authority varied SK8's permission by removing all regulated activities with immediate effect. Accordingly, SK8's Part 4A permission no longer includes the regulated activities of:
  - (a) advising on investments (except on Pension Transfers and Pension Opt Outs);
  - (b) agreeing to carry on a regulated activity;

- (c) arranging (bringing about) deals in investments; and
  - (d) making arrangements with a view to transactions in investments.
2. The First Supervisory Notice further varied SK8's Part 4A permission by imposing a requirement, pursuant to sections 55L and 55N of the Act, such that SK8's assets (whether in the United Kingdom or elsewhere) held by any institution may not, so long as the requirement is in force, be released or spent without written consent from the Authority.
  3. The First Supervisory Notice further varied SK8's Part 4A permission by imposing the following requirements, pursuant to section 55L of the Act, namely that SK8 must, within 14 days of the First Supervisory Notice:
    - (a) notify in writing all clients for SK8's regulated activities that it is no longer permitted by the Authority to carry on regulated activities; and
    - (b) provide the Authority with a copy of the written notification sent to all clients for SK8's regulated activities pursuant to (a) above, together with a list of all clients to whom such notification has been sent.
  4. The Authority has also decided not to rescind the requirements set out in paragraphs 2 and 3 above.

#### **REASONS FOR ACTION**

5. The Authority has concluded, on the facts and matters described below, that SK8 is failing and will continue to fail to satisfy the Threshold Conditions, in that, as of 28 November 2013, SK8 has no approved person performing the controlled function of director. SK8 is therefore failing to satisfy the appropriate resources Threshold Condition.

#### **DEFINITIONS**

6. The definitions below are used in this First Supervisory 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;

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

"SK8" means SK8 Financial Services Limited;

"SK8's Part 4A permission" means SK8's permission pursuant to Part 4A of the Act;

"the Threshold Conditions" means the threshold conditions set out in Part 1B of Schedule 6 to the Act; and

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

## **FACTS AND MATTERS RELIED ON**

7. SK8 was authorised by the Authority on 1 March 2004 to conduct designated investment business. From 1 March 2004, Mr Geoffrey Harold Arthur Fincher ("Mr Geoffrey Fincher") was approved to perform the controlled functions of CF1 (Director), CF10 (Compliance Oversight) and CF11 (Money Laundering Reporting) in relation to SK8. From 1 November 2007, Mr Geoffrey Fincher also held the CF30 (Customer) controlled function at SK8.
8. On 28 November 2013, SK8 submitted to the Authority a Form C, which withdrew Mr Geoffrey Fincher's CF1, CF10, CF11 and CF30 approvals. On 10 December 2013 SK8 submitted to the Authority an application for Mr Gary Fincher to perform the controlled functions of CF1 (Director), CF10 (Compliance Oversight) and CF11 (Money Laundering Reporting) in relation to SK8. Mrs Mavis Fincher and Mr Gary Fincher were appointed directors of SK8 on 29 November 2013 and 11 December 2013 respectively. As at the date of this Second Supervisory Notice, the application in relation to Mr Gary Fincher has not yet been determined by the Authority. No other person at SK8 is approved to perform the CF1, CF10 or CF11 controlled functions.

## **REPRESENTATIONS**

9. Annex B contains a brief summary of the key representations made by SK8, 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 SK8, whether or not set out in Annex B.

## **FAILINGS**

10. The regulatory provisions relevant to this Second Supervisory Notice are set out in Annex A.
11. From the facts and matters described above the Authority, having regard to its operational objectives, has reached the following conclusions:
  - SK8 currently has no approved persons in the role of director. SK8 therefore no longer satisfies the Authority that it has appropriate human resources, which is a failing that is material in relation to the regulated activities for which it has had permission. SK8 is therefore failing to satisfy the appropriate resources Threshold Condition;
  - the risk of loss or other adverse effect on consumers by SK8's failings set out above causes the Authority to have serious concerns about SK8; and
  - it is desirable to exercise the Authority's own initiative power to vary SK8's Part 4A permission with immediate effect to advance its operational objectives: specifically the objective of securing the appropriate degree of protection for consumers.

## **PROCEDURAL MATTERS**

### **Decision Maker**

12. The decision which gave rise to the obligation to give this Second Supervisory Notice was made by the Regulatory Decisions Committee.
13. This Second Supervisory Notice is given to SK8 under section 55Y(7) and in accordance with section 55Y(5) of the Act, and is being served on SK8 at its place of business as last notified to the Authority. The following statutory rights are important.

### **The Upper Tribunal**

14. SK8 has the right to refer the matter to which this First 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, SK8 has 28 days from the date on which this Second Supervisory Notice is given to it to refer the matter to the Upper Tribunal.
15. A reference to the Upper Tribunal can be made by way of a reference notice (Form FTC3) signed by SK8 and filed with a copy of this Second Supervisory Notice. The Tribunal's contact details are: The Upper Tribunal, Tax and Chancery Chamber, 45 Bedford Square, London WC1B 3DN (telephone: 020 7612 9700; email: [financeandtaxappeals@tribunals.gsi.gov.uk](mailto:financeandtaxappeals@tribunals.gsi.gov.uk)).
16. Further details are contained in "Making a Reference to the UPPER TRIBUNAL (Tax and Chancery Chamber)" which is available from the Tribunal website:  
  
<http://www.tribunals.gov.uk/financeandtax/FormsGuidance.htm>
17. SK8 should note that a copy of the reference notice (Form FTC3) must also be sent to the Authority at the same time as filing a reference with the Tribunal. A copy of the reference notice should be sent to Roger Hylton at the Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS.

### **Publicity**

18. SK8 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.

### **Contacts**

19. For more information concerning this matter generally, SK8 should contact Roger Hylton at the Authority (direct line: 020 7066 8186).

**Robin Callender Smith**  
**Deputy Chairman, Regulatory Decisions Committee**

## ANNEX A

### RELEVANT STATUTORY PROVISIONS

1. The Authority's operational objectives established in section 1(B) of the Act include securing an appropriate degree of protection for consumers.
2. The Authority has the power under section 55J of the Act to :
  - vary an authorised person's permission where it appears to the Authority that such person is failing to satisfy the threshold conditions (section 55J(1)(a));
  - vary an authorised person's permission where it is desirable to do so to advance any of its operational objectives (section 55J(1)(c)(i));
  - vary such a permission by removing a regulated activity from those for which the permission is given (section 55J(2)(a)(ii)); and
  - include any provision in the permission as varied that could be included if a fresh permission were being given in response to an application under section 55A of the Act (section 55J(10)).
3. 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)).
4. 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 refrain from taking specified action (section 55N(1)(b)).
5. Section 55Y of the Act allows such a variation 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 variation 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 2D of Part 1B of Schedule 6 to the Act sets out the appropriate resources Threshold Condition which provides that:

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

### **RELEVANT HANDBOOK PROVISIONS**

8. In exercising its power to vary a Part 4A permission, the Authority must have regard to guidance published in the Handbook. The relevant main considerations in relation to the action specified above are set out below.

#### **Guidance concerning the relevant Threshold Conditions**

9. Guidance on the Threshold Conditions is set out in the part of the Handbook entitled Threshold Conditions (“COND”).

#### COND 2.4 – Appropriate resources: Paragraph 2D of Schedule 6 to the Act

10. COND 2.4.1AUK states that the resources of A (being a person carrying on, or seeking to carry on, regulated activities) must be appropriate in relation to the regulated activities that A carries on or seeks to carry on.

11. COND 2.4.1BG provides that paragraph 2D of Schedule 6 to the Act sets out the appropriate resources threshold condition for firms carrying on, or seeking to carry on regulated activities, which do not include a PRA regulated activity.

12. COND 2.4.2G(2) provides that ‘appropriate’ means sufficient in terms of quantity, quality and availability, and that ‘resources’ includes human resources.

### **OTHER RELEVANT REGULATORY PROVISIONS**

13. 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.

14. EG 8.1 reflects the provisions of section 55J of the Act that the Authority may use its own-initiative power to vary or cancel the permission of an authorised firm 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)).

#### Varying a firm’s Part 4A permission on the Authority’s own-initiative

15. 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.

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

17. EG 8.5(1) specifies that the Authority will consider exercising its own-initiative power under section 55J(1)(a) or 55L(2)(a) of the Act where the firm appears to be failing, or appears likely to fail, to satisfy the threshold conditions relating to one or more, or all, of its regulated activities, including because, for instance, it has not been managed soundly and prudently.

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

18. EG 8.6 states that the Authority may impose a variation of permission so that it takes effect immediately or on a specified date if it reasonably considers it necessary for the variation to take effect immediately (or on the date specified), having regard to the ground on which it is exercising its own-initiative powers.
19. EG 8.7 provides the circumstances in which the Authority will consider exercising its own initiative power as a matter of urgency, include 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)).
20. EG 8.8 sets out a non-exhaustive list of factors the Authority will consider in exercising its own-initiative power as a matter of urgency. EG 8.8(1) specifies that the Authority will consider urgent own-initiative action if there is information indicating a significant loss, risk of loss or other adverse effects for consumers, where action is necessary to protect their interests.
21. EG 8.9 sets out the factors which will determine whether the urgent exercise of the Authority's own-initiative power is an appropriate response to serious concerns, including: the extent of any consumer loss or risk of consumer loss or other adverse effect on consumers (EG 8.9(1)) and the extent to which customer assets appear to be at risk (EG 8.9(2)).

## **ANNEX B**

### **REPRESENTATIONS**

#### *The appointment of Mr Gary Fincher as director*

1. SK8 made representations that Mr Gary Fincher was (despite having a number of difficulties to contend with at the firm) performing appropriately the office of director to which he had been appointed by the firm, and accordingly the measures which the Authority had imposed in the First Supervisory Notice were unnecessary.
2. The Authorisations team within the Authority will, in due course, determine the application by the firm for Mr Gary Fincher to perform the controlled function of CF1 (director). Consideration of that application by the team is ongoing. Until the application has been determined (and unless at that stage the application is granted, or another successful candidate is subsequently put forward) the firm has no individual approved to perform the controlled function of director and is unable to satisfy the appropriate resources Threshold Condition.

#### *The assets restriction*

3. SK8 made representations that the requirement in respect of the assets of the firm, set out at paragraph 2 of the First Supervisory Notice (repeated in paragraph 2 of the body of this Second Supervisory Notice), placed unreasonable restrictions on the firm in respect of the legitimate discharge of its liabilities, including staff salaries and payments due to HM Revenue and Customs. Further, it had obtained an indemnity from Mr Geoffrey Fincher in respect of the firm's potential liabilities to customers relating to certain matters arising prior to his resignation from the firm, so the Authority should not be concerned about any inability of the firm to meet any such liabilities.
4. The Authority has concluded that, while the firm's application for approval for Mr Gary Fincher to perform the controlled function of director remains to be determined, the firm has no individual approved by the Authority to carry out that controlled function and accordingly there has been no determination as to whether the firm is being managed by a suitable individual. An indemnity from Mr Geoffrey Fincher is not, of itself, adequate to safeguard the interests of customers. Accordingly, the requirement should remain, in the interests of securing the appropriate degree of protection for consumers. The requirement expressly permits the firm to apply to the Authority for consent to make payments, where appropriate.