
SECOND SUPERVISORY NOTICE

To: **Business Agent Limited**

Reference Number: **669880**

Address: **The Townhouse, 114-116 Fore Street, Hertford, Hertfordshire, SG14 1AJ**

Date: **10 September 2024**

1 ACTION

- 1.1 For the reasons given in this Second Supervisory Notice, the Financial Conduct Authority (“the Authority”) has decided to maintain the following requirements (“the Requirements”) that were imposed on Business Agent Limited (“the Firm”) by a First Supervisory Notice dated 22 July 2024.

Cease Regulated Activity

- (1) The Firm must not conduct any regulated activities without the Authority’s prior written consent.

Notification and client money requirements

- (2) By 5:00pm on 26 July 2024, the Firm must notify in writing any financial services providers that it holds accounts with of the terms and effect of these Requirements. As soon as practicable in advance of making the notifications, the Firm must agree the wording of the notifications with the Authority.
- (3) by 5:00pm on 26 July 2024 the Firm must:
- a) Publish a prominent notice on the front page of its website, and any website that it controls, in terms, font and size to be agreed with the Authority, outlining the effect of the Requirements and providing a link to

the relevant website and entry in the Authority's register relating to the Firm where the terms of those requirements will appear.

- b) Ensure that when any client of the Firm enters login details to access an account, a prominent notice is immediately displayed to the client, in terms, font and size to be agreed with the Authority, outlining the effect of the requirements above and providing a link to the relevant website address of the entry in the Authority's register relating to the Firm where the terms of these requirements will appear.
- (4) Within 24 hours of the notifications at Requirements (2) and (3) being made, the Firm must provide to the Authority:
- a) Copies of the template notification sent to all recipients; and
 - b) Confirmation that, to the best of its knowledge, the Firm has sent notifications pursuant to the Requirements (2) and (3).
- (5) The Firm shall send to the Authority by email by 12 noon every Friday, beginning on 2 August 2024 until such time as it is notified otherwise in writing by the Authority, up-to-date bank statements for all the Firm's bank, payments and/or electronic money accounts.

Records requirement

- (6) The Firm must:
- a) Secure all books and records and preserve information and systems relating to all regulated activities carried on by it, whether or not the Firm holds permissions for that activity.
 - b) Retain such records in a form and at a location within the UK, to be notified to the Authority in writing no later than seven days after the coming into force of these requirements, such that they can be provided to the Authority, or to a person named by the Authority, promptly on its request.

- 1.2 The Requirements took immediate effect upon imposition of the First Supervisory Notice on 22 July 2024 and shall remain in force unless and until varied or cancelled by the Authority (either on application of the Firm or of the Authority's own volition).

2 REASONS FOR ACTION

Summary

- 2.1 The Authority has concluded, on the basis of the facts and matters described below that, in respect of the Firm, it is necessary to exercise its power under section 55L(3)(a) of the Act to impose the Requirements on the Firm because it is failing, or is likely to fail, to satisfy the Threshold Conditions and it is desirable in order to advance one or more of the Authority's operational objectives, which includes securing an appropriate degree of protection for consumers.

- 2.2 The Authority has identified serious concerns relating to:

- (1) the Firm's handling of client money. The Firm has a requirement on its permission that it "*cannot hold or control client money*". However, it appears to be holding client money with a payment services provider ("Firm 2");

- (2) the Firm's activities as ISA Manager. The Firm has received ISA subscriptions into accounts which appear to be set-up inconsistently with the requirements of the ISA Regulations;
 - (3) the Firm's identification and management of several potential conflicts of interest;
 - (4) the Firm's approach to carrying out due diligence. The Firm appears to have failed to conduct adequate due diligence on at least one investment offered on its platform; and
 - (5) the Firm's approach to providing information to the Authority. The Firm appears to have failed to disclose information to the Authority relating to individuals associated with the Firm in response to questions from the Authority and may be in breach of notification requirements relating to financial promotions that it has approved.
- 2.3 The Authority considers that it was necessary that imposition of the Requirements took immediate effect on 22 July 2024 because the facts and matters described below demonstrate that:
- (1) the Firm's conduct risks causing harm to consumers and action was needed to protect their interests;
 - (2) the Authority has serious concerns about the Firm's ability to meet its regulatory obligations; and
 - (3) there is a serious problem with the Firm that calls into question its ability to continue to meet the Threshold Conditions.
- 2.4 Based on the facts and matters described in this Second Supervisory Notice, and having considered the Representations made by the Firm in respect of the First Supervisory Notice, the Authority considers that imposition of the Requirements continues to be necessary and appropriate.
- 2.5 The Firm's Representations, and the Authority's response to them, are set out in Annex 2 to this Second Supervisory Notice.

3 DEFINITIONS

The definitions below are used in this Second Supervisory Notice:

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

"the Authority" means the Financial Conduct Authority;

"Bond Issuer A" means the bond issuer listed on the platform described at paragraphs 4.27 to 4.33;

"CASS" means the Authority's client money asset sourcebook, part of the FCA Handbook;

"Director A" means the director of Bond Issuer A;

"the Firm" means Business Agent Limited;

"Firm 1" means that custody bank engaged by the Firm to act as custodian to the Firm's client's funds in respect of respect of its investment portfolio business;

"Firm 2" means the payment services provider engaged by the Firm to receive clients' funds and pay them on to the relevant investments;

"Firm 3" means the authorised firm which the Firm says it engaged to hold client funds on behalf of the Firm;

"Firm 4" means the company listed on Companies House referred to at paragraphs 4.28 to 4.33;

"Group A" means a group of companies which comprises Firm 2 and Firm 3;

"Handbook" means the Authority's online handbook of rules and guidance (as in force from time to time);

"HMRC" means HM Revenue and Customs;

"ISA" means an Individual Savings Account;

"ISA Regulations" means The Individual Savings Account Regulations 1998;

"PRIN" means the Authority's Principles for Businesses, part of the FCA Handbook;

"Requirements" means the terms imposed on the Firm by this Second Supervisory Notice as outline in section 1 above;

"SUP" means the Supervision Manual, part of the FCA Handbook; and

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

4 FACTS AND MATTERS

Background

- 4.1 The Firm was incorporated on 18 December 2013 as a private limited company, under company number 08819159.
- 4.2 The Firm is a debt and equity crowdfunding platform. It operates the Nextcrowd website at <https://nextcrowd.co.uk/> (the "platform").
- 4.3 The Firm's client base appears to be split evenly between retail investors, certified high net-worth individuals and self-certified sophisticated investors. As of 26 March 2024, the Firm had 66 customers who had invested £1.7m in equity and debt offered on the platform.
- 4.4 The Firm has two Directors. One Director holds SMF 3 – Executive Director. The other Director holds SMF 3 – Executive Director, SMF 16 – Compliance Oversight, and SMF 17 – Money Laundering Reporting Officer (MLRO).
- 4.5 The Firm was authorised by the Authority on 29 September 2015, with the following Part 4A permissions:
 - credit broking;
 - arranging (bringing about) deals in investments;
 - making arrangements with a view to transactions in investments; and
 - agreeing to carry on a regulated activity.

- 4.6 The Firm has a requirement on its permission that it must not hold or control client money. It does not have permissions to deal in investments as principal, to safeguard and administer assets or arrange the safeguarding or administration of assets.
- 4.7 The Authority understands the Firm generates revenue from (a) charging issuers a fee for listing investments on their platform and (b) charging investors a fee which represents a percentage of their investment (deducted when the investment is made).

Failings and risks identified

Holding client money without permission

- 4.8 Money that a firm receives or holds for, or on behalf of, a client during or in connection with its designated investment business or otherwise, is client money for the purposes of the CASS rules. The Firm has a requirement on its permission that it must not hold or control client money.
- 4.9 Before 19 March 2024, consumers who entered into an agreement to purchase investments offered on the platform deposited funds into a bank account with Firm 1 (Firm 1 has permission to hold and control client money). The funds were then transferred from Firm 1 to the Firm.
- 4.10 The Authority reviewed bank statements provided by the Firm in response to an information requirement. These statements appear to show that client funds (which are client money for the purposes of CASS 7.10.1R) were frequently received into the Firm's own accounts.
- 4.11 The Authority considers that when the Firm received these funds into its account, the funds were client money under CASS 7.10.1R. The Firm appears to have been holding client money when it did not have permission to do so.
- 4.12 On 11 June 2024, the Authority invited the Firm to sign a Voluntary Application for Imposition of Requirements ("VREQ") under section 55L(5)(a) of the Act. The Authority noted in its correspondence that the Authority had identified what appeared to be multiple breaches of CASS and believed the Firm was acting in breach of a requirement on its permission not to hold or control client money.
- 4.13 On 25 June 2024, the Firm declined to sign the VREQ. The Firm acknowledged the breach of CASS (following legal advice on the issue in May 2024) but stated that it had since resolved the issue. The Firm noted that it considered that no client money had been lost. The Firm stated that to address the Authority's concerns it had (i) stopped receiving client funds into its own account; and (ii) entered into an agreement for a new client money service to be provided by Firm 2 (in place of Firm 1).
- 4.14 Firm 2 is an authorised payment institution with permission to provide payment services. Firm 2 does not have permission to hold or control client money. The Authority has reviewed the statement for the Firm's account with Firm 2, which appears to show that client money has been paid into the Firm's account with Firm 2.
- 4.15 CASS 7.13.6R requires that "*A firm using the normal approach must ensure that all client money it receives is paid directly into a client bank account at an institution referred to in CASS 7.13.3R(1) to CASS 7.13.3R (3)*".

- 4.16 The Firm's account with Firm 2 is not a client bank account for the purposes of CASS 7.13.6R because Firm 2 is not a valid institution to place client money with (CASS 7.13.3R).
- 4.17 Contrary to the Firm's position (referred to at paragraph 4.134.13 above), the Firm 2 account appears to be:
- an account held in the Firm's name and controlled by the Firm;
 - which is used to hold client money; and
 - which is held with a firm that does not have permission to hold client money and consequently does not appear to be set-up in a way that complies with the rules in CASS.
- 4.18 Although the Firm appears to accept that the arrangements that it had in place prior to receiving legal advice in May 2024 breached the Authority's CASS rules, the Authority has serious concerns that the arrangements the Firm has put in place to remedy this also appear to breach the CASS rules.
- 4.19 Consequently, the Authority has serious concerns about whether those who manage the Firm's affairs have adequate skills and experience to ensure that the Firm's affairs are conducted in an appropriate manner and one which complies with the requirements of the regulatory framework.

Breach of the ISA Regulations

- 4.20 An ISA is a tax-free savings account, which allows individuals to subscribe up to £20,000 per tax year. There are four different kinds of ISA: a cash ISA, a stocks and shares ISA, a Lifetime ISA, an innovative finance ISA (IFISA) - each has different features. The account rules for ISAs are set out in the ISA Regulations and include:
- which investments qualify for these accounts;
 - which financial institutions can offer which ISAs;
 - the rules concerning ownership, transfer and withdrawal of ISA investments; and
 - the information that ISA providers must supply to HMRC.
- 4.21 Only persons approved by HMRC can manage an ISA. The role of an ISA Manager is to hold investments and claim repayment of income tax deducted at source, by submitting claims to HMRC. They are also responsible for ensuring compliance with the duties prescribed under the ISA Regulations.
- 4.22 The Firm is registered with HMRC as an ISA Manager, for Stocks and Shares ISAs and IFISAs.
- 4.23 Regulation 6(4) of the ISA Regulations states that cash subscriptions and other cash held by an ISA manager must be deposited in an account with a deposit-taker as defined in section 853 of the Income Tax Act 2007. The account with a deposit taker must be designated as an ISA account for the purposes of the ISA Regulations and it should be in the name of the investor.
- 4.24 The Firm holds accounts with three financial institutions. None of these financial institutions are deposit takers as defined in section 853 of the Income Tax Act 2007. However, the Authority have identified several transactions involving payments of sums into these accounts which appear to relate to ISAs.
- 4.25 The Authority is concerned that the Firm appears to have breached Regulation 6(4)

of the ISA Regulations by accepting ISA subscriptions and transfers into accounts which are not held with a deposit taker. Even if the ISA subscriptions which the Firm has accepted were held in account with a deposit-taker, it appears from the account statements provided to the Authority that (i) the account is not designated as an ISA account; and (ii) the account is not held in the name of the name of the investors.

- 4.26 Consequently, the Authority has serious concerns about whether those who manage the Firm's affairs have adequate skills and experience to ensure that the Firm's affairs are conducted in an appropriate manner and one which complies with the requirements of the regulatory framework.

Inadequate due diligence on investments on the Firm's platform

- 4.27 The Authority has concerns with the level of due diligence that the Firm appears to be carrying out in respect of prospective bond issuers to be listed on its platform. Supervision has identified that the due diligence carried out on Bond Issuer A appears to be inadequate.
- 4.28 At the time that the Firm carried out its due diligence Companies House recorded Director A as the director of Bond Issuer A. Director A is also listed on Companies House as a director of Firm 4, holding this position since 1 March 2022. Firm 4 went into administration in March 2022 and on 11 October 2023, the Serious Fraud Office announced that it was conducting a criminal investigation into Firm 4. Publicly available adverse media relating to the collapse of Firm 4 and the potential loss of consumer funds dates back to March 2022.
- 4.29 On 17 April 2024, the Authority asked the Firm about its relationship with Bond Issuer A. The Firm said that it had completed KYC checks on the bond issuer, which were signed-off internally. The Authority asked whether the Firm was aware that Director A was a director of Firm 4 and that the Serious Fraud Office was investigating Firm 4. The Firm said it was not aware of this. The Authority asked the Firm what due diligence it had undertaken prior to onboarding Bond Issuer A. The Firm said it had recently carried out due diligence on Director A and Bond Issuer A but was not aware of the Serious Fraud Office investigation.
- 4.30 On 23 April 2024, the Authority sent an information request requiring the Firm to provide, among other things, a copy of the onboarding and due diligence checks carried out on Bond Issuer A. In response the Firm provided (among other things) two documents relating to the Bond Issuer A due diligence. One of the documents completed on 21 November 2023, refers to Director A and states "*Reputation – Individual. There are no adverse returns for the directors.*"
- 4.31 On 11 June 2024, the Authority provided feedback to the Firm on its approach to due diligence on investments to be listed on its platform. The Authority set out its concerns that the Bond Issuer A due diligence was inadequate.
- 4.32 On 25 June 2024, the Firm confirmed that it reviewed Companies House Records and the records of the companies that Director A was connected to. The Firm said that "*On clicking on [Director A], a list of companies did not provide any reference to [Firm 4], so we could not have connected her to [Firm 4]. It's noted there is an article re [Firm 4] and the SFO investigation, but [Director A] is not mentioned and we would not have searched for [Firm 4] as she was not listed as a director there through her companies house link on [Bond Issuer A]. This situation is still the case today.*"
- 4.33 The Authority considers that in carrying out its due diligence on Bond Issuer A,

the Firm should have identified Director A as a director of Firm 4. Following the Authority's engagement with the Firm, the Authority has carried out further searches of Companies House records. Contrary to the Firm's assertion, the Authority has confirmed that Director A is in fact recorded on Companies House as a director of Firm 4.

- 4.34 Consequently, the Authority has serious concerns about whether those who manage the Firm's affairs have adequate skills and experience to ensure that the Firm's affairs are conducted in an appropriate manner and one which complies with the requirements of the regulatory framework.

Approval of Financial Promotions

- 4.35 On 6 February 2024, the Firm applied for permission to approve financial promotions under Section 21 of the Act. No decision has been made by the Authority on the Firm's application to vary its permissions. The application was made in accordance with the Policy Statement for Introducing a gateway for firms who approve financial promotions (PS23/13). The Policy Statement provided for a transitional period to enable existing authorised persons that applied for permission on or before 6 February 2024 to continue approving financial promotions for unauthorised persons while the Authority determines their application.
- 4.36 SUP 16.31.5R(1)(b) requires a firm to notify the Authority within 7 days of approving any financial promotion relating to a Non-Mass Market Investment ("NMMI"). On 6 June 2024, the Authority identified live financial promotions on the Nextcrowd website for Investment Opportunity 1.
- 4.37 NMMIs include Speculative Illiquid Securities ("SIS") as defined in COBS 4.12B.50R and Investment Opportunity 1 is a SIS. The Firm should therefore have notified the Authority of the Investment Opportunity 1 live placement within 7 days of the approval. However, to date the Firm has not made any notifications to the Authority.
- 4.38 In its written feedback to the Firm dated 11 June 2024, the Authority reminded the Firm of its obligations under SUP 16.31.5R. On 25 June 2024, the Firm acknowledged the "*reference to the 7-day notifications on approvals*" and said "*we will ensure this is implemented moving forward.*"
- 4.39 It appears from the Authority's engagement with the Firm that the Firm has not complied with SUP16.31.5R(1)(b). Consequently, the Authority has serious concerns about whether those who manage the Firm's affairs have adequate skills and experience to ensure that the Firm's affairs are conducted in an appropriate manner and one which complies with the requirements of the regulatory framework.

Conflicts of interest and non-disclosures

- 4.40 Principle 8 of PRIN requires the Firm to manage conflicts of interest fairly, both between itself and its customers and between a customer and another client.
- 4.41 SYSC 10 requires firms to take all reasonable steps to identify the types of conflicts of interest that arise, or may arise, in the course of carrying out regulated activities between the firm (including its managers, employees and appointed representatives or any person directly or indirectly linked to them by control) and a client or one client and another. Guidance in SYSC 10.5.1G explains the circumstances which should be treated as giving rise to a conflict of interest.

These include cases where there is a conflict between the interests of the firm or certain persons connected to the firm or the firm's group, and the duty the firm owes to a client.

4.42 Once a firm has identified an actual or potential conflict, it is required to maintain and operate effective organisational arrangements with a view to taking all reasonable steps to prevent conflicts of interest from constituting or giving rise to a material risk of damage to the interests of its clients.

4.43 More specifically, firms should:

- 1) take all reasonable steps to identify conflicts of interest between itself including its managers, employees and appointed representatives, or any person directly or indirectly linked to them by control on the one hand, and clients of the firm on the other, as set out in SYSC 10.1.3R;
- 2) take into account, as a minimum, whether the firm was likely to make a financial gain, or avoid a financial loss, at the expense of the client and/or had an interest in the outcome of a service provided to the client or a transaction carried out on behalf of the client which was distinct from the client's interest in that outcome;
- 3) maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps to prevent conflicts of interest from constituting or giving rise to a material risk of damage to the interests of its clients; and
- 4) clearly disclose the general nature and/or sources of conflicts of interest to the client before undertaking business for the client if arrangements to manage conflicts of interest were not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of a client would be prevented.

4.44 On 27 June 2024, the Authority asked the Firm to provide a copy of its Conflicts of Interest Policy, and a copy of its Conflicts of Interest Register. The Firm provided both documents on 28 June 2024.

4.45 The Firm's Conflict of Interest Policy states that the Firm "*will manage conflicts of interest by maintaining a written record of any conflicts that arise and actions taken*"; and that "*Where a conflict of interest arises between an employee of the Firm or a person that is directly or indirectly linked to the Firm and could cause significant detriment, we will withdraw that individual's involvement in the transaction/activity to safeguard the interest of our customer.*"

4.46 The Conflict of Interests register contains just one entry. No other conflicts are recorded on the Conflicts of Interest Register.

4.47 In response to the Authority's information requests, the Firm has disclosed various relationships which appear to give rise to potential conflicts of interest. The Authority has provided further detail of its concerns in relation to these potential conflicts to the Firm. None of these potential conflicts appear to have been identified, recorded or mitigated by the Firm.

Impact of conflict of interests

4.48 To manage conflicts of interest, the Firm must maintain and operate effective organisational and administrative arrangements with a view to taking all

reasonable steps to prevent conflicts of interest from adversely affecting the interests of its clients.

- 4.49 However, the Firm has not identified in its Conflicts Register that any of the other potential conflicts identified by the Authority exist, nor does it appear to have taken all reasonable steps to manage the conflicts in accordance with the regulatory requirements or its own Conflicts Policy.
- 4.50 SYSC 10.1.8R states that where a conflict is not managed in accordance with SYSC 10.1.7R, the firm should disclose to the client before undertaking business for the client the general nature or sources of conflict of interest (or both) and the steps taken to mitigate the risk. Because, in the circumstances set out above, the Firm has not identified that either potential conflicts exist, the Firm does not appear to have made any disclosures about the potential conflicts to clients before undertaking business for them.
- 4.51 The Authority is concerned that the Firm appears to have acted inconsistently with Principle 8, SYSC 10 and its own Conflicts of Interest Policy because:
- (1) The Firm does not appear to have taken all reasonable steps to identify potential conflicts of interest between the Firm and clients of the Firm.
 - (2) The Firm has not recorded the potential conflicts in the Firm's Conflict of Interest Register.
 - (3) The Firm does not appear to have taken all reasonable steps to prevent the potential conflicts of interest from adversely affecting the interests of its clients.
- 4.52 Consequently, the Authority has serious concerns about whether those who manage the Firm's affairs have adequate skills and experience to ensure that the Firm's affairs are conducted in an appropriate manner and one which complies with the requirements of the regulatory framework.

Failure to deal with the Authority in an open and cooperative manner

- 4.53 Principle 11 of PRIN states that a firm must deal with its regulators in an open and cooperative way and must disclose to the Authority appropriately anything relating to the firm of which that regulator would reasonably expect notice.
- 4.54 Rule 15.6.1 of SUP states that a firm must take reasonable steps to ensure that all information it gives to the Authority in accordance with a rule in any part of the Handbook (including Principle 11) is factually accurate and complete.
- 4.55 On 17 April 2024, the Authority met with representatives of the Firm. During the meeting, when asked about the Firm's organisation and staffing, the Firm said that it employs four staff on its payroll and engages two consultants. This is confirmed in an organisational chart provided to the Authority. The Firm also confirmed that none of its employees are employed elsewhere or hold directorships elsewhere and that none of the Firm's shareholders have an active role in the Firm's business.
- 4.56 The Authority has reviewed the information provided by the Firm, and is concerned that some of the information that the Firm has provided is not accurate or complete and had the potential to be misleading about the individuals involved in the Firm's business. The Authority has provided the Firm with further detail of its concerns about the accuracy of information provided to it.

The Firm's written representations

- 4.57 On 21 August 2024, following the issuance of the First Supervisory Notice, the Firm submitted written representations. The Authority has reviewed and considered the Firm's representations. A summary of the Firm's written representations and the Authority's response is set out in Annex 2.

5 CONCLUSION

- 5.1 The regulatory provisions relevant to this Second Supervisory Notice are set out in Annex 1.

Analysis of failings and risks

- 5.2 The Authority has serious concerns about the Firm's compliance with the Threshold Conditions. The Threshold Conditions are minimum requirements that firms need to meet to be authorised and to continue carrying on regulated activities.

- 5.3 Section 55L of the Act permits the Authority to impose requirements on the Firm because the Firm is failing, or likely to fail to satisfy:

- 1) the Suitability Threshold Condition pursuant to section 2E of Schedule 6 of the Act; and
- 2) the Business Model Threshold Condition pursuant to section 2F of Schedule 6 of the Act.

- 5.4 As a result of the facts and matters detailed above, the Authority has serious concerns that Business Agent is failing or is likely to fail, to meet the Threshold Conditions above because:

- 1) The Firm has a requirement on its permission that it "*cannot hold and control client money*". The Firm appears to have breached this requirement by first holding client money itself and then, in seeking to remedy the issue the Authority had identified, by putting in place arrangements to hold client money with an authorised payment institution which itself does not have permission to hold client money. Consequently, the Authority has serious concerns that the client money arrangements the Firm has in place do not comply with its regulatory requirements and that client money is not adequately protected.
- 2) The Firm appears to be operating as ISA Manager in connection with several investments, but (in part, because of the client money arrangements it currently has in place) does not appear to be complying with the ISA Regulations.
- 3) The Firm appears to have failed to identify, prevent or manage several potential conflicts of interest. Consequently, the Firm appears to be in breach of PRIN 8 and several provisions of SYSC 10 (as outlined above) by failing to identify, manage fairly and disclose potential conflicts of interest.
- 4) The Firm appears to have provided information to the Authority which is inaccurate, incomplete and has the potential to be misleading.
- 5) The Firm appears to have failed to notify the Authority of financial promotions it has approved in breach of SUP 16.31.5R(1)(b).

- 6) The Firm appears to have failed to conduct adequate due diligence on at least one of the investments offered on its platform.
- 5.5 The Authority is concerned that the cumulative effect of these concerns is that the Firm appears to be failing, or is likely to fail, to meet the Suitability and Business Model Threshold Conditions. In particular:
- 1) The Firm's affairs may not be being conducted in an appropriate manner having regard to the interests of consumers (COND 2.5.1A(1)(c)).
 - 2) Those who manage the Firm's affairs may not have adequate skills and experience to do so (COND 2.5.1A(1)(e)).
 - 3) The Firm's business may not be being, or may not be, managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner (COND 2.5.1A(f) and COND 2.7.1(2)).
- 5.6 The Authority considers that the Firm's activities present a significant and ongoing risk of consumer harm. In particular:
- 1) By holding or controlling client money in breach of a requirement on the Firm's permission and in a manner that appears to be inconsistent with the requirements of the CASS rules and the ISA Regulations, customer funds do not appear to be adequately protected and there is a risk of loss to consumers while their money is held in the Firm 2 account.
 - 2) By failing to identify, prevent or manage several potential conflicts of interest competing interests may influence the Firm's decision-making, for example, on the extent of the due diligence it conducts on potential investment opportunities and the investments that it lists on its platform and therefore whether it acts in accordance with the best interests of its client.
- 5.7 The Authority has concluded, in light of the matters set out above, that it is necessary for the Authority to exercise its own-initiative power under section 55L(3)(a) of the Act by imposing the Requirements to stop the Firm from conducting regulated activities in order to protect the interests of consumers.
- 5.8 The Authority considers that the Requirements remain a proportionate and appropriate means to address the current and immediate risks and are desirable in order to advance the Authority's operational objective of consumer protection.

Timing and duration of the Requirements

- 5.9 It was necessary to impose the Requirements given the seriousness of the risks and the need to protect consumers.
- 5.10 The Authority considers that it is necessary for the Requirements to remain in place indefinitely and until such time as the Authority is satisfied that the risks that the Requirements seek to address are appropriately mitigated.

6 PROCEDURAL MATTERS

Decision-maker

- 6.1 The decision which gave rise to the obligation to give this Second Supervisory Notice was made by an Authority staff member under executive procedures according to DEPP 2.3.1G, DEPP 2.5.7G and DEPP 4.1.7G.

6.2 This Second Supervisory Notice is given under section 55Y(7) and in accordance with section 55Y(9) of the Act.

6.3 The following statutory rights are important.

Representations

6.4 On 21 August 2024, the Firm submitted written representations in response to the First Supervisory Notice. The Authority has reviewed and considered all material the Firm provided and concluded that the Requirements remain proportionate and appropriate. A summary of the Firm's written representations and the Authority's response is set out at Annex 2.

The Tribunal

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

6.6 A reference to the Tribunal can be made by way of a reference notice (Form FTC3) signed by or on behalf of the Firm and filed with a copy of this First Supervisory Notice. The Tribunal's contact details are: The Upper Tribunal, Tax and Chancery Chamber, 5th Floor, Rolls Building, Fetter Lane, London EC4A 1NL (telephone: 020 7612 9730; email: uttc@hmcts.gsi.gov.uk).

6.7 Further information on the Tribunal, including guidance and the relevant forms to complete, can be found on the HM Courts and Tribunal Service website: <http://www.justice.gov.uk/forms/hmcts/tax-and-chancery-upper-tribunal>

6.8 The Firm should note that a copy of the reference notice (Form FTC3) must also be sent to the Authority at the same time as a reference is filed with the Tribunal. A copy of the reference notice should be sent to the Executive Decision Making Secretariat (EDMCaseInbox@fca.org.uk).

Confidentiality and publicity

6.9 The Firm should note that section 391(5) of the Act requires the Authority, when the Second Supervisory Notice takes effect, to publish such information about the matter to which the notice relates as it considers appropriate.

6.10 In the Authority's view, publication of this Second Supervisory Notice is not unfair to the Firm or prejudicial to the interests of consumer or detrimental to the stability of the UK financial system as per section 391(6) of the Act.

Authority contacts

6.11 For more information concerning this matter generally, contact the Executive Decision Making Secretariat (EDMCaseInbox@fca.org.uk).

6.12 Any questions regarding the executive procedures decision-making process should be directed to the Executive Decision Making Secretariat (EDMCaseInbox@fca.org.uk).

Executive Decision Maker
Head of Department, Consumer Investments – Supervision, Policy and Competition

Annex 1

RELEVANT STATUTORY PROVISIONS

1. The Authority's operational objectives established in section 1B of the Act include securing an appropriate degree of protection for consumers, and protecting and enhancing the integrity of the UK financial system.
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 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 specified action (section 55N(1)(a)), or to refrain from taking specified action (section 55N(1)(b)).
4. Section 55Y(3) of the Act allows a requirement to take effect immediately (or on a specified date) if the Authority, having regard to the ground on which it is exercising its own-initiative power, reasonably considers that it is necessary for the requirement to take effect immediately (or on that date).
5. Section 55Y(7) provides that if , having considered any representations made by an authorised person, the Authority decides (a) to vary the permission, or impose or vary the requirement, in the way proposed, or (b) if the permission has been varied or the requirement imposed or varied, not to rescind the variation of the permission or the imposition or variation of the requirement, it must give the authorised person written notice.
6. Section 55Y(9) provides that if an authorised person is given written notice under section 55Y(7), the Authority must inform the authorised person of their right to refer the matter to the Tribunal.
7. 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) But the Authority may not publish information under this section if in its opinion, publication of the information would, be unfair to the person with respect to whom the action was taken or proposed to be taken [or] prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
 - (7) Information is to be published under this section in such manner as the Authority considers appropriate.”

RELEVANT REGULATORY PROVISIONS

FCA Handbook

8. COND 1.2.3G provides that the Authority may exercise its own-initiative powers under section 55L of the Act if, among other things, a firm is failing to satisfy any of the Threshold Conditions or is likely to do so.

9. COND 1.3.2G states that the Authority will consider whether a firm satisfies, and will continue to satisfy, the Threshold Conditions in the context of the size, nature, scale and complexity of the business which the firm carries on or will carry on if the relevant application is granted.
10. COND 2.5.4G states that in assessing the Threshold Conditions set out in paragraphs 2E and 3D of the Schedule 6 to the Act (which includes the Suitability Threshold Condition), factors which the Authority will have regard to general considerations including, but not limited to, whether the firm: (a) conducts, or will conduct, its business with integrity and in compliance with proper standards; (b) has, or will have, a competent and prudent management; and (c) can demonstrate that it conducts, or will conduct, its affairs with the exercise of due skill, care and diligence.
11. COND 2.5.6G states that in assessing the Threshold Conditions set out in paragraphs 2E and 3D of the Schedule 6 to the Act (which includes the Suitability Threshold Condition), factors which the Authority will have regard to include, but are not limited to, whether the firm:
 - has been open and co-operative in all its dealings with the Authority and any other regulatory body (Principle 11 (Relations with regulators)) and is ready, willing and organised to comply with the requirements and standards under the regulatory system (such as the detailed requirements of SYSC) in addition to other legal, regulatory and professional obligations; and
 - 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.
12. CASS 7.12.1R states that a firm must, when holding client money, make adequate arrangements to safeguard the client's rights and prevent the use of client money for its own account.
13. CASS 7.13.1G states that the segregation of client money from a firm's own money is an important safeguard for its protection.
14. CASS 7.13.6R states that a firm using the normal approach must ensure that all client money it receives is paid directly into a client bank account at an institution referred to in CASS 7.13.3R(1) to CASS 7.13.3R(3), rather than being first received into the firm's own account and then segregated.
15. SYSC 10.1.3R states that a firm must take all appropriate steps to identify and to prevent or manage conflicts of interest between (1) the firm, including its managers, employees and appointed representatives (or where applicable, tied agents), or any person directly or indirectly linked to them by control, and a client of the firm; or (2) one client of the firm and another client; that arise or may arise in the course of the firm providing any service referred to in SYSC 10.1.1R including those caused by the receipt of inducements from third parties or by the firm's own remuneration and other incentive structures.
16. SUP 16.31.5R(1)(b) states that a firm must notify the Authority within 7 days of approving any financial promotion relating to a Non Mass-Market Investment.

The Principles for Businesses

17. Principle 8 of PRIN states that a firm must manage conflicts of interest fairly, both between itself and its customers and between a customer and another client.
18. Principle 10 of PRIN states that a firm must arrange adequate protection for clients' assets when it is responsible for them.
19. Principle 11 of PRIN states that a firm must deal with its regulators in an open and cooperative way and must disclose to the FCA appropriately anything relating to the firm of which that regulator would reasonably expect notice.

The Enforcement Guide

20. The Authority's approach in relation to its enforcement powers is set out in Chapter 8 of the Enforcement Guide (EG), certain provisions of which are summarised below.
21. EG 8.1.1 reflects the provisions of section 55L of the Act by stating that the Authority may use its own-initiative power to impose requirements on an authorised person where, amongst other factors, the person is failing or is likely to fail to satisfy the threshold conditions for which the Authority is responsible (EG 8.1.1(1)), or it is desirable to exercise the power in order to advance one or more of its operational objectives (EG 8.1.1(3)).
22. EG 8.2.1 states that when the Authority considers how it should deal with a concern about a firm, it will have regard to its statutory objectives and the range of regulatory tools that are available to it. It will also have regard to the principle that a restriction imposed on a firm should be proportionate to the objectives the Authority is seeking to achieve (EG 8.2.1(2)).
23. EG 8.2.3 states that in the course of its supervision and monitoring of a firm or as part of an enforcement action, the Authority may make it clear that it expects the firm to take certain steps to meet regulatory requirements. In the vast majority of cases the Authority will seek to agree with a firm those steps the firm must take to address the Authority's concerns. However, where the Authority considers it appropriate to do so, it will exercise its formal powers under section 55L of the Act to impose a requirement to ensure such requirements are met. This may include where, amongst other factors, the Authority has serious concerns about a firm, or about the way its business is being or has been conducted (EG 8.2.3(1)), or is concerned that the consequences of a firm not taking the desired steps may be serious (EG 8.2.3(2)).
24. EG 8.3.1 states that the Authority may impose a requirement so that it takes effect immediately or on a specified date if it reasonably considers it necessary for the requirement to take effect immediately (or on the date specified), having regard to the ground on which it is exercising its own-initiative powers.
25. EG 8.3.2 states that the Authority will consider exercising its own-initiative power where: 1) the information available to it indicates serious concerns about the firm or its business that need to be addressed immediately; and 2) circumstances indicate that it is appropriate to use statutory powers immediately to require and/or prohibit certain actions by the firm in order to ensure the firm addresses these concerns.
26. EG 8.3.3 states that it is not possible to provide an exhaustive list of the situations that will give rise to such serious concerns, but they are likely to include one or more of four listed characteristics, these include: 1) information indicating significant loss, risk of loss or other adverse effects for consumers, where action is necessary to

protect their interests; 2) information indicating that a firm's conduct has put it at risk of being used for the purposes of financial crime, or of being otherwise involved in crime; 3) evidence that the firm has submitted to the Authority inaccurate or misleading information so that the Authority becomes seriously concerned about the firm's ability to meet its regulatory obligations; 4) circumstances suggesting a serious problem within a firm or with a firm's controllers that calls into question the firm's ability to continue to meet the threshold conditions.

27. EG 8.3.4 states that the Authority will consider the full circumstances of each case when it decides whether an imposition of a requirement is appropriate and sets out a non-exhaustive list of factors the Authority may consider, these include:
- 1) EG 8.3.4(1) includes the extent of any loss, or risk of loss, or other adverse effect on consumers. The more serious the loss or potential loss or other adverse effect, the more likely it is that the Authority's exercise of own-initiative powers will be appropriate, to protect the consumers' interests.
 - 2) EG 8.3.4(2) includes the extent to which customer assets appear to be at risk. Exercise of the Authority's own-initiative power may be appropriate where the information available to the Authority suggests that customer assets held by, or to the order of, the firm may be at risk.
 - 3) EG 8.3.4(4) includes the seriousness of any suspected breach of the requirements of the legislation or the rules and the steps that need to be taken to correct that breach.
 - 4) EG 8.3.4(8) includes the firm's conduct. The Authority will take into account whether the firm identified the issue, brought it promptly to the Authority's attention and what steps the firm has taken or is taking to address the issue.
 - 5) EG 8.3.4(9) includes the impact that use of the Authority's own-initiative powers will have on the firm's business and on its customers. The Authority will need to be satisfied that the impact of any use of the own-initiative power is likely to be proportionate to the concerns being addressed, in the context of the overall aim of achieving its statutory objectives.

Annex 2

REPRESENTATIONS

The Firm's Representations, and the Authority's response, are summarised as follows.

Client money

Firm's Representations

The Firm engaged Firm 3 to hold client funds on behalf of the Firm. This entity holds the requisite regulatory permission to hold and control client money and is doing so in compliance with the Authority's rules and guidance.

The Authority's Response

The Authority notes that there are two entities within Group A: (i) Firm 2; and (ii) Firm 3, and that the former is an authorised payment institution with permission to provide payment services (but does not have permission to hold or control client money) and that the latter does have permission to hold and control client money.

On 27 June 2024, the Authority asked the Firm to confirm the name of the legal entity that provides client money service to the Firm (including its firm reference number) and to provide a copy of the agreement between Group A and the Firm in relation to holding and controlling client money. The Firm provided copies of account statements with Firm 2, which appear to show that client money has been paid into the account with Firm 2.

Although the Firm refers to certain misunderstandings that have arisen due to incomplete information previously submitted to the Authority, the Firm has not provided any evidence to support its assertion that its agreement to hold client funds is with Firm 3. The account statements previously provided by the Firm to the Authority, in response to an information request, suggest client money is held with Firm 2, which does not have permission to hold and control client money.

Compliance with the ISA Regulations

Firm's Representations

The Firm engaged Group A to hold and control client money and Group A operates accounts with Bank A. The Firm's previous provider of client money services held funds with Bank B. As both Bank A and Bank B are deposit-takers, the Firm was, and is, acting in compliance with Regulation 6(4) of the Individual Savings Account Regulations 1998 ("ISA Regulations").

The Authority's Response

The Authority continues to have concerns with the Firm's arrangements for accepting subscriptions from ISA investors. HMRC has published guidance which states that the account with the deposit taker must be designated as an ISA account for the purposes of the ISA Regulations and the account should be in the name of the investor. The Firm has not provided any evidence to support its assertion that cash subscriptions and other investors funds are held with a deposit-taker and in a way that complies with the ISA Regulations. However, even if the ISA subscriptions which the Firm has accepted were held in account with a deposit-taker, it appears that (i) the account is not designated as an ISA account; and (ii) the account is not held in the name of the investors, for the purposes of the ISA Regulations.

Conflicts of interest

Firm's Representations

The Firm acknowledges the importance of managing and disclosing potential conflicts of interest and recognises that relationships and transactions that the Authority identified could be interpreted as conflicts of interest. The Firm states its commitment to transparency. The Firm proposes to take certain actions to address the Authority's concerns including: (i) updating its conflicts of interest policy and register; (ii) engaging a third party to audit the Firm's conflicts management practices; (iii) establishing ongoing monitoring; and (iv) notifying current and former clients of the potential conflicts.

The Authority's Response

The Authority continues to have serious concerns about the Firm's current approach to identifying and managing conflicts of interest. The Firm's Representations accept that there are several relationships that could be interpreted as conflicts of interest. The Authority notes the Firm's current practices (as described in the Representations) and the Firm's commitment to transparency and the remedial steps the Firm is proposing to take to address the Authority's concerns. Although the Authority acknowledges the remedial steps proposed by the Firm, the Authority has serious concerns about the risks to consumers of the Firm offering investments on its platform until these remedial actions are undertaken and the Firm is able to demonstrate to the Authority that it is ready, willing and organised to comply with its obligations under the regulatory system.

Information provided to the Authority

Firm's Representations

The Firm states that it has not intentionally attempted to mislead the Authority and has provided further information to clarify the roles and responsibilities of individuals identified in the FSN. The Firm states that it will take several actions to address the concerns identified in the FSN including (i) conducting a review/audit of its organisational disclosures and providing a copy of its updated organisation charts/role descriptions to the Authority; (ii) engaging an independent compliance auditor to review its internal practices; and (iii) establishing new process for monitoring and reporting organisational changes.

The Authority's Response

The Authority remains concerned that the Firm has provided inaccurate and incomplete information to it and that the information provided by the Firm had the potential to be misleading about the individuals involved in the Firm's business. Although the Authority acknowledges the remedial steps proposed by the Firm, the Authority has serious concerns about the risks to consumers of the Firm offering investments on its platform until these remedial actions are undertaken and the Firm is able to demonstrate to the Authority that it is ready, willing and organised to comply with its obligations under the regulatory system.

Due diligence

Firm's Representations

The Firm conducted due diligence on Director A, by searching her first and last name (but not her middle name) on Companies House. The Firm accepts that if the Firm had searched using her middle name, adverse information would have been found relating to Firm 4. At

the time the Firm outsourced anti-money laundering and financial crime checks to a third party, which subcontracted these to a subcontractor. The third party and the subcontractor did not identify the adverse information. The Firm has now instructed another third party to undertake anti-money laundering and financial crime checks on its behalf. The Firm has proposed a series of remedial actions including: (i) enhancing its due diligence processes; (ii) engaging a third-party to review its due diligence processes; (iii) conducting an independent review and audit of all entities onboarded via the original third party and (iv) implementing a training programme for staff. In summary, the Firm acknowledges the gaps in its due diligence practices and expresses its commitment to implementing the necessary improvements.

The Authority's Response

The Authority remains concerned that the Firm's due diligence processes do not meet its regulatory expectations. Firms who use third party providers must take reasonable care to organise and control their affairs responsibly and effectively, with adequate risk management systems. It is the Firm's responsibility to manage the risk arising from using third parties to carry out services on its behalf and greater levels of risk management are needed when a firm increases its dependence on outsourced and third party providers. Although the Authority acknowledges the remedial steps proposed by the Firm, the Authority has serious concerns about the risks to consumers of the Firm offering investments on its platform until these remedial actions are undertaken and the Firm is able to demonstrate to the Authority that it is ready, willing and organised to comply with its obligations under the regulatory system.

Other matters

Firm's Representations

In addition to those matters identified above, the Firm has committed to taking several further steps to address the Authority's concerns:

- Engaging a compliance consultancy to provide dedicated compliance officer support.
- Launching a compliance training programme for all staff.
- Conducting period independent audits to review and improve compliance practices.
- Enhancing the Firm's governance and risk management framework.

The Firm states that to be able to introduce these changes and ensure their success, it is essential that the Firm can continue to operate and generate revenue.

The Firm has also provided the Authority with a summary of the benefits the Firm provides to the industry.

The Authority's Response

The Authority welcomes the range of remedial actions the Firm intends to take to address the concerns the Authority has raised and to bring it into compliance with the requirements of the regulatory framework. However, noting the scale of the work to be undertaken, the Authority has serious concerns about the risks to consumers of the Firm offering investments on its platform until these remedial actions are undertaken and the Firm can demonstrate to the Authority that it is ready, willing and organised to comply with its obligations under the regulatory system.