
SECOND SUPERVISORY NOTICE

To: **Larksway Investments Limited**

Address: **The Barn
Little Hyde Hall
Hatfield Heath Road
Sawbridgeworth
CM21 9HX**

**Firm Reference
Number:** **516619**

**Interim Permission
Reference
Number:** **640731**

Dated: **27 October 2017**

ACTION

1. For the reasons given below and pursuant to section 55L of the Act, the Authority has decided not to rescind the following requirements, which were imposed on Larksway with immediate effect by a First Supervisory Notice dated 27 September 2017:
 - (a) Larksway may not carry on any of the regulated activities for which it holds a Part 4A permission;
 - (b) the money held in all bank accounts operated by Larksway (including any money deposited, in the future, into any bank account operated by Larksway) may not be dealt with in any way without the prior written consent of the Authority. This is an assets requirement within the meaning of section 55P(4) of the Act;

- (c) Larksway must, by 13 October 2017, notify in writing all clients for Larksway's regulated activities (i.e. all persons to whom Larksway provides, intends to provide or has within the past 12 months provided a service in the course of carrying on a regulated activity) that it may not carry on any of the regulated activities for which it holds a Part 4A permission;
 - (d) Larksway must agree the wording of the notification under sub-paragraph (c) above with the Authority prior to the notification being sent by Larksway to its clients; and
 - (e) Larksway must, by 20 October 2017, provide to the Authority a list of all clients for Larksway's regulated activities, a copy of the written notification sent to its clients, and confirmation that such notification has been sent to all clients on the list.
2. To the extent that any of the steps set out in sub-paragraphs 1 (c) to (e) above remain outstanding as at the date of this Notice, Larksway must complete them immediately.

REASONS FOR ACTION

3. Larksway has failed to respond adequately to the Authority's repeated requests for, and notices issued by the Authority to Larksway under section 165 of the Act requiring Larksway to provide, information relating to:
- (a) the manner in which Larksway is, and has been, handling premiums it has received from its customers for insurance;
 - (b) Larksway's ability to meet its liabilities as they fall, or have fallen, due; and
 - (c) Larksway's ability to operate its banking arrangements adequately.
4. As a consequence of Larksway's failure, both before and after the issue of the First Supervisory Notice, to provide the information requested and required by the Authority in such requests and notices, the Authority considers that Larksway poses a risk to consumers. This is because:
- (a) the Authority has serious concerns as to whether Larksway is, and has been, handling properly premiums it has received, and will handle properly premiums it receives in future, from its customers for insurance; and
 - (b) the Authority remains unable to satisfy itself that Larksway is satisfying the appropriate resources Threshold Condition.
5. Further, as a result of Larksway's inadequate responses to the Authority's requests and requirements for information, the Authority considers that Larksway is not a fit and proper person, having regard to all the circumstances, and is failing to satisfy the suitability Threshold Condition. In particular, Larksway has failed to deal with the Authority in an open and cooperative way, in breach of Principle 11 (Relations with regulators) of the Principles. In the light of the matters set out at paragraph 3 above, the Authority does not consider that Larksway is conducting its affairs in an appropriate manner, having regard in particular to the interest of consumers, and the Authority does not consider that Larksway's business is being managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner.

6. For the above reasons, the Authority concludes that Larksway is failing to satisfy the Threshold Conditions and that Larksway's continued conduct of regulated business poses a risk to consumers. The Authority therefore considers it is necessary to retain the requirements set out in paragraph 1 above.
7. The Authority has also concluded that the seriousness of the risk that Larksway poses to consumers makes it necessary to impose these requirements with immediate effect in order to secure an appropriate degree of protection for consumers.

DEFINITIONS

8. The definitions below are used in this Second Supervisory Notice:

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

"the appropriate resources Threshold Condition" means the threshold condition set out in paragraph 2D of Schedule 6 of the Act;

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

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

"the Decision Notice" means the decision notice given to Larksway dated 25 October 2016;

"DISP" means the Dispute Resolution: Complaints Manual, which is part of the Handbook;

"EG" means the Enforcement Guide;

"the FOS" means the Financial Ombudsman Service;

"the FOS Award" means the Final Decision by the FOS against Larksway on 17 December 2014, in relation to Ms B (decision reference: DRN4040664);

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

"Larksway" means Larksway Investments Limited;

"Larksway's Part 4A Permission" means the permission granted by the Authority to Larksway pursuant to Part 4A of the Act;

"a Part 4A permission" means a permission granted by the Authority pursuant to Part 4A of the Act;

"the Principles" means the Authority's Principles for Businesses;

"the RDC" means the Authority's Regulatory Decisions Committee;

"the suitability Threshold Condition" means the threshold condition set out in paragraph 2E of Schedule 6 of the Act;

“the Threshold Conditions” means the Threshold Conditions set out in Schedule 6 to the Act; and

“the Tribunal” means the Upper Tribunal (Tax and Chancery Chamber).

FACTS AND MATTERS RELIED ON

Background

9. Larksway was authorised by the Authority on 30 November 2010 and is permitted to conduct insurance mediation business. Also, on 1 April 2014, following the transfer of Consumer Credit regulation from the Office of Fair Trading to the Authority, Larksway was granted an interim variation of permission to conduct credit broking.
10. On 25 October 2016, the Authority gave Larksway the Decision Notice. The Decision Notice sets out the Authority’s decision to cancel Larksway’s Part 4A Permission on the basis that Larksway is failing to satisfy the suitability Threshold Condition. Specifically, Larksway failed to comply with the FOS Award made against it, despite repeated requests by the FOS and the Authority that it do so. The Authority concluded that, by not complying with the FOS Award, Larksway was in breach of DISP 3.7.12R(1) and Principle 6 (Customers’ interests) and Principle 11 (Relations with regulators) of the Principles. In the light of these matters, the Authority concluded that Larksway was not fit and proper to be permitted to conduct regulated activities.
11. Larksway has referred the Decision Notice to the Tribunal. Accordingly, the Authority’s decision to cancel Larksway’s Part 4A Permission has not yet taken effect and, subject to this Second Supervisory Notice, it continues to be permitted to carry on the regulated activities for which it holds a Part 4A permission.

Information received by the Authority

12. After giving Larksway the Decision Notice, the Authority received information which appeared to indicate that:
 - (a) Larksway had failed to pay £318,775.66 to Firm A in respect of outstanding net insurance premiums due to Firm A for insurance policies that Larksway has arranged for its customers;
 - (b) Larksway might have failed to pass on insurance premiums it received from its customers which were due to Firm A; and
 - (c) Larksway had failed to pay £52,418.09 to Firm C in respect of invoices issued by Firm C to Larksway for professional services provided to Larksway by, or through, Firm C.
13. The Authority had also received information which showed that Larksway was contesting a petition from Firm A to wind it up, in relation to the alleged debt mentioned at paragraph 12(a) above, and information which indicated that a bank account in Larksway’s name had been frozen and that any other bank account that Larksway held might also be subject to restrictions.
14. The Authority also understood that Larksway still had not complied with the FOS Award and that at least £9,730.59 of the amount owed by Larksway to Ms B remained outstanding.

Correspondence with Larksway

15. The information received by the Authority regarding the winding up petition and the alleged debts owed by Larksway caused the Authority to seek clarification of Larksway's ability to satisfy the appropriate resources Threshold Condition. From 17 March 2017 onwards, the Authority attempted to engage with Larksway in order to obtain information regarding the matters specified in paragraphs 12 and 13 above. In particular:
 - (a) on 17 March 2017, the Authority sent Larksway a notice under section 165 of the Act, requiring Larksway to provide to the Authority, amongst other things, specific information regarding all of Larksway's creditors and a copy of Larksway's new business register;
 - (b) on 24 May 2017, the Authority requested that Larksway provide evidence to the Authority demonstrating that it had adequate financial resources to meet all of its liabilities as they fell due, including the liabilities referred to in paragraphs 12 and 14 above;
 - (c) on 20 June 2017, the Authority requested that Larksway provide a copy of its client money audit reports for the last three years, its latest client money calculation, and details of all bank accounts used by Larksway to receive and hold insurance premiums received by Larksway from its customers; and
 - (d) on 24 July 2017, the Authority requested that Larksway provide specific information regarding any restrictions placed on its bank accounts.
16. Larksway failed to respond adequately to the notice dated 17 March 2017 and to each of the Authority's requests for information as specified in sub-paragraphs 15(b) to (d) above.
17. As a result of such failure by Larksway, the Authority sent Larksway a further notice on 2 August 2017 under section 165 of the Act, requiring Larksway to provide to the Authority all of the information the Authority had requested from Larksway between 17 March 2017 and 24 July 2017 as summarised in paragraph 15 above, and full, up to date management accounts for Larksway.
18. On 3 August 2017, Larksway informed the Authority that it had submitted a complaint to the Authority that had not been determined, and that it considered it would undermine the complaint if it responded to the notice of 2 August 2017. The Authority did not consider this was an adequate reason for Larksway's failure to respond, given the gravity of the Authority's concerns and that the complaint and the Authority's enquiries were separate matters. Therefore, the Authority considered that Larksway had not provided any adequate explanation for not responding.
19. On 29 August 2017, the Authority sent a letter to Larksway which explained that, as a result of Larksway's failure to respond adequately to the Authority's notices and requests for information relating to the matters specified in paragraphs 12 and 13 above, the Authority considered that, in continuing to be permitted to conduct regulated business, Larksway posed a serious risk to consumers. The Authority also informed Larksway that the fact that it had submitted a complaint to the Authority did not affect Larksway's obligation to continue to meet its regulatory obligations. The letter informed Larksway that a recommendation

would therefore be made to the RDC to impose the requirements set out in paragraph 1 above, with immediate effect. Larksway was informed that any response it submitted to the letter would be put before the RDC.

20. In response to the 29 August 2017 letter, Larksway merely informed the Authority that it disputed the alleged debts described in paragraph 12 above and declined to provide any further information about the payment of the FOS Award. Larksway did not respond adequately to the Authority's notices or to any of the Authority's requests for information.
21. On 27 September 2017, in the light of the matters summarised in paragraphs 9 to 20 above, the Authority issued the First Supervisory Notice, imposing on Larksway the requirements set out at paragraph 1 above.

Developments since the First Supervisory Notice

22. On or about the time of the issue of the First Supervisory Notice, the Authority obtained, through its own efforts, information about some additional bank accounts held by Larksway.
23. Between 4 October and 18 October 2017, Larksway exercised its right to make written representations to the Authority's Regulatory Decisions Committee in relation to the First Supervisory Notice, and on 23 October 2017 it made oral representations to the Committee in relation to the First Supervisory Notice. It provided a number of further items of information in writing thereafter.
24. During the course of its representations, Larksway reiterated that it disputed in their entirety the alleged debts described in paragraph 12 above to Firms A and C respectively, and indicated that it had provided a reconciliation to Firm A. It did not provide the Authority with a copy of the reconciliation, or any summary of its conclusions. It could not explain how the detailed list of unpaid premiums claimed by Firm A was wrong, other than to say that Firm A's systems were at fault, and that it contained duplicated items and other errors. Larksway accepted that some of the premiums originally set out in the detailed list were due and had been paid, thereby reducing the amount claimed by Firm A to the figure set out in paragraph 12 (a) above.
25. Larksway also stated during its representations that it had been unable to pay the balance due to Ms B mentioned in paragraph 14 above due to the freezing of certain of its bank accounts in the winding-up proceedings.
26. In its representations, Larksway also stated that it had no other bank accounts than those of which the Authority was aware.
27. A fuller summary of Larksway's representations is set out at Annex B: see paragraph 29 below.
28. However, Larksway still has not made any adequate response to the Authority's information requests and notices. It conceded during its oral representations that it should have responded to these requests and notices; it indicated that its reasons for not doing were overwork on the part of its sole director, and a disinclination to assist the Authority, which it felt had not dealt appropriately with information Larksway had provided on matters of great concern to Larksway regarding its treatment by Firm A and others. It did not make any commitment to provide any of the outstanding information in future. Larksway expressed concern about the risk posed by the acts and omissions of others to consumers, but has not accepted that its failure to respond adequately to the Authority's

requests for information should increase the Authority's concern about the position of Larksway's customers.

REPRESENTATIONS

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

FAILINGS

30. The statutory and regulatory provisions relevant to this Second Supervisory Notice are set out in Annex A.
31. From the facts and matters described above the Authority, having regard to its operational objectives, which include the protection of consumers, considers that:
- The matters specified in paragraphs 12 and 13 above raise serious concerns as to whether Larksway is able to meet its liabilities as they fall (or have fallen) due, and as to whether it has adequate banking arrangements in place. Larksway has repeatedly failed to respond adequately to these concerns. The Authority therefore has serious concerns as to whether Larksway is satisfying the appropriate resources Threshold Condition;
 - The matters specified in sub-paragraphs 12(a) and (b) above raise serious concerns as to whether Larksway is, and has been, handling properly premiums it has received. Larksway has repeatedly failed to respond adequately to these concerns. The Authority is not satisfied that Larksway will handle properly premiums it receives in future from its customers for insurance;
 - By failing to respond adequately to the Authority's repeated requests for, and to notices requiring Larksway to provide, information to the Authority, without any adequate explanation for such failure (and despite admitting that it should have given adequate responses but that it did not wish to cooperate with the Authority), Larksway has failed to deal with the Authority in an open and cooperative way, in breach of Principle 11;
 - As a result of its inadequate responses, Larksway has also failed to satisfy the Authority that its affairs are being conducted in an appropriate manner, having regard in particular to the interest of consumers, and that its 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; and
 - Larksway is not a fit and proper person having regard to all the circumstances, and is failing to satisfy the suitability Threshold Condition.
32. For the reasons set out above, the Authority considers that Larksway is failing to satisfy the Threshold Conditions and that Larksway's continued conduct of regulated business poses a clear and immediate risk to consumers. The Authority therefore considers it is necessary to retain the requirements set out in paragraph 1 above.

33. Further, the Authority has considered the risk of loss or other adverse effect on consumers in light of the facts and conclusions set out above. The Authority has serious concerns about the risk that Larksway presents to consumers that need to be addressed immediately. These concerns have been explained in detail to Larksway, and Larksway cannot have been in any doubt about the need to respond promptly and effectively to them. The Authority has concluded that, in all the circumstances, it is necessary to retain the requirements specified in paragraph 1 above, which were imposed by the First Supervisory Notice with immediate effect, in order to address those concerns and to advance the Authority's operational objective of securing an appropriate degree of protection for consumers. The Authority considers this action is necessary notwithstanding that the Authority has already taken action, for different reasons, to cancel Larksway's Part 4A permission, by giving Larksway the Decision Notice. The Authority's conclusion that Larksway poses an immediate risk to consumers is based on information which it has received, and matters which have occurred, since the Decision Notice.

PROCEDURAL MATTERS

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

Decision Maker

35. The decision which gave rise to the obligation to give this Second Supervisory Notice was made by the RDC.
36. The following paragraphs are important.

The Tribunal

37. Larksway has the right to refer the matter to which this Second Supervisory Notice relates to the Tribunal. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, Larksway has 28 days from the date on which this Second Supervisory Notice is given to it to refer the matter to the Tribunal.
38. A reference to the Tribunal can be made by way of a reference notice (Form FTC3) signed by Larksway and filed with a copy of this Second Supervisory Notice. The Tribunal's contact details are: The Upper Tribunal, Tax and Chancery Chamber, 5th Floor, The Rolls Building, Fetter Lane, London EC4A 1NL (telephone: 020 7612 9730; email: uttc@hmcts.gsi.gov.uk).
39. For further information on the Tribunal Larksway should refer to the HM Courts and Tribunal Service website. The following page includes guidance on making a reference to the Tribunal, the relevant form to complete (Form FTC3) and notes on that form:
- <http://www.justice.gov.uk/forms/hmcts/tax-and-chancery-upper-tribunal>
40. Larksway 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 Dilip Vekariya at the Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS.

Publicity

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

Contact

42. For more information concerning this matter generally, Larksway should contact Dilip Vekariya at the Authority (direct line: 020 7066 5520).

**Simon Pearce, Company Secretary, for and on behalf of
Peter Hinchliffe
Deputy Chair, Regulatory Decisions Committee**

ANNEX A

RELEVANT STATUTORY PROVISIONS

1. The Authority's operational objectives established in section 1B of the Act include the protection of consumers.
2. The Authority is authorised by section 55L of the Act to impose a new requirement on an authorised person with a Part 4A permission if it appears to the Authority that such person is failing to satisfy the Threshold Conditions (section 55L(2)(a)) or it is desirable to do so to advance any of the Authority's operational objectives (section 55L(2)(c)).
3. Section 55P of the Act provides that a requirement under section 55L which prohibits the disposal of, or other dealing with, any of the subject's assets (whether in the United Kingdom or elsewhere) or which restricts such disposals or dealings is an 'assets requirement' (section 55P(4)(a)) of which the Authority may give notice to any institution with whom the subject has an account. The notice has the effects set out in section 55P(6) of the Act.
4. Section 55Y(3) of the Act allows the imposition of a requirement 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 imposition of the requirement to take effect immediately (or on that date).
5. The appropriate resources Threshold Condition provides, in relation to a person ("A") carrying on or seeking to carry on regulated activities which do not consist of or include a PRA-regulated activity, that:

"The resources of A must be appropriate in relation to the regulated activities that A carries on or seeks to carry on."
6. The suitability Threshold Condition provides, in relation to a person ("A") carrying on or seeking to carry on regulated activities which do not consist of or include a PRA-regulated activity, that:

"A must be a fit and proper person having regard to all the circumstances, including-

(c) the need to ensure that A's affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers;

[...]

(f) whether A's business is being, or is to be, managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner;

[...]"

RELEVANT HANDBOOK PROVISIONS

7. In exercising its power to impose a requirement on an authorised person, the Authority must have regard to guidance published in the Handbook, and in regulatory guides such as EG. The relevant main considerations in relation to the action specified above are set out below.

Relevant Principle

8. Principle 11 (Relations with regulators) of the Principles, states that a firm must deal with its regulators in an open and cooperative way, and must disclose to the appropriate regulator appropriately anything relating to the firm of which the regulator would reasonably expect notice.

Guidance concerning the relevant Threshold Condition

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(1) reproduces the relevant statutory provision that the resources of the person concerned must be appropriate in relation to the regulated activities that it carries on or seeks to carry on.
11. COND 2.4.1AUK(3) states that the matters which are relevant in determining whether a firm has appropriate financial resources include the provision the firm makes in respect of liabilities.
12. COND 2.4.2G(2) provides that, in this context, the Authority will interpret the term 'appropriate' as meaning sufficient in terms of quantity, quality and availability, and 'resources' as including all financial resources, non-financial resources and means of managing its resources; for example, capital, provisions for liabilities, holding of or access to cash and other liquid assets, human resources and effective means by which to manage risks.
13. COND 2.4.4G(2) states that relevant matters to which the Authority may have regard when assessing whether a firm will satisfy, and continue to satisfy, the appropriate resources Threshold Condition may include whether there are any indications that the firm will not be able to meet its debts as they fall due (COND 2.4.4G(2)(b)).

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

14. COND 2.5.1AUK(1) reproduces the relevant statutory provision that the person concerned must satisfy the Authority that he is a fit and proper person having regard to all the circumstances, including amongst other things, the need to ensure that his affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers and the integrity of the UK financial system (COND 2.5.1AUK(1)(c)), and whether the firm's business is being, and is to be, managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner (COND 2.5.1AUK(1)(f)).
15. COND 2.5.4G(2) states that examples of the general considerations to which the Authority may have regard when assessing whether a firm will satisfy and continue to satisfy the suitability Threshold Condition include whether the firm conducts its business in compliance with proper standards (COND 2.5.4G(2)(a)).
16. COND 2.5.6G sets out examples of the kind of particular considerations to which the Authority may have regard when assessing whether a firm will satisfy, and continue to satisfy, the suitability Threshold Condition, which include, but are not limited to, whether: the firm has been open and cooperative in all its dealings

with the Authority and is ready, willing and organised to comply with the requirements and standards of the regulatory system (COND 2.5.6G(1)); and whether the firm has contravened any provisions of the Act or the regulatory system, which include the Principles and other rules (COND 2.5.6G(4)).

OTHER RELEVANT REGULATORY PROVISIONS

17. The Authority's policy in relation to its enforcement powers is set out in EG, certain provisions of which are summarised below.
18. EG 8.1.1(1) reflects the provisions of 55L of the Act that the Authority may use its own-initiative power to impose requirements on an authorised person where the person is failing or is likely to fail to satisfy the threshold conditions, or it is desirable to exercise the power in order to advance one or more of the Authority's operational objectives.

Imposing requirements on a firm's Part 4A permission on the Authority's own initiative

19. EG 8.2.1 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.
20. EG 8.2.3 provides that the Authority will exercise its formal powers under section 55L of the Act where the Authority considers it is appropriate to ensure a firm meets its regulatory requirements. EG 8.2.3(1) specifies that the Authority may consider it appropriate to exercise its powers where it has serious concerns about a firm or about the way its business is being or has been conducted.
21. EG 8.2.6(1) specifies that the Authority will consider exercising its own-initiative power under section 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.

Use of the own-initiative powers in urgent cases

22. EG 8.3.1 states that the Authority may impose a requirement so that it takes effect immediately or on a specified date if the Authority reasonably considers it necessary for the requirement take effect immediately (or on the date specified), having regard to the ground on which it is exercising its own-initiative powers.
23. EG 8.3.2(1) provides that the Authority will consider exercising its own initiative power as a matter of urgency where the information available to the Authority indicates serious concerns about the firm or its business that need to be addressed immediately, and 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.
24. EG 8.3.3 sets out a non-exhaustive list of factors that the Authority will consider when exercising its own initiative power as a matter of urgency. EG 8.3.3(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.
25. EG 8.3.4 sets out the factors that the Authority may consider when it decides whether an urgent imposition of a requirement is appropriate, including: the extent of any loss, risk of loss or other adverse effect on consumers (EG 8.3.4(1)); the extent to which customer assets appear to be at risk (EG 8.3.4(2)); and the seriousness of any suspected breaches of the requirements of the legislation or the rules and the steps that need to be taken to correct those breaches (EG 8.3.4(4)).

Requirements that the Authority may impose when exercising its section 55L powers

26. EG 8.4.4 gives examples of the requirements that the Authority may consider imposing, which include a requirement that prohibits the disposal of, or other dealing with, any of the firm's assets or restricts such disposal or dealings.

ANNEX B

REPRESENTATIONS

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

Larksway's financial position

2. *Larksway is solvent. The debts alleged to be due by Firm A and Firm C are not in fact due, and indeed both Firm A and Firm C have substantial liabilities to Larksway in damages.*
3. *None of the outstanding items set out in the account rendered by Firm A to Larksway in respect of premiums allegedly due to it (totalling £318,775.66) are in fact payable. The account contains numerous duplicated items and other errors. Larksway has carried out a full reconciliation internally with its client account and has sent this to Firm A. It has also invited Firm A to meet to discuss the matter, but that invitation has not been taken up. Larksway intended at one stage to engage a forensic accountant to go through the account, but did not go ahead with this as it was not satisfied with the accountant it had identified. The winding-up proceedings issued by Firm A against Larksway are an attempt to put a stop to action by Larksway against it in respect of its involvement in theft and fraud by an individual against Larksway. In respect of that matter, Larksway has issued an account to Firm A in respect of damages in the sum of £826,434. As Firm A has not responded in respect of that account, Larksway has issued a statutory demand for that sum to Firm A. Larksway has provided the Authority with copies of emails from various customers whom it has approached to discuss its concerns about the conduct of Firm A, responding to those concerns.*
4. *Larksway could have paid the FOS Award if it had not been for the freezing of certain of its bank accounts in the winding-up proceedings brought by Firm A. It has commenced proceedings to force Firm A to pay the FOS Award out of the damages it owes to Larksway. It has provided the Authority with a copy of its claim document in those proceedings.*
5. *Firm C's invoices are not payable by Larksway. They are excessive (being more than twice the amount of their initial estimate for their professional services); also, the agreement between Firm C and Larksway is void in its entirety due to a breach of confidentiality by Firm C in providing information to the Authority about*

the unpaid invoices. By reason of that breach, Firm C is liable to pay substantial damages to Larksway.

6. In respect of the sum alleged to be owed by Larksway to Firm A, Larksway has not provided the Authority with a copy, or any details, of the reconciliation which it says it has provided to Firm A. Over a period in excess of six months and despite repeated request and clear warnings about the seriousness of its position Larksway has been unable or unwilling to provide any information to the Authority that explains why it considers the sums claimed by Firm A in unpaid premiums are not due. Larksway also relies on its counterclaim against Firm A and asks the Authority to accept that this will succeed. The Authority is unable to draw such a conclusion from any of the information provided by Larksway about its claim against Firm A, including the emails from Larksway's customers, referred to at paragraph 3 above. The Authority notes that the alleged liability in damages by Firm A to Larksway has not been admitted by Firm A and is at best a contingent asset, being a claim rather than a debt. Likewise, Larksway has not provided any reason for the Authority to conclude that it can successfully resist the demands by Firm C for payment of its invoices, or recover damages from Firm C in relation to the breach of contract which Larksway considers it has committed.
7. While noting Larksway's position that the FOS Award cannot be paid from any funds which remain frozen in the winding-up proceedings (save, presumably, with the leave of the Court), the Authority continues to require the information it has asked for about Larksway's financial resources in order to understand whether or not it can meet that liability from other funds, if necessary. Given the uncertainty of Larksway's claim against Firm A, the Authority cannot be satisfied that the payment of the FOS Award can be achieved by means of the proceedings by Larksway referred to in paragraph 4 above.
8. More generally, as Larksway has failed to respond adequately to the requests and requirements by the Authority for information about its financial resources (including creditors and liabilities), the Authority retains its serious concerns as to whether Larksway is able to meet its liabilities as they fall due, and otherwise satisfying the appropriate resources Threshold Condition.

Larksway's banking arrangements

9. *Larksway has no bank accounts over and above those of which the Authority is now aware, from its own investigations.*

10. This assurance, given by Larksway during the course of its oral representations, is helpful but is a very small part of the information required by the Authority in order to be satisfied as to whether Larksway is meeting the appropriate resources Threshold Condition.

The Authority's treatment of Larksway

11. *Larksway has provided the Authority with important information about the involvement of Firm A in the matters mentioned in paragraph 3 above, which demonstrates that consumers are at risk as well as the fact that Larksway has been the victim of fraud and theft. The Authority appears to be uninterested in pursuing that matter, and is instead focusing its attentions on Larksway. Larksway appreciates that the Authority is not able to tell Larksway everything it is doing, and that the issue of its allegations of involvement in fraud and theft against Firm A is for Larksway to resolve itself. However, Larksway's sole director is already in a stressful position, attempting to run his business and dealing with disputes and other matters, without additionally dealing with the information requests and notices. It realises that it ought to cooperate with the Authority in relation to the provision of information; its failure to do so is perhaps "bloody-minded", due to frustration at the Authority's apparent lack of interest in the information it has provided about Firm A.*
12. *The Authority took its decision to issue the First Supervisory Notice without the full facts before it.*
13. The Authority has confirmed to Larksway that the information provided by Larksway relating to its concerns about Firm A has been passed on to the relevant supervisory area for consideration of what, if any, regulatory response may be required. However, as Larksway has acknowledged, for reasons of confidentiality the Authority is unable to discuss with it action taken (or not taken) in relation to other firms it regulates, and it is not the Authority's function to intervene to resolve commercial disputes between firms. In any event, Larksway's concerns in this regard provide no excuse for its failure to cooperate with the Authority. The Authority appreciates that the information requests and requirements may have become stressful to deal with, but the Authority has made very clear to Larksway its reasons for seeking the information from Larksway, including its concerns about the potential risk to consumers, and Larksway has had ample opportunity to respond. The Authority notes that, even in its oral representations to the Authority's Regulatory Decisions Committee,

while acknowledging that it ought to respond properly to the information requests and requirements, Larksway did not indicate any intention to do so.

14. When serving the First Supervisory Notice on Larksway, the Authority provided Larksway with copies of all the information which the Regulatory Decisions Committee took into account when reaching that decision. Through its representations, Larksway had the opportunity to provide any information that it felt the Authority had been missing during its consideration. In the Authority's opinion, Larksway's representations largely repeated points which it had previously made, and which were taken into account in reaching the decision to issue the First Supervisory Notice. No new information of any significance (other than that mentioned at paragraph 10 above) was provided during Larksway's representations. Notably, Larksway did not provide the Authority with any other significant information about its financial resources, any reasonable explanation for its failure to provide the information, any clarification in relation to its handling of payments received from customers, or any assurance that it intended to cooperate in future.