

The Authority issued a First Supervisory Notice to Promethean on 11 April 2023 and a Second Supervisory Notice to Promethean on 1 June 2023. The First and Second Supervisory Notices stated that the Authority had decided to impose certain requirements on the Part 4A permission of Promethean pursuant to section 55L of the Act. On 15 June 2023, Promethean referred the Second Supervisory Notice to the Upper Tribunal. The Upper Tribunal released a written decision in respect of this reference on 5 August 2024. This decision can be found at the Upper Tribunal’s website at: <https://www.gov.uk/tax-and-chancery-tribunal-decisions/promethean-finance-limited-v-the-financial-conduct-authority-2024-ukut-00229-tcc>.

The Upper Tribunal found that the decision reached by the Authority to issue the Second Supervisory Notice to Promethean was within the range of reasonable regulatory judgments that the Authority could make. The Upper Tribunal therefore dismissed the reference.

SECOND SUPERVISORY NOTICE

To: Promethean Finance Limited

Reference Number: 662425

Address: International House
61 Mosley Street
Manchester
Greater Manchester
M2 3HZ
UNITED KINGDOM

Date: **1 JUNE 2023**

1 ACTION

1.1 For the reasons given in this Second Supervisory Notice, the Financial Conduct Authority (“the Authority”) has decided not to rescind the requirements set out at paragraph 1.2 below on Promethean Finance Limited (“Promethean” or “the Firm”) and notified to it in the First Supervisory Notice (“the FSN”) dated 11 April 2023. On 18 May 2023, Representations were received by the Authority in relation to the FSN (“the Representations”). The Authority has considered the Representations and concluded that the Requirements set out at paragraph 1.2 below remain proportionate and appropriate. A summary of the firm’s written representations and the Authority’s response is set out at Annex B.

1.2 Pursuant to section 55L(3)(a) of the Financial Services and Markets Act 2000 ("the Act"), the Authority has decided to impose the following requirements with immediate effect:

- 1) **By 4.30PM on 12 April 2023** the Firm must remove all "Non-Genuine Trading Names" registered on the Authority's FS Register.
- 2) The Firm must not register and/or use any Trading Names without the prior written consent of the Authority.
- 3) **Within 10 days** of the Requirements coming into force, the Firm must provide, in a form to be agreed with the Authority, data confirming the number of customers that have been referred to the Firm by its trading names registered with the Authority (including all previous registrations of trading names no longer used) from March 2022 to the date of this Second Supervisory Notice.
- 4) **Within 14 days** of the Requirements coming into force, the Firm must conduct a review of all the Firm's financial promotions, communications and those of its Appointed Representatives.
- 5) The Firm must make amendments to any financial promotions and/or communications identified at (4) above to ensure they comply with all relevant FCA Handbook Rules **within 5 days** of their review.
- 6) The Firm must provide a written report to the FCA detailing the number of financial promotions and communications withdrawn/amended in accordance with (4) and (5) **within 7 days** and provide the Authority with a list of breaches identified and amendments, or, if no such breaches are identified, provide written confirmation to the Authority that the Firm's financial promotions (and those of its ARs) comply with the relevant requirements.
- 7) The Firm must conduct a review of its (i) systems and controls, and (ii) policies and procedures in relation to all financial promotion activities for which it is responsible, including the activities of all its Appointed Representatives, and provide a written report of the outcome of the review to the Authority within **3 weeks** of the Requirements coming into force.

Notification

- 8) The Firm must secure all books and records and preserve all information and systems in relation to all activities carried on by it, including but not limited to regulated activities, and must retain these in a form and at a location within the UK, to be notified to the Authority in writing by no later than on **within 7 days** of the Requirements coming into force, such that they can be provided to the Authority, or to a person named by the Authority, promptly on its request.
- 9) By close of business on **within 2 days** of the Requirements coming into force, the Firm must publish in a prominent place on its website (<https://www.prometheanfinance.co.uk/>) in a form to be agreed in advance with the Authority, a notice setting out the terms and effects of these Requirements.

- 10) The Firm must as soon as possible, and by no later than close of business **within 14 days** of the Requirements coming into force, notify in writing all customers who have been referred to the Firm through its Non-Genuine Trading Names since March 2022 of the imposition of the terms and effects of the Requirements. This must be in a form to be agreed in advance with the Authority.
- 11) Once the notifications referred to in sub-paragraph (10) have been made, the Firm must provide to the Authority **within 24 hours**:
 - i. copies of the template notifications sent to all recipients referred to in subparagraph (10);
 - ii. a list of all parties to whom notifications have been sent pursuant to subparagraph (10); and
 - iii. confirmation that, to the best of its knowledge, the Firm has sent notifications pursuant to sub-paragraph (10) to all relevant parties.
- 1.3 These Requirements shall take immediate effect and remain in force unless and until varied or cancelled by the Authority (either on the application of the Firm or of the Authority's own volition).
- 1.4 Following the Firm's non-compliance with Requirement (1) as above, on 18 April 2023, the Decision Maker authorised the Authority to end-date the "Non-Genuine Trading Names" on the Authority's FS Register effective from 18 April 2023.

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/or 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 serious concerns relating to Promethean. The Firm appears not to be a fit and proper person and appears to be failing to satisfy, or likely to fail to satisfy, the Suitability Threshold Condition. Specifically:
 - 1) The Firm appears to be placing its own commercial interests over its obligation to treat customers fairly by entering into agreements with Insolvency Practitioners ("IPs") to register their websites as trading names on the Firm's FCA's Register ("FS Register"), in order to circumvent Google's updated advertising policy. This may result in consumers being misled that they are dealing with a firm regulated by the Authority, when in fact they are dealing with an IP, and to wrongly believe that they have same protections as if they were dealing with an authorised firm.
 - 2) The Authority has historically engaged with the Firm regarding financial promotion rule breaches in respect of its website

www.prometheanfinance.co.uk and, although the issues were rectified at the time, there appear to have been further financial promotion breaches in respect of the Firm's Appointed Representatives ("ARs").

- 3) The Authority identified concerns around the Firm's financial promotions connected to its ARs in November 2022 and asked the Firm to undertake a review of its relevant systems and controls. The Firm has failed to identify and mitigate these issues effectively or at all, which is particularly concerning in light of the engagement between the Authority and the Firm. From January 2023 through to March 2023, the Authority undertook further reviews of some of the Firm's AR's financial promotions and communications for which the Firm is responsible as a Principal. Further apparent financial promotion rule breaches were identified.
 - 4) The Firm was sent two detailed feedback letters with accompanying VREQs on 7 November 2022 (the "7 November Letter") and 15 December 2022 (the "15 December Letter"). The Firm's conduct following receipt of the two letters raises significant issues over the Firm's suitability, namely:
 - i) Between 7 November 2022 and 15 December 2022, the Firm registered an additional 15 trading names, which Supervision considers to be further website names for IPs, notwithstanding that the Authority had set out its concerns around this practice.
 - ii) The Firm agreed to remove two of the trading names which contained the domain ".org" but then later added a further 3 trading names with the same domain reference. The use of ".org" within a trading name risks being misleading without very clear disclosures stating that the firm is neither a charity nor not-for-profit organisation.
 - iii) The Authority requested that the Firm review its systems and controls and policies and procedures in relation to its financial promotions, in light of the scale and severity of the concerns identified. In response to this request, the Firm did not consider this necessary stating that it had adequate systems and controls in place already. As above, the Authority subsequently conducted a review of some of the Firm's AR's financial promotions and communications from January through to March 2023, and identified a number of apparent failings, which the Firm has failed to identify or remedy.
 - iv) Up until 21 March 2023, the Firm has proceeded to register an additional 19 Non-Genuine Trading Names, which the Authority understands to be further website domains operated by IPs, following receipt of the FCA's 15 December Letter.
- 2.3 The Authority considers it necessary to exercise its power to impose the Requirements in order to advance the Authority's operational objective of securing an appropriate degree of protection for consumers.

- 2.4 The Authority considers that imposition of the Requirements should take immediate effect because the matters set out in this Second Supervisory Notice demonstrate that the Firm is putting consumers at risk by registering Non-Genuine Trading Names (as defined below). When engaging with one of the Non-Genuine Trading Names, consumers may believe they are dealing with an entity regulated by the Authority and benefit from the protections afforded to them, when they are in fact not.

3 DEFINITIONS

- 3.1 The definitions below are used in this Second Supervisory Notice:

“the Act” means the Financial Services and Markets Act 2000;

“Appointed Representative” is as defined in the Handbook;

“the Authority” means the Financial Conduct Authority;

“the Firm” means Promethean Finance Limited;

“the First VREQ” means the requirements proposed by the Authority to be imposed on the Firm’s permission, and which accompanied the Authority’s feedback letter dated 7 November 2022;

“the FS Register” means the Authority’s Financial Services Register;

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

“IP” means Insolvency Practitioner;

“Non-Genuine Trading Names” are trading names listed on the FS Register which are not: (a) owned and/or (b) controlled; and/or (c) used in the carrying out of debt counselling by the Firm;

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

“The Second VREQ” means the requirements proposed by the Authority to be imposed on the Firm’s permission, and which accompanied the Authority’s feedback letter dated 15 December 2022; and

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

4 FACTS AND MATTERS

Background

- 4.1 The Firm was incorporated under the name of Connected Service Solutions Limited on 19 March 2013. On 1 July 2014, the Firm’s name was changed to Promethean Finance Limited and its registered address is International House, 61 Mosley Street, Manchester, England, M2 3HZ.

- 4.2 The Firm has been authorised by the Authority to perform regulated activities since 25 July 2016. It has permissions relating to regulated consumer credit activities which include credit broking, debt adjusting and debt counselling (both limited to exclude the administration of debt management plans) and agreeing to carry on a regulated activity.
- 4.3 The Authority understands that the Firm has entered into commercial arrangements with certain IPs whereby the IP can use a Non-Genuine Trading Name so that it can advertise to consumers for the purposes of debt advice. The IPs refer customers to the Firm, in certain circumstances, where the IPs are unable to advise. The customer will typically first engage with the IP, having identified the IP's website using Google searches or via Google adverts. Under the arrangement between the Firm and the IP, the IP's website is registered as a trading name of Promethean on the FS Register. The Authority understands that the IP's website is controlled by the IP.
- 4.4 The Firm has indicated to the Authority that it has a commercial relationship with approximately 10 IPs, some of whom operate multiple websites. The Firm is also a Principal to 7 ARs.
- 4.5 As at 21 March 2023, the Firm had 32 active trading names registered on the FS Register, of which 30 are Non-Genuine Trading Names, and which instead are the active website names of independent third parties (specifically IPs). The Firm appears to have two genuine trading names. In addition to the Non-Genuine Trading Names and the Firm's two trading names, 21 other trading names were registered by the Firm between March 2022 and 21 March 2023 which are no longer active. In some instances, the Non-Genuine Trading Names have been placed on the FS register for 24 hours, before then being removed.
- 4.6 The Authority has previously informed the Firm about concerns with its compliance with applicable financial promotion rules. On 19 October 2020, the Authority wrote to the Firm to explain that it had identified two issues with its website, www.prometheanfinance.co.uk. The Firm resolved these issues at the time. However, the Authority became aware of further potential financial promotions rules breaches committed by the Firm in October 2022.

5 Failings and risks identified

- 5.1 On 7 November 2022, the Authority wrote to the Firm setting out the concerns it had with Promethean's ability to comply with the Authority's financial promotion rules. The letter contained various examples of apparent breaches and noted that the Authority had previously identified similar concerns in October 2020.
- 5.2 The 7 November Letter set out examples of the Firm's financial promotions which appeared not to be clear, fair and not misleading. This included:
- 1) The Firm using trading names that had links to charity organisations and the use of the ".org" domain name. The Authority asked the Firm to set out how it had considered its obligations under CONC 3.9.7R(2) as the Firm is neither a charity nor not-for-profit organisation.
 - 2) The Firm appeared to have used promotional language in the headline of its adverts as well as in the descriptors, such as: "government debt write off,"

"government debt help" and "government approved service", "gov legislated solution."

- 3) Two websites, operated under trading names of Promethean, were stated, falsely, as being operated by ARs of Promethean.
 - 4) The Firm did not appear to be effectively overseeing its ARs' financial promotions, which appeared to breach the following rules and did not follow applicable guidance including:
 - i. lack of prominence when signposting to free impartial advice;
 - ii. making unsubstantiated claims of *"up to 81% write off of unsecured debt with government legislation"*;
 - iii. stating advantages of individual voluntary arrangements as *"helps you avoid bankruptcy"* and *"no upfront fees"*.
- 5.3 As a result of the Authority's concerns, it asked the Firm to sign the First VREQ, which included, amongst other items, that the Firm must conduct a review of its systems and controls and its policies and procedures in relation to its own financial promotions (and those of its ARs).
- 5.4 In response, the Firm stated, amongst other things, that it disagreed with the Authority's view on the inappropriate use of ".org" domain names (and on its interpretation of the regulatory requirements) but had, in any event, applied to remove the two domain names from the FS Register and that it planned to commence work to ensure another Non-Genuine Trading Name complied "within guidelines". The Firm also noted that it had amended disclaimers on three websites and it had also "brought up to standard" the content of another trading name relating to an AR's website.
- 5.5 The Firm declined to enter into the First VREQ but did indicate that it may be willing to undertake to the Authority that it would rectify the issues identified, subject to further discussions with the Authority on the terms of any proposed changes.
- 5.6 On 30 November 2022, the Authority sent further correspondence to the Firm, requesting, amongst other things, a detailed understanding of how the Firm would address all the proposed requirements set out in the 7 November Letter, clarification on the Firm's use of the Non-Genuine Trading Names and details of the contractual arrangements in place with the IPs operating them.
- 5.7 The Authority reminded the Firm of its obligations to register only genuine trading names of the Firm and noted that the Firm must not use the FS Register to record the names of independent third parties as being trading names of the Firm.
- 5.8 On 7 December 2022, the Firm provided a further written response to the Authority, explaining that it had either addressed the risks identified by the Authority or otherwise considered further changes envisaged via the First VREQ to be unnecessary. Specifically, the Firm explained that it had removed the *"alleged offending ads being placed on Google"*, it had adequate systems and controls in place and *"all the sites apart from some AR's (where only minor points were made*

about disclaimers and such were made) are all dual regulated". The Firm concluded "consumer detriment has been averted by the swift actions of this firm within the marketplace."

- 5.9 In relation to the use of Non-Genuine Trading Names, the Firm informed the Authority that it was *"a facilitation service"* which was required to enable IPs to *"maintain"* their *"marketing services"* to consumers. The Firm also explained that it reflected commercial arrangements between it and those third parties.
- 5.10 The Firm has not, insofar as the Authority is aware, conducted a review of its financial promotions or those of its ARs as at the date of this Notice, or otherwise conducted a review of its policies and procedures governing financial promotions, further to the Authority's request on 7 November 2022. Further, the changes made by the Firm to the one AR website which the Authority had specifically identified as being of concern, did not address all of the issues of concern with this website, nor seemingly extend to a more holistic assessment of its financial promotions or those of its ARs.
- 5.11 On 15 December 2022, the Authority sent further correspondence to the Firm, which was accompanied by the Second VREQ. The Authority reiterated that where a registered trading name is used in a communication with a customer, the Firm needed to ensure that its communication was clear, fair and not misleading. In addition, the Authority raised serious concerns as to the Firm's apparent justification for registering Non-Genuine Trading Names, which appeared to be aimed at circumventing Google's advertising policy. Finally, the Authority noted that the Firm had registered a further 15 trading names since the 7 November Letter, despite the Firm knowing that the Authority had serious concerns regarding this practice.
- 5.12 The Authority requested the Firm sign the second VREQ which required the Firm, amongst other things, to remove all Non-Genuine Trading Names and provide data confirming the number of referrals to the Firm generated from all the registered Trading Names.
- 5.13 On 20 December 2022, the Firm declined to enter into the Second VREQ. The Firm stated that the Non-Genuine Trading Names were *"exempt from authorisation..."* and that the arrangement was intended to enable those operating the trading names to benefit from this exemption and be able to send financial promotions. The Firm reiterated that this was to facilitate commercial arrangements between it and those IPs and was being done owing to policy changes made by Google. The Firm also explained that there *"should be"* no *"statement"* on these websites connecting the third-party to the Firm (or, as a consequence of the Firm's authorisation, to the Authority), and that consequently there would be no risk of consumer harm. The Firm also noted, however, that it might be sensible for those operating the NonGenuine Trading Names to include some form of *"disclaimer"* on their website to refer to the fact that the customer may be referred to Promethean (which was *"FCA regulated"*) should they wish.
- 5.14 The Authority conducted a further review of certain websites of the Non-Genuine Trading Names and identified examples on certain websites that stated they were *"a trading name of Promethean Finance Limited"* with a reference to the Firm's FS Reference Number. One website stated that *"all enquiries received through [the website] are exclusively handled by Promethean Finance Limited."* These statements create a risk that consumers may be misled as to the regulatory status of the entity that they are engaging with and of the role performed by the Firm at

that point in the customer journey. The Authority has also found that certain Non-Genuine Trading Names appear within the top Google search results for “free debt advice” and “debt management”. The Authority considers that these adverts increase the prospects of customers being drawn to those websites, which can then enable customers to proceed directly to the website of the relevant Non-Genuine Trading Name. The fact that those Non-Genuine Trading Names also appear on the FS Register as a trading name of Promethean raises very serious risks that customers would incorrectly assume that they are receiving the same protections when dealing with one of the IPs as would be the case were they dealing directly with the Firm.

5.15 Further reviews of the Firm’s financial promotions and communications carried out by the Authority in January 2023 and subsequently March 2023, identified similar apparent breaches of the financial promotions rules and guidance, by the Firm’s ARs. For example, this review identified communications which:

- i. do not prominently signpost free impartial advice (a breach of CONC 8.2.4R) and outdated referral to the Money Advice Service;
- ii. make unsubstantiated claims of “*up to 81% write off of unsecured debt with government legislation*” and “*write off up to 75% of un-secured debts*” (a breach of CONC 3.3.10 G (6));
- iii. state advantages of individual voluntary arrangements as having “*no upfront fees*” (a breach of CONC 3.3.1R(1));
- iv. do not provide a balance when promoting benefits of individual voluntary arrangements and the use of trust deeds;
- v. falsely state the AR as a trading name of the Firm, as opposed to being an AR of the Firm; and
- vi. falsely state the firm issuing the promotion is an AR, when it is in fact a trading name of Promethean.

5.16 The Authority published guidance on the use of trading names on 21 October 2022. The guidance was updated on 10 February 2023 and states: “*you should only add genuine trading names that your firm uses.*” The guidance also states that, “*Adding your trading names to the FS Register helps consumers check they’re dealing with an authorised firm, however having multiple trading names can be difficult for consumers to follow. Consider whether having large numbers of trading names could cause consumer confusion and affect your ability to communicate with customers in clear, fair and not misleading way.*” As at 21 March 2023 the Firm has 30 Non-Genuine Trading Names on the FS Register.

6 CONCLUSION

6.1 The regulatory provisions relevant to this Second Supervisory Notice are set out in the Annex.

Analysis of failings and risks

The Threshold Conditions

- 6.2 The Authority has serious concerns that Promethean is failing to satisfy, or likely to fail to satisfy, one more of the Threshold Conditions. The Threshold Conditions are minimum requirements that firms need to meet in order to be authorised and to continue carrying on regulated activities. The Authority considers that Promethean is failing, or is likely to fail, to satisfy the Suitability Threshold Condition for the following reasons.
- 6.3 Promethean appears not to be a fit and proper person in relation to the regulated activities which it carries on or seeks to carry on. Specifically:
- 1) The Firm was informed of financial promotion breaches in October 2020 and was informed of further apparent breaches again in November 2022. The Authority requested that the Firm undertake a review of its systems and controls relating to its financial promotions (and those of its ARs) to better understand whether similar issues were affecting other financial promotions, and the Authority understands that no such review has taken place. Since making this request, another review by the Authority has identified further serious concerns in the financial promotions of the Firm's ARs.
 - 2) The Firm has continued to register Non-Genuine Trading Names that it does not use or operate. As at 21 March 2023, the Firm had 30 Non-Genuine Trading Names which are operated by IPs and have been added to the FS Register. The Authority is concerned that it is doing so, notwithstanding being aware of the Authority's concerns about this practice, in order for the Firm to maintain commercial arrangements with the IPs who may not have otherwise been able to advertise debt advice in line with Google's updated advertising policy.
 - 3) The Authority raised concerns with the Firm on 7 November 2022 regarding some of its Non-Genuine Trading Names containing misleading terms in the website address, such as ".org." While the Firm disagreed that the Non-Genuine Trading Names were misleading, it informed the Authority that it planned to remove two of these domain names, only then to subsequently add a further three trading names with this same domain name, despite of being aware of the Authority's concerns.
 - 4) The Firm informed the Authority on 14 November 2022 that it had adopted the practice of registering IPs websites as Non-Genuine Trading Names to circumvent Google's advertising policy. However, the Firm has been operating this practice since March 2022, seven months before Google announced its upcoming policy (October 2022) and nine months before it was enforced (December 2022). The Firm appears to have acted to register these Non-Genuine Trading Names ahead of Google making public its intentions to change its policy. The Authority is therefore concerned that the Firm has not accurately presented the actual justification for adopting this practice.
 - 5) The Authority has made its expectations in relation to trading names very clear through published guidance. It explains that the FS Register displays a firm's name so that anyone is able to check a firm's details. The Authority's guidance states that firms should only add genuine trading names, as the inappropriate registration of trading names could mislead consumers with the

risk of causing harm. Despite the Firm being aware of the guidance dated October 2022 and the Authority's concerns, the Firm registered 15 Non-Genuine Trading Names between the Authority issuing the 7 November Letter and 15 December Letter and a subsequent 19 Non-Genuine Trading Names up to 21 March 2023.

Principles for Businesses

- 6.4 PRIN 2.1.1 sets out the general Principles with which all firms must comply. Principle 7 of the Principles for Businesses states that a firm must pay due regard to the information needs of its clients and communicate information to them in a way that is clear, fair and not misleading. The Authority is concerned that the Firm's practice of registering multiple trading names, particularly where the vast majority are not genuine trading names used by the Firm but are instead the names of third-party IPs which are unregulated and have only a commercial arrangement with the Firm to refer business, creates serious risk for consumers. Specifically, the Authority considers that the Firm appears to be failing to pay due regard to its customers (including prospective customers) information needs, particularly in relation to the regulated status of the counterparty that the consumer is engaging with. Further, the Authority considers that, by registering the trading names in this way, the Firm is not communicating information to those consumers in a way that is clear, fair and not misleading. The Authority therefore has serious concerns that the Firm is in breach of Principle 7.
- 6.5 As a consequence of this the Authority is also concerned that the Firm is failing to pay due regard to its customers' interests and treat them fairly, as required under Principle 6. When engaging with one of the Non-Genuine Trading Names, consumers may believe they are dealing with an entity regulated by the Authority and benefit from the protections afforded to them, when they are in fact not. The Authority is concerned that this practice is being used to make the promoted activities a potentially more attractive proposition than they may otherwise have been.
- 6.6 General principles GEN 4.5.3R also require that *"a firm must not indicate or imply that it is authorised by the FCA in respect of business for which it is not so authorised."* The underlying guidance states that *"it is likely to be misleading for a firm that is not authorised by the FCA to state or imply that it is so authorised. It is also likely to be misleading for a firm to state or imply that a client will have recourse to the Financial Ombudsman Service or the FSCS where this is not the case."*
- 6.7 The Authority has concluded, in light of the matters set out above, that it is necessary to exercise its own-initiative power under section 55L(3)(a) of the Act by imposing the Requirements to stop the Firm registering Non-Genuine Trading Names in order to provide an appropriate degree of protection for consumers.
- 6.8 The Authority considers that the Requirements are 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

- 6.9 It is necessary to impose the Requirements on an urgent basis to take immediate effect given the seriousness of the risks and the need to protect consumers.

6.10 The Authority considers that it is necessary for the Requirements to remain in place indefinitely.

7 PROCEDURAL MATTERS

Decision-maker

7.1 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 2.3.7G and DEPP 4.1.7G.

7.2 This Second Supervisory Notice is given under section 55Y(4) and in accordance with section 55Y(5) of the Act.

7.3 The following statutory rights are important.

The Tribunal

7.4 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.

7.5 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 Second 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).

7.6 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>

7.7 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 Dee O'Sullivan at Dee.OSullivan@fca.org.uk and the SPC Decision Making Secretariat (SPCDecisionMakingSecretariat@fca.org.uk).

Confidentiality and publicity

7.8 The Firm should note that this Second Supervisory Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining legal advice on its contents).

7.9 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.

Authority contacts

7.10 For more information concerning this matter generally, contact Dee O’Sullivan at Dee.OSullivan@fca.org.uk.

7.11 Any questions regarding this matter generally or the executive procedures decision making process should be directed to the SPC Decision Making Secretariat (SPCDecisionMakingSecretariat@fca.org.uk).

Decision made by an FCA Head of Department under Executive Procedures

Annex A

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 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

6. The section of the Handbook entitled “Threshold Conditions” (COND) gives guidance on threshold conditions. 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.
7. The section of the Handbook governing Consumer Credit: Conduct of Business sourcebook (“CONC”) contains rules governing financial promotions relating to consumer credit.

8. CONC 3.3.1R states that a firm must ensure that a communication or a financial promotion is clear, fair and not misleading. This applies to communications that relate to debt counselling and/or debt adjusting activity (CONC 3.1.4R). This rule applies in relation to customers, including prospective customers.
9. CONC 3.9.3R applies to financial promotions and communications relating to debt counselling and debt adjusting and sets out the applicable rules in relation to what a firm must ensure that a financial promotion or a communication with a customer contains.
10. CONC 3.9.7R states that a firm must not (1) unless it is a not-for-profit debt advice body or a person who will provide such services, operate a look alike website designed to attract customers seeking free, charitable, not-for-profit or governmental or local governmental debt advice; or (2) seek to use internet search tools or search engines so as to mislead a customer into visiting its website when the customer is seeking free, charitable, not-for-profit or governmental or local governmental debt advice.
11. CONC 3.3.10 G provides examples of practices that are likely to contravene the clear, fair and not misleading rule in CONC 3.3.1R.

The Enforcement Guide

12. The Authority's approach in relation to its own-initiative powers is set out in Chapter 8 of the Enforcement Guide (EG), certain provisions of which are summarised below.
13. 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)).
14. 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)).
15. EG 8.2.3 states that in the course of its the Authority 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)).

16. 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.
17. 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.
18. 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.
19. 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:
 - i. 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 FCA's exercise of own-initiative powers will be appropriate, to protect the consumers' interests.
 - ii. 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.
 - iii. 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.
20. 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 B

THE FIRM'S WRITTEN REPRESENTATIONS AND THE AUTHORITY'S RESPONSE

1. Promethean's Representations (*in italics*) and the Authority's conclusions in respect of them are set out below.

Requirement 1

2. *Promethean submits that this requirement is not necessary or proportionate based on the evidence, the implication being that the trading names should be put back on the Financial Services ("FS") Register as set below.*
3. Supervision has considered Promethean's submission below but does not consider that this requirement should be amended or removed.

Consumer Detriment

4. *Promethean states that the Authority has failed to prove on the balance of probabilities where any consumer detriment could or has occurred.*
5. To issue a First Supervisory Notice ("FSN") to a firm, the Authority does not need to prove that there has been consumer detriment. There is a risk of consumer harm from Promethean registering non-genuine trading names as set out in paragraph 2.2(2) and 2.4 of the FSN.

Updated Trading Names Guidance

6. *Promethean states that it perceives that the FSN was predetermined as the Authority did not make the firm aware of or speak to it about the update to the Authority's trading names guidance in February 2023. The Firm queries whether the Authority issued an FSN in April 2023, having raised concerns about the firm's trading names in November 2022 to, "shore up its position as to the ambiguity the firm had stated in previous correspondence, not that the firm agrees that the ambiguity has been quashed at all by the updated guidance."*
7. The Authority did not "*predetermine*" the FSN, as asserted by Promethean. There was no material or substantial change to the trading names guidance, which was updated on 10 February 2023, such that the requirements on Promethean were different or had changed. Guidance on the Authority's website is periodically updated and it is for the regulated firms to make sure they are complying with any relevant guidance.
8. The trading names added by the firm to its FS Register are operated by third party insolvency practitioners ("IPs") that Promethean has commercial arrangements with. They are not genuine trading names of Promethean and therefore Promethean are not complying with the guidance. Supervision made Promethean aware of the trading names guidance in previous correspondence exchanged with the firm.

Delay

9. *Promethean argues that the Authority has responded to certain issues and questions raised by the firm in previous correspondence, that should have been dealt with at the time.*
10. Supervision has engaged with Promethean since November 2022 about the websites registered as the firm's trading names. Supervision set out its concerns in the two feedback letters that accompanied two VREQs on 7 November and 15 December 2022. Promethean declined to sign the VREQs and disagreed with many of Supervision's concerns. Notwithstanding Supervision raising concerns in those letters about Promethean adding non-genuine trading names to the FS Register, the firm continued by adding further non genuine trading names up until 14 March 2023. Supervision also set out its concerns about the firm's Appointed Representatives' ("AR") financial promotions. Promethean took some steps to address these concerns but failed to identify and mitigate the issues effectively and comprehensively. Due to Promethean's failure to address Supervision's concerns in full, and Promethean's refusal to voluntarily address the issues, Supervision considered it necessary and proportionate to impose the requirements on an own initiative basis.

The ultimate owners and operators of the trading names

11. *Promethean asserts that the ultimate owners and operators of the websites registered on Promethean's FS Register as trading names are authorised by a recognised professional body and that they have the relevant knowledge and experience in their field. There have been no complaints upheld against the owners and operators in over 12 months as at November 2022.*
12. The ultimate owners and operators of the trading names are independent IPs with commercial arrangements with Promethean, and the websites they operate are not therefore genuine trading names of Promethean. Promethean is therefore not using the FS Register in accordance with its guidance. The registration of these websites as trading names could mislead consumers to believe that when they visit the website, they are dealing with entities regulated by the Authority such that they will have the same regulatory protections as if dealing with a regulated entity.

Google's Advertising Policy - 'Financial Services and Products'

13. *Promethean submits that the Authority took a leading role in influencing online search engines and social media firms and, following its public intervention, Google changed its policy to only permit its authorised firms or their promotions to advertise financial promotions with them. Supervision understands that Promethean's reference to "the policy" is to Google's Advertising Financial Services and Products Policy and the changes made to the policy by Google specifically relating to debt service advertising that were effective from 6 December 2022.*
14. *Promethean also argues that if the IPs were to cease trading because of inability to advertise sufficiently to potential new customers, this would impact the industry and force the firm to work with IPs it may not have chosen otherwise.*
15. The Authority understands from the firm's letter of 20 December 2022 that the websites are placed on the FS register as trading names to advance Promethean's commercial interests with the IPs and to circumvent Google's Financial Services and Products Policy. Supervision does not accept that this is a valid reason for Promethean to put non-genuine trading names on the FS Register.

16. Promethean appears to have concerns with the impact of Google's Financial Services and Products Policy. This does not detract from the firm's obligation to comply with the applicable regulatory requirements. As above, Supervision's position is that Promethean should not be adding non-genuine trading names to its FS register, and yet has continued to do so despite being notified of this by Supervision.

The FS Register and misleading consumers

17. *Promethean refers to the disclaimer on its FS Register listing and considers that the disclaimer deals with Supervision's concern that consumers may be misled to believe that, when engaging with an IP conducting business via a non-genuine trading name website, they are dealing with a regulated firm and that they may mistakenly believe that they will be afforded certain consumer protections which are associated with firms that are regulated by the Authority, such as access to the Financial Ombudsman Service.*

18. Supervision does not consider that the disclaimer is sufficient to allay its concerns regarding consumers being misled by the misuse of trading names. On the FS Register, in the section titled "How are customers protected?" there is another disclaimer that states, in summary, that the Financial Ombudsman Service and the Financial Compensation Scheme ("FSCS") may be able to help if something goes wrong when dealing with this firm. Both disclaimers support Supervision's concern that a customer may believe that they could be afforded certain protections when engaging with an IP through a website registered as a trading name on Promethean's FS Register page.

Consumer complaints

19. *Promethean asserted in previous correspondence that no consumer detriment had occurred as no complaints have been upheld against the firm or any of its ARs at the Financial Ombudsman Service ("FOS") at the time. Supervision responded that it does not consider minimal volume of complaints as reasonable grounds to assume that no consumer detriment has occurred. Consumers may not complain because they are unaware that the advice given was non-compliant or are unsure which firm they had been dealing with, the debt advice firm or the IP.*

20. *In its Representations, Promethean argues that the advice of the firm or the IPs is irrelevant as no judgement is being made about whether the firm's or IPs' advice is compliant or not, and seeks for this point to be clarified. The firm states that customers are aware of whether the advice given is compliant referring to the current insolvency practitioners sanctions list and asserts that if a customer was genuinely dissatisfied with a service they could easily complain to the firm.*

21. Supervision understands that Promethean made its argument to illustrate why it says that the websites registered as non-genuine trading names should remain on the FS Register because, it asserts, there has been no consumer detriment. Supervision does not accept that Promethean's arguments are a basis for registering non-genuine trading names and not adhering to the Authority's trading names guidance.

22. Supervision also does not accept that a list of all current sanctions against insolvency practitioners as a result of professional misconduct would indicate

whether advice provided to a customer was sound. In any event, this does not address the fundamental issue that there is a risk of consumer harm by registering the websites as non-genuine trading names as consumers may be misled into believing that they are dealing with entities regulated by the Authority when they are in fact not.

Consumer searches for the websites registered as trading names

23. *Promethean submits that if a trading name cannot be found on a "layman's search of the internet" then there was no risk of harm. In its Representations, Promethean argued that if a consumer entered the exact name of a website registered as a trading name into an internet search engine only the website would be returned and the FS Register would not be. Promethean's authorisation would therefore not be apparent and linked to the website unless a "deep amount of investigation is done". This would mean that a customer who saw the website's Google adverts, would not automatically presume that the firm is regulated by the Authority.*
24. Supervision does not accept that it would take a "deep amount of investigation" for a consumer to associate a website registered as a trading name with Promethean. If a consumer was to search for a non-genuine trading name on the FS Register, it would produce the result of Promethean's FS Register listing. A consumer may then incorrectly assume that they are being given the same protections as those of an authorised firm when they engage with one of the IPs, on the basis that the name of the IP would also appear on the FS Register as being a trading name of Promethean.
25. Additionally, the websites registered as non-genuine trading names place adverts on Google, which a consumer could find through search terms such as "free debt advice" and "debt management. The consumer would then be directed through to the landing page of the websites. As at 31 May 2023, there were eleven websites previously registered as non-genuine trading names of Promethean, that continue to state they are a trading name of Promethean, despite this being incorrect following the removal of all the non-genuine trading names from the FS Register on 18 April 2023.

Promethean's proposal of disclaimers for the trading names websites

26. *Promethean suggested in its letter of 20 December 2022 that disclaimers could be placed on the IPs websites to address the ambiguity around regulated/unregulated activity on the non-genuine trading names websites. Supervision responded stating that it did not consider any such disclaimer to be suitable and in any event, as at 13 January 2023, Supervision had not identified any disclaimers on the websites. In its Representations, Promethean states that only now has the authority stated that the disclaimer would not be needed.*
27. Supervision explained that it had not seen any evidence of the firm having made the proposed disclaimers on the websites and in any event, Supervision did not consider any disclaimer to be suitable to prevent the potential consumer harm arising from the practice of registering non-genuine trading names on the FS register.

VREQ requests for information / reporting

28. *Promethean states that it understood that the requirements in the proposed VREQs were an "all or nothing" request and that if the authority wanted information or reporting done, these could have been requested separately.*
29. It is assumed by Supervision that Promethean is referring to Requirements 4, 6 and 7 of the FSN. If Supervision's assumptions are correct, then it did request this information as part of Requirement 3, 4 and 5 of the first VREQ dated 7 November 2022 and Requirement 4 of the second VREQ dated 15 December 2022. Promethean responded to both VREQs at the time and did not assert that it considered these requirements to be an "all or nothing request". Promethean has also not yet provided any such information requested in the FSN's requirements.
30. Supervision considered it necessary and proportionate to impose the Requirements on Promethean at its own initiative, owing to Promethean's failure to address concerns raised by Supervision and in view of the firm's continued practice of adding non-genuine trading names despite knowing clearly that Supervision considered this practice to not comply with Promethean's regulatory obligations. Supervision also considers that Requirements 4, 6 and 7 of the FSN are necessary and proportionate.

Requirement 2

31. *Promethean contends that if the firm had to comply with this requirement, then it would never be able to register a trading name again. Promethean also stated that this is especially so, "when there is no review period or conditions to satisfy and the firm will be unable to, in its opinion bring this point back to court later for further debate."*
32. Supervision's position is that if Promethean wished to register a genuine trading name on the Financial Services Register, the Authority would be likely to approve this. However, the Authority has concerns over Promethean adding non-genuine trading names to the FS Register. Promethean is able to challenge this point in a Tribunal reference, as it has done.

Requirements 3 – 7

33. *It is understood from Promethean's submissions that the firm is not opposed to Requirements 3 to 7 Requirements and is seeking an amended timeframes to comply with them.*
34. Supervision notes that the firm has not set out a basis or rationale as to why an amended timeframe is being sought, save for stating that "consideration has been given to the unfortunate timing of the notice." Supervision infers that the firm is referring to the timing whereby the FSN was served to the firm during the firm's sole director's period of annual leave. Supervision requested an alternative suitable contact to be made available during Mr Maddison's period of leave, which was not provided. Supervision considers that regulated firms are expected to ensure they have sufficient resources to implement requirements at all times, in order to continue meeting the Appropriate Resources Threshold Condition. Supervision also considers that it has been reasonable in offering an extended period for Promethean to provide written representations.
35. *It is understood that the firm objected to Supervision having relied on examples that it alleges are of the firm amending its advertising in trying to cooperate on*

points raised by Supervision in relation to financial promotions issues when recommending the imposition of requirements.

36. Supervision's position is that some inadequate amendments were made to the relevant websites which did not fully address Supervision's concerns.
37. *The Requirement to review the firm's financial promotions activity including across its AR network, has been included from the Supervision's first VREQ of 7 November 2022. The firm has challenged the requirement as it did not consider it necessary on the basis that it considered it had adequate systems and controls in place already.*
38. Supervision considers it remains appropriate and proportionate for the firm to conduct this review and report to Supervision on its findings, given the continued issues identified by Supervision in connection with financial promotions issued by certain of the firm's ARs. In light of the issues with these financial promotions identified by Supervision, Supervision considers that the firm is responsible for assessing these promotions and demonstrating to Supervision that it has adequate systems and controls and policies and procedures in place to identify and mitigate non-compliance, including across its AR network.

Requirement 8

39. *It is understood from Promethean's Representations that the firm is not opposed to this Requirement but has sought to clarify that "all records and books as a matter of course are stored in the UK."*
40. As such, it seems that Promethean is confirming its partial compliance with Requirement 8, in that it keeps all books and records electronically in the UK. Requirement 8 also requires confirmation that all information and systems in relation to all activities carried on by Promethean are preserved, i.e. not deleted or destroyed. Supervision does not propose to amend or remove this Requirement.

Requirement 9

41. *It is understood from Promethean's Representations that the firm is opposed to complying with this Requirement on the basis that it does not consider that the requirement serves or achieves the Authority's statutory objectives as it will detrimentally affect the firm's viability. It states that it: "fails to see how issuing a notice on the firm's website, will achieve one of the authorities statutory objectives, www.prometheanfinance.co.uk has never been a trading name of the firm on the register, it does not issue financial promotions from this site and never has done."*
42. The Requirements have been imposed on Promethean, therefore it is appropriate that the Requirements be published by the firm on which they have been imposed. The website domain set out in Requirement 9 is the one which is set out on the firm's registration page on the FS Register under "firm details," and therefore considered to be the most appropriate place to issue such a notification to potential customers. The matters of the specific domain - www.prometheanfinance.co.uk - not being a registered trading name, and whether the website is itself directly issuing financial promotions, are not relevant considerations to be made in response to this Requirement.

43. Requirement 9 aims to disclose to prospective consumers any such actions undertaken and imposed by the Authority in respect of the regulated firm. Supervision has considered this is a proportionate measure in advancing its consumer protection objective to address potential harm that customers (including prospective customers) may be exposed to. The Requirements do not seek to remove the firm's regulated permissions, therefore Promethean's activities such as its ability to refer consumers to the debt respite scheme ought not be curtailed by the Requirements themselves.

Requirements 10 – 11

44. *Supervision understands that Promethean's arguments in opposing these Requirements are the same as outlined for Requirement 9.*

45. *The firm also submits that this could cause previous/existing customers to whom Promethean has given advice to presume wrongdoing on the part of the firm. Further, the issuance of correspondence to customers could detrimentally impact vulnerable customers who are already engaged/contracted with another exempt entity (presumably referring to the IPs operating the non-genuine trading names).*

46. Supervision does not consider that these Requirement should be amended or removed. Their purpose is to notify customers accordingly of the terms and effect of the Requirements. These Requirements seek to ensure the firm notifies customers who have been referred through the non-genuine trading names of the impact and effect of the Requirements and does not apply to those customers of Promethean that have not been referred to it in this way. The notification would, in Supervision's view, also serve the purpose of clarifying which entity the customer was engaging with at the outset of the customer journey to reduce the risk of any confusion arising as a consequence of the misuse of trading names by Promethean.

Conclusion

47. *The firm submits that the Authority should place weight, in regard to proportionality of the Authority's actions, on the fact that the firm has received "no complaints from customers, regarding financial promotions or otherwise."*

48. Supervision does not consider that the volume of complaints received by the firm in relation to its use of non-genuine trading names is necessarily a useful indicator of the extent of risk arising. This is particularly the case where the key issue arising from the use of non-genuine trading names is the risk that customers may not have properly understood who they were engaging with and the regulatory status of the IPs, such that they may be less likely to know to complain to Promethean on the matter.