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## FIRST SUPERVISORY NOTICE

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**To:** Sterling Financial Security Limited

**Address:** Kuhlmann House  
Lancaster Way  
Fradley Park  
Lichfield  
Staffordshire  
WS18 8SX.

**IPN:** 586333

**Date:** 19 March 2015

### **ACTION**

1. For the reasons given in this Notice, and pursuant to section 55L of the Act, the Authority has decided to impose a requirement that the Firm:
  - a. Corresponds with its customers, within 14 days of the date of this notice, providing the following information to each customer:
    - i. written statements of account clearly indicating the balance owed, at the time of the statement, to each of their creditors; the cumulative total of monies paid to creditors whilst a customer of the Firm; the amount of money accumulated by the customer and held on trust by the Firm and the cumulative total of the fees paid by the customer to the Firm; and
    - ii. if and when the Firm no longer provides the debt plan, as defined in paragraph 6, how monies accumulated by the Firm will be refunded to the customers as at the date of the written statements of account.
  - b. Provides the following information to the Authority:
    - i. a list of the customers of the Firm, detailing each customers' correspondence address, all contact numbers and email addresses;

- ii. the identity (with solicitor's reference where known) of all Law Firms or third parties to which the Firm's customers have been transferred since 1 April 2014 or to which the Firm intends to transfer, or otherwise introduce, customers to in the future; and
- iii. the number of customers who have been transferred to a debt management plan by the Firm or a Connected Firm since 1 April 2014.

## **REASONS FOR ACTION**

- 2. In the relevant period, the Firm entered into, or administered, 494 debt plans with customers. Customers paid a monthly fee to the Firm of 90% of their monthly payment or at an hourly rate of £75 per hour, whichever was the lower. In practice the customers would pay 90% of their monthly payment to the Firm in almost all cases.
- 3. The Firm has indicated in correspondence with the Authority that they intend to transfer, or otherwise introduce, the customers to Law Firms and/or to the Firm's debt management product.
- 4. The Authority and the Firm have been engaged in Written Requirement correspondence since 30 October 2014, the Authority requiring the Firm to inform it of the Firm's intentions towards transfer of the customers and to provide key information to enable the customers to make an informed decision as to whether or not to accept this proposed transfer. This has been necessary in order for the Authority to be in a position to adequately supervise the Firm and seek to ensure customers are being treated fairly. The Written Requirements have not been complied with satisfactorily.
- 5. The Authority considers that it is desirable to exercise the power in order to advance one of its operational objectives, namely, the consumer protection objective.

## **DEFINITIONS**

- 6. The definitions below are used in this Warning Notice.
  - "the Act" means the Financial Services and Markets Act 2000;
  - "the Authority" means the Financial Conduct Authority;
  - "the CCA" means the Consumer Credit Act 1974;
  - "a Connected Firm" means each of Haydon Associates Debt Management Consultants Limited and Clear View Finance Limited;
  - "CONC" means the Consumer Credit sourcebook of the Authority's Handbook;
  - "the customers" means the 494 customers who held debt plans with Sterling during the relevant period;
  - "the debt plan" means a debt reduction plan set up by Sterling before or during the relevant period;

"the Firm/ Sterling" means Sterling Financial Security Limited;

"full and final settlement" means a model in which the firm holds money on behalf of the customer and does not distribute that money promptly, pending negotiating a settlement with the customer's lenders;

"Law Firms" means the unidentified firms of solicitors accepting as clients the customers transferred to them from the Firm or a Connected Firm;

"the OFT" means the Office of Fair Trading;

"the RAO" means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

"the relevant period" means 1 April 2014 to the date of this notice;

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

"the First Visit" means the attendance at the offices of the Firm by the Authority on 18 June 2014;

"the Second Visit" means the attendance at the offices of the Firm by the Authority on 11 November 2014;

"the VREQ" means the voluntary requirement agreed to by the Firm, on 4 July 2014, adding a limitation to the Firm's interim permission to the effect that it must not enter into contractual arrangements with new customers for debt counselling or debt adjusting purposes;

"Written Requirements" means a written requirement, seeking information and/or documentation, imposed on the Firms pursuant to section 165 of the Act;

"Written Statements" means a written statement of a customer's account providing the following information: the balance owed, at the time of the statement, to each creditor; the cumulative total of monies paid to creditors; the amount of money accumulated by the customer and held on trust by the Firm; the cumulative total of the fees paid by the customer to the Firm up to the date of the written statement and how monies accumulated by the Firm will be refunded to customers; and

"the 2013 Order" means the Financial Services and Markets Act (Regulated Activities) (Amendment) (No. 2) Order 2013.

## **FACTS AND MATTERS**

### **Background**

7. On 17 August 2006, the OFT issued a licence to the Firm under the CCA. The Firm obtained an interim permission on 1 April 2014 to carry on the regulated activities of debt counselling and debt adjusting. The interim permission arose in accordance with article 56 of the 2013 Order and is to be treated as a permission under Part 4A of the Act.
8. Anthony Roberts is the 100% shareholder and sole director of the Firm. The Firm conducts both debt management activities and debt "reduction" activities and has

at least 1134 clients (640 with debt management plans and 494 with debt plans). Two distinct debt products were offered by the Firm:

- a. A standard debt management plan – where the Firm intends to assess a client’s ability to make repayments across the range of creditors, and will include debt advice and counselling and manages the collection and distribution of payments to them; and
  - b. A debt “reduction” plan (i.e. a debt plan as defined in paragraph 6 above) – which offered the standard debt management plan, plus a range of additional services, including seeking to assess the legitimacy of a client’s debt, and challenge these where any legal, or other, relevant process failings have been identified, with the potential outcome being a renegotiation and potential reduction (or write off) in the debt outstanding.
9. For the debt plan, the Firm would firstly advise the customer on their debts and then correspond with the customer’s creditors to seek information about the customer’s loans with creditors to determine whether the enforceability could be challenged under the CCA. The Firm would also write to a number of banks to see whether the customer was able to claim compensation for payment protection insurance being mis-sold to that customer and whether the banks had imposed unfair charges. The Firm would seek to negotiate adjusted balances for clients irrespective of the merits of any claim to unenforceability or for payment protection insurance or unfair charges redress. The terms and conditions of the contract between the customers and the Firm required the Firm to advise on whether compromises appeared to be fair and reasonable and to provide a report, in writing, about the best available terms for repayment of debt and make a recommendation.
  10. The terms and conditions of the contract between the customers and the Firm stated that the Firm would charge fees, costs, charges and expenses for the debt plan, taken from the monthly payment made by the customer, at an hourly rate of £75 per hour up to a maximum of 90% of the aggregate of the monthly payments. The customers would then be subject to this arrangement for an indefinite period of time.
  11. At the Second Visit, the Firm accepted that it invariably charges all its customers 90% of the monthly payment. The Firm has agreed with the Authority that its business model is not one that can be properly described as a “full and final settlement” model.
  12. Shortly after the First Visit, the Authority issued a draft requirement notice, on 22 July 2014, in accordance with section 166 of the Act requiring a report by a skilled person to be prepared. Following discussions with the Authority following the Visit, the Firm applied for a VREQ which was accepted by the Authority and took effect on 4 July 2014. The Firm has continued to carry out their services for their customers after the imposition of the VREQ as the VREQ did not prevent this continued work and fees for their services.
  13. The Firm subsequently stated to the Authority that they intended to transfer its customers to Law Firms where their debt reduction work would continue. The Authority was, and remains, concerned whether the Law Firms, in undertaking this work, would be acting within the exemption from the general prohibition pursuant to section 327 of the Act or where the Law Firm in question is an authorised person, they are acting within their permissions. The Authority requires the names,

and full contact details, of the Law Firms to enable it to continue to scrutinise the work being carried out by the Law Firms and determine whether the Law Firms are being compliant with their regulatory obligations.

14. The Authority seeks information about the customers of the Firm to ensure that the Authority is able to contact them if it feels it is appropriate to do so of the purpose of advancing the consumer protection objective. The information required is limited to a list of the customers with the Firm detailing the customers' correspondence address, all contact numbers and email addresses. The Authority has asked other debt management firms to provide them with similar information. The Firm has refused to provide this information.
15. It is vital for a customer to have the appropriate information available in order for them to make an informed decision whether or not to agree to a proposed transfer of their debt reduction product with the Firm to a different debt management product with the Firm, or a Connected Firm, or a similar debt reduction product with an unconnected firm, or a Law Firm.
16. The Authority understands that the Firm has transferred customers of the debt reduction product to a debt management plan (as referred to in paragraph 8a) with it or a Connected Firm. The Authority seeks the number of customers that the Firm has transferred in this way in order for it to be able to continue to supervise the Firm, or Connected Firm, appropriately.
17. This information and documentation sought by the Authority from the Firm has not been provided to the Authority after a number of Written Requirements. As set out above, these are reasonably required in connection with the exercise by the Authority of functions conferred on it by the Act.

### **Regulated Activity**

18. The Authority considers that much of the activities (but not all) that the Firm carries out in practice should be construed as debt adjusting and/or debt counselling under article 39D and article 39E of the RAO:
  - a. Debt adjusting includes the activity of negotiating with a lender, on behalf of a borrower, terms for the discharge of a debt due under a credit agreement, and any similar activity concerned with the liquidation of a debt; and
  - b. Debt counselling includes advice to a borrower about the liquidation of a debt due under a credit agreement.
19. Accordingly, much of the Firm's activities (but not all) should be considered to be "specified activities", under the RAO, and the Firm is required (as it is doing this by way of business without any obvious exemptions applying) to comply with the rules in CONC and to comply with Written Requirements. In addition, to be able to discharge its general functions, the Authority must be able to seek information and/or documentation in order to consider whether a firm is conducting business requiring it to be authorised.
20. Activities the Firm engages in that are not considered to be "specified activities" under the RAO may be regulated claims management services under the Compensation Act 2006.

## **Failings**

21. The regulatory provisions relevant to this First Supervisory Notice are set out in Annex A.
22. From the facts and matters described above, the Authority, having regard to its operational objectives, has concluded that the Firm has failed to comply with the Written Requirements that were imposed reasonably by the Authority.
23. The Authority requires this information and/or documentation, and the Firm to provide its customers with Written Statements in order to advance its consumer protection objective.

## **PROCEDURAL MATTERS**

### **Decision maker**

24. The decision which gave rise to the obligation to give this First Supervisory Notice was made by the Regulatory Transactions Committee.
25. This First Supervisory Notice is given under section 55Y(4) and in accordance with section 55Y(5) of the Act and is being served on the Firm at its place of business as last notified to the Authority. The following statutory rights are important.

### **Representations**

26. The person to whom this First Supervisory Notice is given has the right to make written and oral representations to the Authority (whether or not it refers this matter to the Tribunal). It must do by 6 April 2015 or such later date as may be permitted by the Authority. Written representations should be made to the Regulatory Transactions Committee and sent to:

Ms Kate Rowley  
Secretary to the Regulatory Transactions Committee  
Financial Conduct Authority  
25 The North Colonnade  
Canary Wharf  
London  
E14 5HS

27. The Authority must be informed in writing of any intention to make oral representations by 30 March 2015. If the Authority is not notified by this date, the person to whom this Notice is given will not, other than in exceptional circumstances, be able to make oral representations.

### **The Tribunal**

28. The Firm has the right to refer the matter to which this First Supervisory Notice relates to the Tribunal. The Tax and Chancery Chamber is the 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 First Supervisory Notice is given to it to refer the matter to the Tribunal.

29. A reference to the Tribunal can be made by way of a reference notice (Form FTC3) signed by the Firm and filed with a copy of this First Supervisory Notice. The Tribunal's contact details are: The Upper Tribunal, Tax and Chancery Chamber, 45 Bedford Square, London WC1B 3DN (telephone: 020 7612 9700; email: [financeandtaxappeals@tribunals.gsi.gov.uk](mailto:financeandtaxappeals@tribunals.gsi.gov.uk)).

30. Further details are contained in "Making a Reference to the UPPER TRIBUNAL (Tax and Chancery Chamber)" which is available from the Tribunal website:

<http://www.tribunals.gov.uk/financeandtax/FormsGuidance.htm>

31. 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 filing a reference with the Tribunal. A copy of the reference notice should be sent to Denise Sbraga at the Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS.

#### **Access to Evidence**

32. Section 394 of the Act does not apply to this First Supervisory Notice.

#### **Confidentiality and Publicity**

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

34. The Firm should note that section 391 of the Act requires the Authority when the First Supervisory Notice takes effect, to publish such information about the matter as it considers appropriate.

#### **Authority contacts**

35. For more information concerning this matter generally, contact Denise Sbraga, Manager, Supervision Division at the Authority (direct line: 020 7066 4870 or email [denise.sbraga@fca.org.uk](mailto:denise.sbraga@fca.org.uk)).

36. Any questions regarding the procedures of the Regulatory Transactions Committee should be directed to the RTC Secretariat (email [rtcsecretariat@fca.org.uk](mailto:rtcsecretariat@fca.org.uk)).

**Linda Woodall**  
**Chair, Regulatory Transactions 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. Section 55L of the Act allows the Authority to impose a new requirement on an authorised person if it appears to the Authority that 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)). Section 55N(2) provides that a requirement may extend to activities which are not regulated activities. Section 55N(5) provides that a requirement may refer to the past conduct of the person concerned.
4. Section 165 of the Act provides that:
  - (1) [the Authority] may, by notice in writing given to an authorised person, require him to provide specified information or information of a specified description; or to provide specified documents or documents of a specified description;
  - (4) this section applies only to information and documents reasonably required in connection with the exercise by [the Authority] of functions conferred on it by or under the Act.
5. Section 327 of the Act provides that:
  - (1) the general prohibition does not apply to the carrying on of a regulated activity by a person if the conditions set out in subsections (2) to (7) are satisfied
  - (4) the manner of the provision by [the Law Firm] of any service in the course of carrying on the activities must be incidental to the provision by him of professional services.
6. Section 391 of the Act provides that:

"[...]

  - (5) When a supervisory notice takes effect, the Authority must publish such information about the matter to which the notice relates as it considers appropriate.
  - (6) 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...
  - (7) Information is to be published under this section in such manner as



the Authority considers appropriate.”

7. Article 39D of the RAO provides the definition of debt adjusting:

(1) When carried on in relation to debts due under a credit agreement—

(a) negotiating with the lender, on behalf of the borrower, terms for the discharge of a debt,

(b) taking over, in return for payments by the borrower, that person's obligation to discharge a debt, or

(c) any similar activity concerned with the liquidation of a debt,

is a specified kind of activity.

(2) When carried on in relation to debts due under a consumer hire agreement—

(a) negotiating with the owner, on behalf of the hirer, terms for the discharge of a debt,

(b) taking over, in return for payments by the hirer, that person's obligation to discharge a debt, or

(c) any similar activity concerned with the liquidation of a debt,

is a specified kind of activity.

8. Article 39E of the RAO provides the definition of debt-counselling.

(1) Giving advice to a borrower about the liquidation of a debt due under a credit agreement is a specified kind of activity.

(2) Giving advice to a hirer about the liquidation of a debt due under a consumer hire agreement is a specified kind of activity.

## **RELEVANT REGULATORY PROVISIONS**

9. The Authority's policy in relation to its enforcement powers is set out in the Enforcement Guide (EG), certain provisions of which are summarised below.

10. EG 8.1 reflects the provisions of section 55J of the Act that the Authority may use its own-initiative power to vary or cancel the permission of an authorised firm where it is desirable to exercise the power in order to advance one or more of its operational objectives (EG 8.1(3)).

11. EG 8.1A provides that the powers to vary and cancel a person's Part 4A permission and to impose requirements are exercisable in the same circumstances.

12. EG 8.1B provides that the Authority will have regard to its statutory objectives and the range of regulatory tools that are available to it, when it considers how it should deal with a concern about a firm. It will also have regard to the principle that a restriction imposed on a firm should be proportionate to the objectives the FCA is seeking to achieve.

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

- 1) the Authority has serious concerns about a firm, or about the way its business is being or has been conducted;
- 2) the Authority is concerned that the consequences of a firm not taking the desired steps may be serious; and
- 3) the imposition of a formal statutory requirement reflects the importance the FCA attaches to the need for the firm to address its concerns.