

Harriett Baldwin MP
Chair
Treasury Select Committee
House of Commons
SW1A 0AA

5 December 2023

Dear Ms Baldwin,

Blackmore Bonds

I write to you as the joint Executive Director of Enforcement & Market Oversight, given the Committee's close interest in the issues associated with the collapse of Blackmore Bond plc ("Blackmore") and following Nikhil Rathi's letter to the Committee of 14 December 2022.

I am now in a position to confirm that we have concluded our investigations into NCM Fund Services Ltd ("NCM") and Northern Provident Investments Ltd ("NPI"), the two organisations that approved the financial promotions of Blackmore's mini-bonds. After looking in forensic detail at the financial promotions, our investigation concluded that these were largely accurate in what they set out and contained very relevant risk warnings to consumers. Therefore, we will not be taking enforcement action against the firms.

I can understand that it is very distressing for consumers who lost money in Blackmore. To aid your committee's scrutiny of the FCA, I thought it would be helpful to set out in more detail the scope of our investigations in relation to NCM and NPI's approval of Blackmore's financial promotions, as well as providing an update on our wider work since December 2022.

I also set out what we have changed to better enable us to deal with cases like Blackmore, which straddle the regulated and unregulated markets. This is embodied in our enforcement work, where we are adopting a more assertive and proactive approach. The recent expansion of the FCA's enforcement and market oversight leadership team, with the appointment of Steve Smart and me as joint Executive Directors of Enforcement and Market Oversight reflects the vital role that enforcement plays in delivering the FCA's 3-year strategy. It is a key regulatory tool allowing us to hold firms and individuals to account for wrongdoing and helping to reduce and prevent serious harm to consumers, and in markets.

Our investigations

In Nikhil's letter to the Committee of 14 December 2022, he gave an overview of the background concerning Blackmore. This referenced the fact that the issuance of mini-bonds is not a regulated activity. Consequently, Blackmore was not authorised by the FCA, which means its activities were not subject to FCA supervision nor within the scope of protections provided by and to regulated firms. However, the financial promotion of mini-bonds is within our remit.

Section 21 of FSMA provides that a person must not, in the course of business, communicate an invitation or inducement to engage in investment activity unless the communication is made, or approved by, an authorised person. There is no regulated activity of approving a financial

promotion. Therefore, unauthorised issuers can engage an authorised firm to approve the content of their marketing to avoid breaching the Section 21 FSMA restriction.

If a firm takes on activities alongside approving the financial promotions such as operating a platform or acting as an introducer or arranger, this is likely to constitute a regulated activity. Similarly, a firm may also be conducting a regulated activity if they, for example, provide advice on mini-bonds, provide or arrange custody services in relation to mini-bonds or provide ISA management services.

Blackmore's mini-bonds were promoted through Information Memoranda (as well as other promotions), approved by FCA-authorised firms NCM and NPI. These Memoranda set out the nature of Blackmore's property development business as well as the key attributes of the mini-bond investment.

Blackmore's Information Memoranda contained various statements disclosing and warning consumers about the risks associated with the investment, the specific risks associated with Blackmore's business model, and disclosed that costs of up to 20% of overall bond subscriptions may be incurred as part of raising capital. Additionally, the Information Memoranda stated that Blackmore's mini-bonds could not be transferred to another investor.

Under the rules at the time¹, Blackmore's mini-bonds were only available to be marketed to investors who could certify they were able to afford potential losses, were investing no more than 10% of their net assets (excluding certain assets such as their primary residence or withdrawals from pension savings), or satisfied relevant investment experience or sophistication criteria. Before investing, prospective investors had to confirm they met one or more of these criteria.

NCM was responsible for approving the financial promotions for the Series 1, 2, 3 and 4 of the bonds issued by Blackmore, with approximately £36 million invested in these Series of bonds by c.2,000 investors. NPI was responsible for approving financial promotions for Series 5 and 6 of the bonds issued by Blackmore, with approximately £5.8m invested by c.500 investors.

In the case of NCM, key areas of focus for our investigation included the approval of the financial promotions of Blackmore, the steps taken to ensure the financial promotions it approved for Blackmore were fair, clear and not misleading, and whether the firm had undertaken adequate due diligence on Blackmore. The investigation also considered how the Blackmore bonds were marketed/sold to potential investors.

We took action in March 2019, which resulted in NPI withdrawing its approval of Blackmore's financial promotions. In February 2020, we imposed requirements on NPI for it to cease approving any further financial promotions for any firm. Our enforcement investigation in NPI itself focused on the approval of financial promotions of unauthorised issuers of mini-bonds (including, but not limited to, the Blackmore bonds); the disclosure of its fee structure to investors in the firm's role as an innovative finance ISA manager; and whether the firm appropriately identified and managed potential conflicts of interest arising from its fee structure in its role as innovative finance ISA manager. As with NCM, the investigation also considered the marketing and sales process for the Blackmore bonds. As set out in our letter of 31 March 2023 to Siobhain McDonagh MP and Steve McCabe MP, NPI entered into liquidation on 23 August 2021. Due to its insolvency, the only option available in the event our investigation proved serious misconduct, would have been public censure.

A total of 7,330 hours were spent on our investigations and over 8,000 documents reviewed. After undertaking this extensive work, in both investigations we did not find evidence of

¹ The time period for our investigation into NCM was 1 June 2016 to 16 October 2018, and for NPI was 1 January 2017 to 31 December 2019.

sufficiently serious breaches relating to their approval of the financial promotions to justify taking enforcement action against either firm.

Outstanding complaints

We have 26 complaints referring to Blackmore, which have been deferred since June 2021 while we undertook our enforcement investigations.² These complainants allege we failed to protect investors. Now our enforcement investigations into NCM and NPI have concluded, our consideration of these complaints will restart. We shall endeavour to complete our complaint investigations and provide a response to each complainant as soon as practicable. Complainants have been notified of this decision earlier today and will be kept regularly updated about the progress of our investigations until a decision has been made about each of the allegations raised.

Wider developments since December 2022

Since NPI entering into liquidation on 20 August 2021, the Financial Services Compensation Scheme (FSCS) has announced that it will consider claims from investors whose investments NPI facilitated as ISA manager and/or provided custodial services for. This includes, but is not limited to, investments in Blackmore Bond Series 5 and Series 6.³

The letter of 14 December 2022 also provided an update on the wider actions of the FCA, including the steps taken which led to the removal of Ayma's website in March 2019 and the termination of Ayma's appointed representative status in September 2019. Based on the information available to us, it does not appear Ayma introduced customers to Blackmore while it held appointed representative status.

In the context of London Capital & Finance plc, the Committee may have seen that a Final Notice was issued and published on 11 October 2023 censuring the firm for financial promotions breaches. A decision was taken not to impose a financial penalty on LCF as it is insolvent and in administration and to do so would have diverted funds that the administrators may use for the benefit of bondholder creditors.⁴ The SFO continues to investigate associated individuals.

Changes to our Policy

We banned the mass-marketing of speculative illiquid securities (including speculative mini-bonds) to retail investors in January 2021. Our definition of speculative illiquid securities includes those where (subject to certain exemptions) the proceeds are used to buy or fund the construction of property, as Blackmore did.

In February 2023, we introduced new rules designed to ensure that firms communicating and approving financial promotions do so to a high standard. These changed the consumer journey for high-risk investments, introducing strengthened risk warnings, banning inducements to invest, introducing positive frictions, improving client categorisation, and establishing stronger appropriateness tests. We also sought to strengthen the role of firms approving and communicating financial promotions, ensuring they have the relevant expertise in the promotions they approve and a higher overall quality of financial promotions in the market.

As set out above, the approval of financial promotions is not currently a regulated activity under the Regulated Activities Order (RAO). The Financial Services and Markets Act 2023 includes an amendment to Section 21 (s21 of the Financial Services and Markets Act 2000) to create a regulatory gateway for all authorised persons that want to approve financial promotions for unauthorised persons. Once the gateway comes into effect on 7 February 2024, all authorised

² [Section 3.7 of our Complaints Scheme](#)

³ <https://www.fscs.org.uk/making-a-claim/failed-firms/northern-provident-investments/>

⁴ [FCA censures London Capital and Finance plc](#)

persons that want to approve financial promotions will need to apply to us for explicit permission to do so.

We want to reduce the number of consumers buying financial products that are not appropriate for their circumstances, due to unclear, unfair or misleading advertising. By ensuring that financial promotions comply with our financial promotions rules, we hope to reduce the frequency of a mismatch between consumers' financial decisions and their needs.

Changes in our approach

We have also made significant changes to the way we operate, to ensure we are taking assertive and timely action against firms breaching the financial promotion rules. In October 2021 we set up a new department, bringing together specialists from across the FCA to deliver an integrated approach to tackling scams, breaches of the perimeter and non-compliant financial promotions. The Financial Promotion and Enforcement Taskforce (FPET) blends skills and experience across our supervision and enforcement teams, leading to more and earlier interventions. FPET uses data and technology to more quickly identify firms that straddle the perimeter, helping identify and tackle financial promotion breaches more quickly.

These changes have enabled us to act where we have seen misconduct, to stop firms distributing mini-bonds or conducting further regulated activities. Our new approach is exemplified by restrictions we have placed on London Court Ltd⁵ and Independently East Ltd⁶. We will also use our new rules under the Consumer Duty to hold authorised firms to higher standards, and to ensure they act in a way that will deliver good consumer outcomes.

More widely, following these changes we have significantly increased our intervention activity. In relation to authorised firms, following our intervention, in 2022 we had 8,582 promotions amended or withdrawn, compared to 573 in 2021. This year, as of 31 October a further 9,447 promotions by authorised firms were amended or withdrawn. Furthermore, from 8 October our financial promotions rules for cryptoassets went live. These rules require the financial promotion of cryptoassets to be clear, fair, and not misleading, to display clear risk warnings, to disclose the firm's regulated status and cease offering any form of incentive to invest. We will take robust action with firms that do not comply with our requirements.

Further changes required

We have previously highlighted the issue of Financial Promotion Order (FPO) exemptions for high net worth (HNW) individuals and sophisticated investors. When the exemptions are used, financial promotions are taken completely outside our perimeter. We saw increased use of these exemptions after our ban on the mass-marketing of mini-bonds, as issuers tried to avoid FCA scrutiny. Our experience shows that these are a major enabler of firms mis-selling high-risk investments outside our remit, which undermines the steps we have taken to strengthen the financial promotions regime. The Treasury are taking forward limited reforms to these exemptions following their 2021 consultation.⁷ If the exemptions are to be maintained in legislation, far more extensive reform is required to adequately protect retail investors. We have previously requested consideration of reforms such as changing the product scope of the exemptions to remove investments subject to an FCA mass-marketing ban, thereby requiring firms marketing these products to comply with FCA rules. Other possibilities include reviewing self-certification, by placing a greater degree of responsibility on firms to ensure individuals meet the criteria to be deemed HNW or sophisticated.

Ultimately, the continued presence of exemptions for HNW individuals and sophisticated investors complicates the effective supervision of financial promotions and results in consumer harm that the FCA alone is unable to mitigate.

⁵ [FCA places restrictions on London Court Ltd](#)

⁶ [FCA places restrictions on Independently East Ltd](#)

⁷ [Financial promotion exemptions for high net worth individuals and sophisticated investors: a consultation](#)

Conclusion

Where serious misconduct is alleged, enforcement investigations are an invaluable tool. It is vital our investigations are conducted thoroughly and fairly, which means never prejudging the conclusion and taking action only where we have sufficient evidence to justify it. I recognise that many will be disappointed that we have not found that evidence to the required legal thresholds in these investigations. I hope, however, we have shown that we looked at all the available information and considered all potential avenues.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Therese". The signature is written in a cursive, flowing style.

Therese Chambers
Joint Executive Director of Enforcement & Market Oversight