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Rt Hon Mel Stride MP
House of Commons
Committee Office
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4 May 2021

Our Ref: 210423A

Dear Mel,

RE: Greensill Capital

Thank you for your letter of 19 April and your request for further information on the regulation of Greensill Capital, and its associated companies.

Given the Committee's and wider public interest in the engagement of Lex Greensill (CEO of Greensill) with various public authorities, I thought it would be helpful to share with you at the outset details of meetings with Lex Greensill and the FCA that we have identified. Two formal meetings were held between FCA employees and Lex Greensill, the first on 12 September 2019 and the second on 9 December 2020. The first was a discussion around Greensill's activities in the UK, held at Greensill's request, and the second was a meeting as part of the evidence gathering for the Woolard Review into the future of unsecured credit. A third, unplanned meeting with Maurice Thompson (Chair of Greensill) also occurred in February 2020, at which Greensill's employer salary advance scheme was briefly discussed. I have attached the notes of those meetings at Annex A of this response. Given the public interest, including through Freedom of Information requests, this information will be published on the FCA's website[1]. I can also confirm that those meetings came about from direct contact with the firm and were not facilitated by an adviser of Greensill.

I would also like to take this opportunity to inform the Committee that the FCA is formally investigating matters relating to Greensill Capital UK (GCUK) and Greensill Capital Securities (GCSL) and the oversight of GCSL by its principal, Mirabella Advisers LLP (Mirabella). We are also cooperating with counterparts in other UK enforcement and regulatory agencies, as well as authorities in a number of overseas jurisdictions. As the Committee will be aware, a number of allegations have been made in the press regarding the circumstances of Greensill's failure, some of which are potentially criminal in nature. There are, therefore, some aspects of the FCA's interactions with Greensill entities that I am not able to disclose so as not to prejudice these ongoing investigations.

As with all investigations in which potential misconduct falls within the jurisdiction of multiple agencies, we ensure from the outset that we are in a position to share information and co-operate as fully as possible.

I now turn to your specific questions.

[1] We are sharing the notes of these meetings because we consider that, having regard to the purpose of the meetings, the information in them does not, for the most part, constitute "confidential information" under section 348 of the Financial Services and Markets Act 2000 (FSMA). We have redacted a little information which we consider may be caught by that provision, is personal data or commercially sensitive.

1. **Can you provide an outline of the history of the FCA's dealings with the above entities, including how and for what they were supervised? The Committee is aware that Greensill Capital Securities Limited was an appointed representative of Mirabella Advisers LLP. Can you provide information on the oversight by the FCA of entities, such as Greensill Capital Securities Limited and Mirabella Advisers LLP, in this context?**

GCUK has been a registered entity, a so-called 'Annex 1' firm, under the Money Laundering Regulations (MLRs) since 6 May 2014. This means that the FCA was responsible for supervising it only in relation to its compliance with anti-money laundering rules. This regime is based on registration and is different from the authorisation regime under FSMA. For example, our wider conduct rules do not apply to these firms, nor are customers able to access the Financial Ombudsman Service or the Financial Services Compensation Scheme.

The wider activities that GCUK undertook were not regulated by the FCA. As you know, most commercial lending falls outside the FCA's remit and the origination of a supply-chain finance instrument is not a regulated activity. Similarly, Employer Salary Advance Schemes, such as those that were offered by GCUK, are not considered to be credit-related regulated activity and therefore are not regulated by the FCA.

GCUK was placed into administration on 8 March 2021, with Grant Thornton appointed as administrators. To assist the smooth functioning of the administration process, we have decided, for now, not to cancel GCUK's registration under the MLRs.

As you note in your letter, GCSL, part of GCUK group, was an appointed representative (AR) of Mirabella. Mirabella was authorised by the FCA on 1 July 2014 and has permission to provide investment advice, to make arrangements with a view to transactions in investments and arrange deals in investments. As a principal firm, Mirabella can contract with a firm so that it can become an AR of Mirabella. GCSL was an AR from 10 August 2017 to 5 March 2021.

The AR regime permits an AR to carry out a limited number of regulatory activities, including advising and arranging deals in investments (the principal must hold such FCA permissions). An AR is a firm or person which carries out a limited number of regulated activities under the supervision of a firm we directly authorise (known as a principal firm). A principal firm (in this case, Mirabella) is responsible for ensuring that, on an ongoing basis, its AR complies with the requirements, rules and regulations of the FCA. Mirabella is also subject to the Senior Managers and Certification Regime.

GCSL arranged and distributed Greensill's loan notes to institutional investors. The structuring of loan notes and provision of supply chain financing was carried out by GCUK. The origination of a supply chain finance instrument is not a regulated activity. GCSL's AR status was terminated by Mirabella on 5 March 2021 and all related approvals were also terminated on that date.

Our rules and guidance place responsibility on the principal for seeking to ensure that its ARs are fit and proper to deal with clients in its name and to ensure that customers dealing with its ARs are afforded the same level of protection as if they had dealt with the principal itself. We expect principals to maintain appropriate systems and controls and to be able to demonstrate that they have control over the activities of their ARs to the same extent as they have over their own activities. The underlying legislation in FSMA[2] makes clear that: *'The principal of an AR is responsible, to the same extent as if the principal had expressly permitted it, for anything done or omitted by the representative in carrying on the business for which the principal has accepted responsibility'.*

[2] https://www.legislation.gov.uk/ukpga/2000/8/section/39

As noted above, GCSL as an AR, was not authorised by the FCA. This is because section 39 of FSMA[3] exempts ARs from the need to obtain authorisation. ARs are instead registered by the FCA. The FCA receives a notification from the principal firm that an AR has been appointed or terminated by it; this information is then updated on the Financial Services Register[4]. There are currently around 40,000 ARs on the Financial Services Register.

2. To what extent did the FCA have responsibility for combatting economic crime in relation to the two entities?

As set out in our response to the Committee's ongoing inquiry into economic crime on 9 October 2020,[5] combatting financial crime and improving anti-money laundering practices are priorities for the FCA as part of a multi-agency effort. We work closely with other responsible UK and international agencies, as well as through our programme of supervision and enforcement. We are strengthening senior capability in the area of economic crime. As I previously informed the Committee, Sarah Pritchard (currently Director of the National Economic Crime Centre) will be joining the FCA in June as Executive Director, Markets and we have also recently recruited a dedicated Director, Intelligence and Digital.

Under the MLRs, firms are required to identify their customers, monitor their transactions, pick up unusual or suspicious activity and, where appropriate, report any suspicions to the National Crime Agency. Under Regulation 46 of the MLRs the FCA is required to monitor all firms it supervises under the MLRs using a risk-based approach.

GCUK was part of the Annex 1 population of approximately 875 firms. The general approach of the FCA historically to supervision of these firms has been a combination of reactive supervision in response to adverse intelligence alongside a targeted risk assurance programme. As set out in our recent fees consultation[6] we have proposed increasing the fee for Annex 1 firms. This increase would be used to fund additional supervisory work in relation to these firms, including further proactive supervision.

In addition to the civil enforcement actions under the MLRs outlined in our previous letter to the Committee, we recently commenced our first criminal proceedings under the MLRs.[7]

In relation to GCSL, as it was an appointed representative of Mirabella, the firm would need to follow the systems and controls set out by Mirabella. As an authorised firm, Mirabella is required to take reasonable care to establish and maintain effective systems and controls for countering the risks that the firm might be used to further financial crime. Financial crime is defined in section 1H(3) of FSMA as any offence involving: fraud or dishonesty; misconduct in, or misuse of information relating to, a financial market; handling the proceeds of crime; or the financing of terrorism. Mirabella is also supervised by the FCA under the MLRs.

Although GCSL does not fall within the list of firms set out in Regulation 7 of the MLRs for which the FCA is the supervisory authority, its parent GCUK, by virtue of being an Annex 1 firm, was required to ensure GCSL applied the relevant AML policies, controls and procedures referred to in Regulation 19(1) MLRs, to the extent that GCSL was doing business subject to the MLRs.

[3] https://www.legislation.gov.uk/ukpga/2000/8/section/39
[4] https://register.fca.org.uk/s/
[5] https://publications.parliament.uk/pa/cm5801/cmselect/cmtreasy/correspondence/Letter-FCA-to-Chair-09-10-20.pdf
[6] Paragraphs 2.45 and 2.46, https://www.fca.org.uk/publication/consultation/cp21-8.pdf
[7] https://www.fca.org.uk/news/press-releases/fca-starts-criminal-proceedings-against-natwest-plc

3. Can you outline whether the FCA carried out any analysis of the Greensill entities for any other reason than their direct supervision, including supporting you (or your predecessor) as CEO in your role on the FPC?

We agree with the Bank of England's assessment that the Greensill entities were not systemically important for the purposes of UK financial stability. GCUK was not regulated by the FCA to conduct regulated activities and, in line with the Bank's assessment of Greensill, no specific analysis was done for reasons other than direct supervision.

In the context of the UK's regulatory framework under FSMA and the role of the Bank of England in relation to systemic risk, the Prudential Regulation Authority (PRA) has the power to designate an investment firm for prudential supervision by it. This power can only be exercised in relation to firms which have, or have applied for, permission to deal in investments as principal, and under its current policy for designating firms the PRA has regard (among other things) to whether the firm's balance sheet exceeds £15 billion of gross assets. Neither GCUK nor GCSL were regulated investment firms for the reasons described above and, in any case, neither met this asset size threshold.

There have been a range of discussions over a number of years in relation to non-bank financial intermediation, including at the Financial Policy Committee (FPC), of which the FCA has been part.

As I understand the Bank will set out in its letter, the FPC looks at vulnerabilities across the whole non-bank financial sector to identify areas of potential vulnerability and where these could potentially have a wider effect on financial stability. Based on its assessment, the FPC may recommend changes to regulation to bring activities into the regulatory perimeter or to change the regulation of activities already within the perimeter. Non-bank lending activities and market-based finance are considered as part of this review and the FPC has identified a number of vulnerabilities that need addressing, which are set out in regular Financial Stability Reports.

We continue to work actively on shadow banking at the international level and I have provided more detail on this below.

4. What work has the FCA done to assess the potential conduct and prudential risk of nonregulated non-bank lending by its regulated entities; and what, if any, conclusions have been drawn?

In recent years the FCA has been involved in international policy development in relation to non-banks. This has primarily been though our membership of the Financial Stability Board (FSB) and International Organisation of Securities Commissions (IOSCO). Our attention here is typically broader than non-bank lending and considers market-based finance as a whole - including the interconnections with the banking system and financial market infrastructure.

Through the FSB we have contributed to an international assessment of structural vulnerabilities in the non-bank sector. This includes supporting the development of the FSB recommendations to address vulnerabilities, published in 2017. Each year we also contribute to the FSB's non-bank finance monitoring exercise, which provides a global view of developments and trends in the sector.

Through IOSCO the FCA has played an active role in implementing the FSB's 2017 Recommendations. Between 2016-2020 the FCA chaired IOSCO's Committee on Investment Management, overseeing, among other things, the development of a global framework to monitor leverage in investment funds. Alongside other authorities, the FCA has also contributed to assessments and mitigation activity of emerging risks at an international level.

Since Spring 2020, the FCA has been engaged with further multilateral work assessing the resilience of non-banks and financial markets, particularly those that experienced significant volatility during the early phase of the pandemic. A work plan has been agreed by the G20 and the FCA is actively contributing across several workstreams.

In addition to our international work, as part of the FCA's response to the Covid-19 we created a Small Business Unit to help us understand the impact of the pandemic on small and medium sized businesses. While most commercial lending is outside the FCA's perimeter there is a subset of those borrowing from Government-backed Covid lending schemes covered by our rules on debt collection. Beyond these rules, the Senior Managers Regime includes a fitness and propriety requirement, which may include consideration of honesty, integrity, competence and financial soundness, even where they relate to unregulated activities. We wrote to the CEOs of CBILS lenders on 15 April 2020 to remind them of their accountability under SM&CR.

We also set out our expectations on how firms should apply their systems and controls to combat and prevent financial crime during the crisis.

Previously, in 2013 we published a thematic review of banks' control of financial crime risks in trade finance[8], identifying a number of common weaknesses and a list of 'red flags' for firms to consider in assessing risk. We also review firms' trade finance controls as part of our regular and ongoing proactive financial crime supervisory work.

5. What analysis has the FCA carried out of the perimeter around Greensill's business activities? Can you provide an outline of any analysis the FCA has carried out on whether the perimeter should change, as a response to the collapse of Greensill?

There are a number of areas that have been under consideration for regulatory or perimeter change and the collapse of Greensill has drawn further attention to these issues.

These include:

i) The appointed representatives regime
ii) Investigation and penalty powers in the event of firm failure or deregistration
iii) Criteria for fitness and propriety under the MLRs
iv) Access to UK investors through listing securities on overseas markets that are not Recognised Overseas Investment Exchanges (ROIEs) or regulated markets (e.g. in the European Union)
v) Employer Salary Advance Schemes

In addition, as highlighted above and as the Committee will be aware from its discussions with the FCA over several years, commercial lending is largely unregulated in the UK and any changes would be a matter for the Government and Parliament.

i) The appointed representatives regime

The FCA has undertaken analysis in relation to the AR regime and we highlighted risks in in the most recent perimeter report[9].

The AR regime is a longstanding part of the regulatory architecture. It was introduced in the Financial Services Act 1986. ARs are exempt from the general prohibition in respect of regulated activities which they carry on under the responsibility of an authorised firm acting as their principal. It allows many thousands of firms, under the oversight of a principal firm, to operate

[8] https://www.fca.org.uk/publication/thematic-reviews/tr-13-03.pdf
[9] See Annex 1, p.26, https://www.fca.org.uk/publication/annual-reports/perimeter-report-2019-20.pdf

in the financial services sector offering a wide range of products and services to consumers. Principal firms need to account for the actions of their ARs and ensure appropriate visibility over what they do and whether they are operating within the scope of the permissions and have adequate systems and controls to oversee the work of their ARs.

Since the regime started the number of principals and ARs has grown sharply, and with it the potential for harm. There are currently c.3,600 principal firms that support the activities of c.40,000 ARs.

It was in part a response to this growth that we conducted reviews into principals' understanding of their responsibility to oversee the activities of their ARs. Following weaknesses identified in our 2019 review of principals in the investment management sector, we intervened with a number of firms. This included agreeing the imposition of requirements on their regulatory permissions to either remove or to stop on-boarding ARs, asking principal firms to de-register their ARs and commissioning two FSMA section 166 skilled persons reports.

Although most ARs continue to be involved in the retail distribution of mainstream products and services, for example the distribution of general insurance products or retail investments, ARs are now used in a more diverse range of business models and sectors, including asset management and wholesale firms.

Our recent Call for Input on Consumer Investments asked for views on how the AR regime is working in practice in the investment sector. We received a range of views, many of which raised concerns over the AR regime. Respondents argued that ARs drove significant consumer harm and the regulatory disparity between authorised firms and ARs was a source of confusion and harm for consumers.

In CP21/8 FCA regulated fees and levies: rates proposals 2021/22[10] we are consulting on introducing a new fee block for principal firms. We are proposing a new flat periodic fee of £250 to be levied on principal firms payable on each of their ARs.

We have also concluded that we need to do further work at our gateway for authorisations, and on our supervisory and policy approaches.

Our work programme will include:

- greater engagement with, and scrutiny of, firms as they appoint ARs. This will apply both to new applicants and already authorised firms. Our aim will be to understand even more fully how the AR fits into the firm's business model, and we will assess whether the firm has appropriate systems and controls to oversee the AR.
- Using a data-led approach, we will undertake proactive supervision of principal firms that may pose a higher-risk of harm. We will use our full range of supervision and enforcement tools to reduce the risks we identify.
- Carrying out a range of targeted supervision activity in sectors, or portfolios, where we consider that the AR regime is a particular driver of harm.
- Undertaking analysis, informed by the work above, to determine whether policy interventions are required, including using the full extent of our rule making powers to help reduce the harm posed by the AR regime. This could also include making recommendations to the Treasury for changes in the legislative regime.

GCSL is not the trigger for our focus on the AR Regime: we have been considering it as part of our Consumer Investments and Sustainable Credit business priorities. However, the issues raised by recent events highlight some of the potential harm and challenges associated with the AR model.

[10] See https://www.fca.org.uk/publication/consultation/cp21-8.pdf

ii) Investigation and Penalty powers in the event of firm failure or deregistration

There are some effects of deregistration on the FCA's powers. For example, under the MLRs, once a firm deregisters, the FCA would no longer have the investigative power to enter a firm's premises without a warrant. While this power is not commonly used, we believe it would be useful to retain it for those exceptional cases where such investigations may be necessary into firms which have previously been registered under the MLRs but have subsequently lost or cancelled their registration.

Our ability to impose penalties on firms is also removed once they are cancelled. Our approach to that has been to refuse to allow firms at risk of enforcement action to cancel their permissions. However, this is not ideal, as such firms would then retain their status on the FCA Register subject to any specific warnings.

iii) Criteria for fitness and propriety under the MLRs

Under the MLRs, the criteria that can be considered when determining fitness and propriety for both assessing at the gateway and considering whether to cancel or suspend a registration are far more limited in comparison to criteria for taking similar action under FSMA. We consider that the regime could be strengthened if the criteria that could be used to determine fitness or propriety, included, for example, specific criteria in relation to adequate governance and financial resilience.

iv) Access to UK investors through listing securities on overseas markets that are not Recognised Overseas Investment Exchanges (ROIEs) or regulated markets

Currently, there is scope for securities listed on EEA exchanges and multilateral trading facilities (MTFs) to be distributed to UK investors, without being subject to the UK listings regime and associated FCA scrutiny. In this case, certain Greensill securities were classed as "officially listed" by virtue of listing on certain EEA MTFs. These trading venues may not even have sought recognition under the UK's Recognised Overseas Investment Exchange regime.

In our discussion paper on high risk investments published on 29 April, we are seeking views on removing securities admitted to official listing on EEA exchanges and securities regularly traded on or under the rules of EEA exchanges from the definition of "readily realisable security" which is used in the FCA's financial promotion rules to identify those investments that can be generally promoted to retail investors. We would also welcome greater consistency between the ROIE and wider UK regulatory regime and the list of overseas exchanges that qualify for specific UK tax treatment e.g. the Quoted Eurobond Exemption, as these tax treatments can drive institutional investor choice and behaviour.

This is one example of the issue of regulatory arbitrage which needs to be considered in relation to the future of UK regulation. The Treasury is currently considering the framework under which financial products and services may be provided to UK investors from outside the UK, and its Call for Evidence on the Overseas Framework closed on 11 March 2021.

v) Employer Salary Advance Schemes

In July 2020, we provided our view of Employer Salary Advance schemes, including the risks we believed existed within them.[11] The Woolard Review[12] also considered the matter, noting that "Employer Salary Advance Schemes (ESAS) offer a low-cost alternative to using credit like payday loans or overdrafts. If used appropriately they can give employees benefits and greater control of their finances. While wider regulation may not be immediately necessary, the FCA should take a proportionate approach and continue to closely monitor market developments and guard against risks to individuals. These risks can include inappropriate relationships between employers and lenders. For example, lenders 'locking in' employers through linked commercial contracts, or cross-selling of inappropriate financial services products to employees. The FCA working with the government should encourage ESAS providers and major employers to draw up a code of best practice. Where firms are regulated for part of their activity by the FCA, the FCA should look to formally recognise the code. Further, major employers should be encouraged to only contract with ESAS providers adhering to this code."

The FCA stands ready to work with the Government to take forward this recommendation.

6. The Committee is aware that parts of the Greensill Group were regulated in other countries. Were there any information requests from or to those countries' regulators regarding these entities?

The German, Australian and Swiss authorities have all confirmed publicly that they are investigating or considering matters in relation to Greensill entities and we have cooperated with counterparts in all these jurisdictions. In addition, there are other jurisdictions that are considering matters and we will continue also to cooperate with authorities in those jurisdictions under the terms of our international memoranda of understanding.

The failure of Greensill again demonstrates the need for regulators around the world to work closely together to fully assess the risks created by those financial entities that span multiple jurisdictions. The FCA is committed to taking a lead role in this work.

7. It has been reported that Credit Suisse and GAM operated Greensill related funds. Did the FCA have any involvement in the regulation of those funds?

Credit Suisse Asset Management

Credit Suisse Asset Management (CSAM) operates four supply chain finance (SCF) sub-funds through fund vehicles based in Luxembourg and Liechtenstein. They are qualified-investor funds ('alternative investment funds') and therefore not accessible to retail investors. The funds' management companies are based in Luxembourg and Liechtenstein respectively. Both the funds and their management companies are authorised and supervised by their local regulators in Luxembourg (Commission de Surveillance du Secteur Financier – 'CSSF') and in Liechtenstein (Financial Market Authority - 'FMA') respectively. Portfolio management was performed by Credit Suisse Asset Management (Switzerland) AG for all the SCF funds. The Swiss Financial Market Supervisory Authority (FINMA) is the relevant regulator.

CSAM Limited (CSAM UK) and Credit Suisse UK Limited (CSUK) marketed and distributed the funds to UK investors. CSAM UK and CSUK are authorised and regulated by the FCA. While the operation of the funds sits under the respective regulators (CSSF, FMA and FINMA), the FCA continues to engage with CSAM's UK regulated entities in respect of their marketing and distribution.

[11] https://www.fca.org.uk/news/statements/fca-sets-out-views-employer-salary-advance-schemes
[12] p6, https://www.fca.org.uk/publication/corporate/woolard-review-report.pdf

GAM

Until mid-2018, the Swiss GAM AG Group operated several sub-funds within its Absolute Return Bond Fund (ARBF) range, which, among others, made investments in Greensill's supply chain finance (SCF) assets. These ARBF funds and their management company were established in Luxembourg, authorised and supervised by the CSSF. They were alternative investment funds. Portfolio management was performed by GAM Investment Management Limited, which is established in the UK and is authorised by the FCA.

GAM announced the suspension of nine of the ABRF sub-funds, totalling c.$8bn AUM, in August 2018.[13] GAM then announced the wind-up of most of the ABRF fund range later that month.[14]

GAM operated a range of the sub-funds 'GAM Greensill Supply Chain Finance Funds', which were part of its ARBF range. On 2 March 2021, GAM announced that it was liquidating the last remaining GAM Greensill Supply Chain Finance Fund (which at the time held $842m in assets).[15] Throughout this matter the FCA has worked closely with GAM as well as our relevant European regulatory counterparts to ensure the best outcome for investors.

8. Can you provide a description of when and how FCA staff first became aware of any potential financial difficulties or weaknesses at Greensill?

In early 2020, and particularly after the onset of the pandemic in March, there was widespread distress in financial markets across financial services firms and other sectors of the economy. It was reported at various times in the media that Greensill may be one of many such firms facing defaults.[16] FCA staff were aware of these reports.

The Committee took evidence from the FCA and other authorities during this period and will be aware that the FCA refocused very significant resources to activities to support the economy during the pandemic, including a range of systemwide interventions to support consumers, small businesses (e.g. in relation to business interruption insurance) and the smooth functioning of markets to enable capital raising. The Government and Bank of England also introduced a number of emergency schemes to support the economy. The FCA also intensified its work on the financial resilience of FCA authorised firms, with an emphasis on those firms whose disorderly failure could pose the greatest risk to consumers or would be likely to pose a systemic risk to markets. This work has involved detailed assessment of the financial resilience of some 4,000 firms, having received data from 19,000. This has resulted in a range of interventions with individual firms that presented risk of failure.

I hope this information is helpful to the Committee. I look forward to appearing before the Committee on 12 May.

Yours sincerely,

Nikhil Rathi

Nikhil Rathi
Chief Executive

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[13] https://www.gam.com/en/news-articles/press-releases/corporate/gam-fund-boards-suspend-dealing-in-unconstrained-absolute-return-bond-funds
[14] https://www.gam.com/en/news-articles/press-releases/corporate/gam-outlines-liquidation-plan-for-unconstrained-absolute-return-bond-funds
[15] https://www.gam.com/en/news-articles/press-releases/corporate/gam-to-initiate-orderly-wind-down-of-gam-greensill-supply-chain-finance-fund
[16] https://www.ft.com/content/d5a5951f-bab8-4ea8-b0d7-2b70455c9ed5