



12 Endeavour Square
London
E20 1JN

Tel: +44 (0)20 7066 1000
Fax: +44 (0)20 7066 1099
www.fca.org.uk

NOTICE OF DECISION

To: Tusk Capital Management Limited
FRN: 409723
Dated: 29 September 2023

ACTION

1. For the reasons given below, the Authority has decided to cancel Tusk Capital Management Limited's Part 4A permission. The cancellation takes effect on the date of this Notice of Decision.
2. The effect of the cancellation is that Tusk Capital Management Limited no longer has permission to carry on any regulated activities.

DEFINITIONS

3. The definitions below are used in this Notice of Decision (and in the Annex):
 - "the Act" means the Financial Services and Markets Act 2000;
 - "the Authority" means the Financial Conduct Authority;

“DISP” means the Authority’s Dispute Resolution: Complaint’s sourcebook, part of the Handbook;

“EG” means the Enforcement Guide;

“FDA” means the Firm Details Attestation which Authority-authorized firms are required to submit to the Authority under SUP 16.10;

“the Further Notice” means the further notice issued by the Authority to TCML dated 7 September 2023;

“the Handbook” means the Authority’s Handbook of rules and guidance;

“the Notice” means the notice issued by the Authority to TCML dated 18 July 2023;

“Part 4A permission” means permission to conduct regulated activities, granted by the Authority under Part 4A of the Act;

“RAG” means regulated activity group as referred to in SUP;

“the Returns” means the Complaints, FIN-A, FSA001, FSA002, FSA003, FSA038 and FSA039 returns relating to the period from 1 January 2019 to 31 December 2022 which were due to be submitted to the Authority on various dates between 24 April 2020 and 26 April 2023;

“SUP” means the Supervision Manual, part of the Handbook; and

“TCML” means Tusk Capital Management Limited;

“TCML’s Part 4A permission” means the Part 4A permission granted by the Authority to TCML;

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

FACTS AND MATTERS

4. TCML was authorised by the Authority on 24 February 2005 and given a Part 4A permission to conduct the following regulated activities:
 - a) advising on investments (except on pension transfers and pension opt outs);
 - b) advising on P2P agreements;
 - c) agreeing to carry on a regulated activity;
 - d) arranging (bringing about) deals in investments;
 - e) dealing in investments as agent;
 - f) making arrangements with a view to transactions in investments; and
 - g) managing investments.
5. Under SUP 16.3.13R, SUP 16.7A.3R, SUP 16.12.3R, SUP 16.12.4R, SUP 16.12.12R, SUP 16.12.25R (and the further rules specified therein) in Chapter 16 of SUP and DISP 1.10.1R, TCML is required to submit the Returns to the Authority by the relevant due date. However, TCML has failed to submit the Returns to the Authority. The Authority therefore considers that TCML has failed to provide information to the Authority as is required by the Handbook, namely the information it is required to provide in the Returns.

6. Under SUP 16.10.4R, 16.10.4AR and 16.10.14AAR, TCML is required to submit the FDA to the Authority by the relevant due date. However, TCML has failed to submit the FDA to the Authority.
7. On 18 July 2023, the Authority gave TCML the Notice which stated that:
 - (a) it appears to the Authority that TCML is carrying on no regulated activity to which its Part 4A permission relates; and
 - (b) the Authority may take action to cancel TCML's Part 4A permission unless it responds to the Notice in the manner specified in the directions to the Notice.
8. TCML failed to respond in the manner specified in the directions to the Notice.
9. As a result of the matters specified above, on 7 September 2023, the Authority gave TCML the Further Notice which stated that:
 - a) the Authority considered that TCML is carrying on no regulated activity to which its Part 4A permission relates; and
 - b) the Authority proposes to cancel TCML's Part 4A permission on 29 September 2023 unless TCML takes the steps specified in the directions to the Further Notice.
10. TCML failed to take the steps specified in the Further Notice.

CANCELLATION OF PART 4A PERMISSION

11. From the facts and matters described above, and having regard to paragraph 1(3) of Schedule 6A to the Act, the Authority considers that TCML is carrying on no regulated activity to which its Part 4A permission relates. The Authority has therefore decided to cancel TCML's Part 4A permission. The cancellation of TCML's Part 4A permission takes effect on the date of this Notice of Decision.
12. The statutory and regulatory provisions relevant to this Notice of Decision are set out in the Annexes.

PROCEDURAL MATTERS

13. This Notice of Decision is given to TCML under paragraph 3 of Schedule 6A to the Act (variation or cancellation of Part 4A permission on initiative of FCA: additional power).

The following paragraphs are important.

Annulment of the Authority's decision

14. If TCML is aggrieved by the decision to cancel its Part 4A permission as set out in this Notice of Decision, TCML may make an application for an annulment of the Authority's decision under paragraph 4 of Schedule 6A to the Act.
15. TCML must submit a completed application for an annulment of the Authority's decision to the Authority by 28 September 2024 and in the manner specified by the Authority.

The Tribunal

16. TCML does not have a right to refer the decision to give this Notice of Decision to the Tribunal.

Publicity

17. The Authority intends to publish such information about the matter to which this Notice of Decision relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate.

Authority Contact

18. For more information concerning this matter generally, TCML should contact Arjun Periasamy (direct line: 020 7066 4935).

Jeremy Parkinson
Enforcement and Market Oversight Division

**ANNEX ON CANCELLATION OF PART 4A PERMISSION ON INITIATIVE OF FCA:
ADDITIONAL POWER**

RELEVANT STATUTORY PROVISIONS

1. The Authority's operational objectives established in section 1B of the Act include protecting and enhancing the integrity of the UK financial system and securing an appropriate degree of protection for consumers.
2. The Authority is authorised by paragraphs 1(1) and (2) of Schedule 6A to the Act to cancel an Authority-authorised person's Part 4A permission, if it appears to the Authority that the Authority-authorised person is carrying on no regulated activity to which the permission relates.
3. Paragraph 1(3) of Schedule 6A of the Act provides that the circumstances in which the Authority may form the view that an Authority-authorised person is carrying on no regulated activity include (but are not limited to) circumstances where the person fails—

(b) to provide such information to the Authority as is required by the Handbook.
4. The Authority must exercise its power to cancel an Authority-authorised person's Part 4A permission using its additional own initiative power in accordance with the procedure set out in paragraph 2 of Schedule 6A to the Act.

RELEVANT HANDBOOK PROVISIONS

5. In exercising its power to cancel an Authority-authorised person's Part 4A permission, the Authority must have regard to the regulatory requirements and guidance published in the Handbook and in regulatory guides, such as EG. The main considerations relevant to the action stated in this Notice of Decision are set out below.

Relevant Rules

6. SUP 16.3.13R(1) requires that:

"A *firm* must submit a report required by this chapter in the frequency, and so as to be received by the [Authority] no later than the due date, specified for that report."
7. SUP 16.3.13R(4) states that:

"If the due date for submission of a report required by this chapter is a set period of time after the end of a half-year, a quarter, or a month, the dates will be determined by (a) or (b) below except where otherwise indicated:

(a) the *firm's accounting reference date*;

(b) monthly, 3 monthly or 6 months after the *firm's accounting reference date*, as the case may be."

8. SUP 16.12.3R(1)(a)(ii) requires that:

“unless (iii) applies, where a *firm* is required to submit completed *data items* for more than one *RAG*, that *firm* must only submit the *data item* of the same name and purpose in respect of the lowest numbered *RAG* applicable to it, *RAG* 1 being the lowest and *RAG* 12 the highest.”

9. SUP 16.12.3R(1)(a)(iii) specifies that:

“where a *firm* is, but for this *rule*, required to submit *data items* for more than one *RAG* and this includes the submission of *data items* in respect of fees, the *FOS* or *FSCS* levy, or threshold conditions, that *firm* must only submit these *data items* if they belong to the lowest numbered of the *RAGs* applicable to it.”

10. The specific reporting requirements for TCML are set out in SUP (taken from SUP 16.12.4R and DISP 1.10.1R) which stipulate the type, frequency and due date of each of the regulatory reports which TCML is required to submit, according to the regulated activities which TCML has permission to conduct:

RAG Number/Basis of reporting requirement	Type of Return(s) applicable (Relevant rule)	Frequency of data item(s) to be submitted (Relevant rule)	Due date of data item(s) to be submitted (Relevant rule)
RAG 3	FIN-A Annual Report and Accounts	Annually (SUP 16.7A.3R)	80 business days (SUP 16.7A.8R)
RAG 3	FSA001, FSA002, FSA003	Half Yearly (SUP 16.12.28AR)	30 business days (SUP 16.28.AR)
RAG 3	FSA038, FSA039	Half yearly (SUP 16.12.12R)	30 business days (SUP 16.12.13R)
Complaints return (DISP 1.10.1R(1))	Complaints (DISP 1.10.1R)	Half yearly (DISP 1.10.1R)	30 business days (DISP 1.10.5R)

11. SUP 16.10.4R specifies that:

“(1) Within 60 business days of its accounting reference date, a firm must check the accuracy of its firm details through the relevant section of the [Authority] website.

[...]

(3) If any of the details are incorrect, the firm must submit the corrected firm details to the [Authority] using the appropriate form set out in SUP 15 Ann 3 and in accordance with SUP 16.10.4AR.”

12. SUP 16.10.4AR(1) specifies that:

“A firm must submit any corrected firm details under SUP 16.10.14R(3) using the appropriate online systems accessible through the [Authority’s] website.”

13. SUP 16.10.14AAR, which applies where, in complying with SUP 16.10.14R(1), a firm does not need to submit corrected firm details under SUP 16.10.14R(3), specifies that:

“(2) Within 60 business days of its accounting reference date, a firm must submit a report to the [Authority] confirming that the firm details which it has checked under SUP 16.10.14R(1) remain accurate, using the appropriate online systems accessible through the [Authority’s] website.”

Guidance concerning the use of the Authority’s additional power to cancel an authorised firm’s Part 4A permission on its own initiative

14. Guidance on the use of the Authority’s power to cancel an Authority-authorized person’s Part 4A permissions on its own initiative under Schedule 6A to the Act is set out in SUP and EG.

15. EG 8.5.2A states that the Authority may cancel the Part 4A permission of a firm that is an Authority-authorized person, under Schedule 6A of the Act, if:

- (1) it appears to the Authority that the firm is carrying on no regulated activity to which the permission relates; and
- (2) the firm has failed to respond as directed by the Authority to notices served by the Authority to the firm under paragraph 2 of Schedule 6A.

16. EG 8.5.2A also states that Schedule 6A specifies that the Authority may form the view that a firm is carrying on no such regulated activity on the basis of its failure to pay a periodic fee or levy or provide information to the Authority, in each case as required by the Handbook.

17. SUP sets out further guidance on the Authority’s power under Schedule 6A of the Act. In particular, SUP 7.2.2AG states that the Authority may decide to cancel an Authority-authorized person’s Part 4A permission using its powers under Schedule 6A of the Act:

- (1) if that person appears to the Authority not to be carrying on any regulated activity to which the permission relates, including, without restriction, if the person has failed to:
 - (b) provide the Authority with information required under the Handbook; and

(2) if that person, when served by the Authority with two notices under paragraph 2 of Schedule 6A of the Act, has not:

- (a) responded in the manner directed, in those notices or otherwise, by the Authority; nor
- (b) taken other steps as may also be directed by the Authority;

the second of which notices will specify the effective date of the proposed cancellation.

18. SUP 7.2.2DG states that:

- (1) the Authority's additional own-initiative variation power under Schedule 6A to the Act (which includes the power to cancel the Part 4A permission of an Authority-authorized firm under Schedule 6A of the Act and references to "additional own-initiative variation power in the remainder of this Notice of Decision should be read as such) has, unlike the Authority's own-initiative variation power under section 55J of the Act, a single basis: that it appears to the Authority that the relevant Authority-authorized person is not carrying on any regulated activity to which its Part 4A permission relates.
- (2) if the Authority uses its additional own-initiative variation power, it is therefore more likely to cancel the relevant firm's Part 4A permission, rather than merely varying it by removing or amending the description of one or more such activities or by imposing one or more limitations.
- (3) the Authority will, however, consider all relevant facts and circumstances, including, without restriction:
 - (a) the relevant firm's responses, if any, to the notices given by the Authority under paragraph 2 of Schedule 6A; and
 - (b) if applicable, the factors described in SUP 6.4.22G, including whether there are any matters relating to the firm requiring investigation,

before deciding whether to use its additional own-initiative variation power and whether to use it to cancel or vary.

19. SUP 7.2.7G(1) states that a firm has no right of referral to the Tribunal in respect of the Authority exercising its additional own-initiative variation power, under Schedule 6A to the Act, on the Authority-authorized firm's Part 4A permission.

