
FINAL NOTICE

To: **Esfera Capital, Agencia de Valores, S.A.**

Address: **CJ Chiuida
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Puerta 4.
0470
Spain**

FRN: **750962**

Dated: **18 January 2022**

ACTION

1. For the reasons set out in this Final Notice, the Authority hereby takes the following action.
2. The Authority issued to ECADV the Decision Notice, which notified it that for the reasons given below and pursuant to section 55J of the Act and Regulation 8(5)(a) of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018, the Authority had decided to cancel ECADV's Part 4A permission.
3. ECADV has not referred the matter to the Tribunal within 28 days of the date on which the Decision Notice was given to it.
4. Accordingly, the Authority has today cancelled ECADV's Part 4A permission.

SUMMARY OF THE REASONS

5. ECADV has failed to respond to repeated requests for the provision of information, namely the information set out in the TPR Attestation Survey. Authorised firms (and those seeking authorisation) are expected to engage with the Authority in an open and cooperative way. The Authority has concluded, on the basis of the facts and matters set out below, that ECADV is failing to satisfy the suitability and effective supervision Threshold Conditions. In particular, the Authority is not satisfied that ECADV is fit and proper having regard to all the circumstances or that it can be effectively supervised. Specifically, ECADV has failed to be open and co-operative in all its dealings with the Authority, and as a result, the Authority is not satisfied that ECADV's business is being, or will be, managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner or that ECADV is ready, willing and organised to comply with the requirements and standards under the regulatory system.

DEFINITIONS

6. The definitions below are used in this Final Notice (and in the Annex):

"the Act" means the Financial Services and Markets Act 2000;

"the Authority" means the Financial Conduct Authority;

"COND" means the Threshold Conditions part of the Handbook;

"the Decision Notice" means the decision notice given to ECADV dated 16 November 2021;

"ECADV" means Esfera Capital, Agency de Valores, S.A.;

"ECADV's Part 4A permission" means the deemed permission granted by the Authority to ECADV under Part 4A of the Act;

"the effective supervision Threshold Condition" means the threshold condition set out in paragraph 2C of Schedule 6 of the Act;

"EG" means the Enforcement Guide;

"the Handbook" means the Authority's Handbook of rules and guidance;

"the Principles" means the Authority's Principles for Businesses;

"the RDC" means the Authority's Regulatory Decisions Committee;

"the suitability Threshold Condition" means the threshold condition set out in paragraph 2E of Schedule 6 to the Act;

"SUP" means the Supervision section of the Handbook;

"SYSC" means the Senior Management Arrangements, Systems and Controls section of the Handbook;

"the Threshold Conditions" means the threshold conditions set out in Schedule 6 to the Act; and

"the TPR" means the Temporary Permissions Regime for EEA-based firms that were formerly carrying on regulated activities in the UK through passporting arrangements;

“the TPR Attestation Survey” means the firm attestation sent by the Authority to ECADV requesting information from ECADV regarding whether, having obtained a Part 4A permission under the TPR, it understands its regulatory obligations and asking ECADV to provide to the Authority contact details for individuals with specific responsibilities at ECADV;

“the TPR Notification Form” means the form submitted by ECADV notifying the Authority of its intention to enter into the TPR; and

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

FACTS AND MATTERS

7. On 17 October 2019, ECADV submitted the TPR Notification Form notifying the Authority that it wished to enter into the TPR in order to obtain a temporary Part 4A permission to carry on regulated activity in the UK under the passporting arrangements set out in Schedule 3 or 4 of the Act.
8. On 21 January 2021, the Authority informed ECADV by email that it had been granted a deemed Part 4A permission and was now regulated by the Authority for its UK business.
9. On 25 January 2021, the Authority sent an email to ECADV using the ‘key contact’ details in the TPR Notification Form requiring ECADV, in accordance with section 165 of the Act, to provide the information requested within the TPR Attestation Survey by 29 January 2021.
10. On 28 January 2021, using the same ‘key contact’ email address for ECADV, the Authority sent an email to ECADV, reminding ECADV that the required information within the TPR Attestation Survey was to be provided by 29 January 2021.
11. On 4 February 2021, the Authority sent an email to ECADV using the same ‘key contact’ email address stating that the information ECADV was required to provide within the TPR Attestation Survey was now overdue. The Authority gave ECADV a revised deadline of 11 February 2021 to provide the information specified in the TPR Attestation Survey.
12. To date, the Authority has not received any response to its requests for information, including those dated 25 and 28 January 2021 and 4 February 2021 and ECADV has failed to provide the information.

FAILINGS

13. The statutory and regulatory provisions relevant to this Final Notice are set out in the Annex.
14. ECADV has failed to respond to repeated requests for the provision of information, namely the information set out in the TPR Attestation Survey. The Authority considers this information to be necessary to establish that ECADV, having obtained a Part 4A permission under the TPR, understands its regulatory obligations and for ECADV to provide to the Authority contact details for individuals with specific responsibilities at ECADV.
15. Authorised firms are expected to engage with the Authority in an open and cooperative way. The failure to respond to the Authority’s requests and provide the requested information leads the Authority to conclude that ECADV:
 - (a) has failed to be open and cooperative in all its dealing with the Authority in breach of Principle 11;

- (b) is not capable of being effectively supervised by the Authority because the Authority is not satisfied that it will receive adequate information from ECADV to enable the Authority to determine whether ECADV is complying with the requirements and standards under the regulatory system, and that ECADV is therefore failing to satisfy the effective supervision Threshold Condition; and
- (c) is not a fit and proper person because the Authority is not satisfied that ECADV's business is being, or is to be, managed in such a way as to ensure its affairs will be conducted in a sound and prudent manner, and that ECADV is therefore failing to satisfy the suitability Threshold Condition.

16. Accordingly, the Authority has cancelled ECADV's Part 4A permission.

DECISION MAKER

17. This decision which gave rise to the obligation to give this Final Notice was made by the RDC.

IMPORTANT

18. This Final Notice is given to ECADV in accordance with section 390(1) of the Act.

Publicity

19. The Authority must publish such information about which this Final Notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such information would, in the opinion of the Authority, be unfair to ECADV or prejudicial to the interests of consumers.

20. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Authority Contact

21. For more information concerning this matter generally, ECADV should contact Dilip Vekariya at the Authority (direct line: 020 7066 5520).

Anna Couzens
Enforcement and Market Oversight Division

ANNEX

RELEVANT STATUTORY PROVISIONS

1. Section 55J of the Act provides that where it appears to the Authority that an authorised person with a Part 4A permission is failing, or is likely to fail, to satisfy the threshold conditions for which the Authority is responsible it may exercise its power under this section to cancel the person's Part 4A permission.
2. Regulation 8(1) of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 provides that a person to whom a temporary Part 4A permission is granted has permission to carry on a regulated activity in the UK under Part 4A of the Act. Regulations 8(4) and (5) provide that a power of a regulator under the Act is exercisable in respect of such a person as it is in respect of a person with permission under Part 4A of the Act. Regulation 8(5)(a) provides that such a power is exercisable in relation to a variation or cancellation of a permission to carry on a regulated activity.
3. The effective supervision Threshold Condition provides, in relation to a person ("A") carrying on, or seeking to carry on, regulated activities which do not include a PRA-regulated activity, that:

"A must be capable of being effectively supervised by [the Authority] having regard to all the circumstances, including-

[...]

(c) the way in which A's business is organised".
4. The suitability Threshold Condition provides, in relation to a person ("A") carrying on, or seeking to carry on, regulated activities which do not include a PRA-regulated activity, that:

"A must be a fit and proper person having regard to all the circumstances, including:

[...]

(f) whether A's business is being, or is to be, managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner."

RELEVANT HANDBOOK PROVISIONS

5. In exercising its power to cancel a firm'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 relevant main considerations in relation to the action specified above are set out below.

Relevant Principle

6. Principle 11 requires a firm to deal with its regulators in an open and co-operative way, and to disclose to the Authority appropriately anything relating to the firm of which the Authority would reasonably expect notice.

Guidance concerning the Threshold Conditions

7. Guidance on the Threshold Conditions is set out in COND.

Threshold Condition 2C: Effective supervision

8. COND 2.3.3G states that, in assessing the threshold condition set out in paragraph 2C of Schedule 6 to the Act, factors which the Authority will take into consideration include, among other things, whether it is likely that the Authority will receive adequate information from the firm, and those persons with whom the firm has close links, to enable it to determine whether the firm is complying with the requirements and standards under the regulatory system for which the Authority is responsible and to identify and assess the impact on its statutory objectives; this will include consideration of whether the firm is ready, willing and organised to comply with Principle 11 (Relations with regulators) and the rules in the Supervision manual in the Handbook on the provision of information to the Authority.

Threshold Condition 2E: Suitability

9. COND 2.5.2G states that the Authority will take into consideration anything that could influence a firm's continuing ability to satisfy the threshold conditions set out in paragraphs 2E and 3D of Schedule 6 to the Act.
10. COND 2.5.4G(2)(a) states that examples of the kind of general considerations to which the Authority may have regard when assessing whether a firm will satisfy, and continue to satisfy, threshold condition 2E include, but are not limited to, whether the firm can demonstrate that it conducts, or will conduct its business with integrity and in compliance with proper standards.
11. COND 2.5.6G provides that examples of the kind of particular considerations to which the Authority may have regard when assessing whether a firm will satisfy, and continue to satisfy, this threshold condition include, but are not limited to, whether:
 - the firm has been open and co-operative in all its dealings with the Authority and any other regulatory body (see Principle 11 (Relations with regulators))) and is ready, willing and organised to comply with the requirements and standards under the regulatory system (COND 2.5.6G(1)); or
 - the firm has contravened, amongst other things, any provision of the regulatory system, which includes the Principles and other rules (COND 2.5.6G(4)).

OTHER RELEVANT REGULATORY PROVISIONS

12. The Authority's policy in relation to its enforcement powers is set out in EG, the relevant provisions of which are summarised below.

Cancelling a firm's Part 4A permission on the Authority's own initiative

13. EG 8.1.1(1) provides that the Authority may use its own initiative power to vary or cancel the Part 4A permission of an authorised person under section 55J of the Act where the person is failing or is likely to fail to satisfy the Threshold Conditions for which the Authority is responsible.
14. EG 8.5.1(1) states that the Authority will consider cancelling a firm's Part 4A permission using its own initiative power contained in section 55J of the Act in circumstances where the Authority has very serious concerns about the firm, or the way its business is or has been conducted.
15. EG 8.5.2 provides examples of the types of circumstances in which the Authority may cancel a firm's Part 4A permission. These include failure to provide the FCA with valid contact details or failure to maintain the details provided, such that the FCA is unable to communicate with the firm (EG 8.5.2(6)), repeated failures to comply with rules and requirements (EG 8.5.2(7)) and provide material information or take remedial action reasonably required by the FCA (EG 8.5.2(8)(b)).