
FINAL NOTICE

To: Applicant A

Date: 2022

ACTION

1. By an application dated 19 October 2020, Applicant A applied under section 55A of the Act for Part 4A permission to carry on the regulated activities of:
 - a. Agreeing to carry on a regulated activity;
 - b. Arranging deals in investments;
 - c. Making arrangements with a view to transactions in investments; and
 - d. Advising on investments (except pension transfers and pension opt-outs).
2. The Authority has refused the Application.

SUMMARY OF REASONS

3. For the reasons set out in this Notice, the Authority cannot ensure that Applicant A will satisfy, and continue to satisfy, Threshold Conditions 2D (Appropriate Resources), 2E (Suitability) and 2F (Business Model) as set out in Schedule 6 of the Act.
4. Applicant A is a compliance consultant, seeking permission to offer regulatory hosting services to investment businesses, whereby it will carry on regulated activities through appointed representatives (ARs) under section 39 of the Act. Applicant A would be responsible for the products sold or arranged, any advice given to customers and for ensuring ARs meet all of the requirements of the regulatory system.

5. Applicant A applied to carry on the regulated activities set out in paragraph 1 in relation to certain securities (shares, debentures, government and public securities, warrants and certificates representing certain securities), options and futures (excluding commodity options and futures). It applied to arrange and advise on these products for retail clients, professional clients and eligible counterparties.
6. The Authority is not satisfied that Applicant A has the appropriate non-financial resources for the regulated activities it seeks to carry on. Applicant A has one director and no employees. Applicant A's Director has relevant and longstanding compliance experience but has not satisfied the Authority that they have the skills and experience to manage and oversee an investment business as principal. Applicant A informed the Authority that it intends to recruit additional compliance professionals to assist with providing the oversight required to ensure that its ARs act in compliance with the requirements of the regulatory system. However, Applicant A has not made it clear to the Authority how it intends to recruit to fill the relevant experience gaps and lacks clarity and understanding in respect of the skills it would need to recruit for. The Authority expects firms, like Applicant A, seeking to offer regulatory hosting services to understand that to oversee ARs and ensure compliance with the appropriate rules and requirements, they need to recruit appropriate personnel with knowledge and frontline experience of advising on or arranging deals in investments, or of running a business which carries on those regulated activities. Applicant A has therefore not demonstrated that it will satisfy, and continue to satisfy, Threshold Condition 2D (Appropriate Resources).
7. Applicant A indicated to the Authority that it intends to rely upon prospective ARs to put in place an Appropriateness Assessment which complies with regulatory requirements, however responsibility for this rests with Applicant A as the prospective authorised person. Despite providing two versions of an Appropriateness Assessment to the Authority, Applicant A has not provided a version which meets regulatory requirements and is suitable for the proposed business Applicant A intends to carry on. It has therefore not demonstrated that it is ready, willing and organised to comply with the requirements of the regulatory system and it has not demonstrated that it will satisfy, and continue to satisfy, Threshold Condition 2E (Suitability).
8. Applicant A seeks Part 4A permission so that it can provide a regulatory hosting service, whereby it will offer a compliance framework and enter contracts with a limited number of ARs. However, Applicant A is yet to identify any prospective ARs or to be specific about the businesses it intends to take on as ARs, so it is not yet in a position to articulate its rationale for the business it proposes to do, its competitive advantage, viability or the longer-term profitability of the business. Applicant A has not therefore demonstrated that it will satisfy, and continue to satisfy, Threshold Condition 2F (Business Model).
9. The Authority's concerns are compounded by the fact that Applicant A will act as a regulatory host. As principal, Applicant A would be wholly responsible for oversight and compliance with the requirements of the regulatory system of the AR businesses it intends to host. A failure by Applicant A to effectively discharge that obligation exposes consumers to the risk of harm.

DEFINITIONS

10. The definitions below are used in this Notice.

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

"the Application" means the application referred to in paragraph 1 above;

"Appropriateness Assessment" means a document which is intended to ensure that ARs make suitable recommendations in accordance with COBS 10;

"AR" means appointed representative as defined by section 39(2) of the Act;

"the Authority" means the Financial Conduct Authority;

"COBS" means the Authority's Conduct of Business Sourcebook part of the Handbook;

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

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

"RDC" means the Regulatory Decisions Committee of the Authority (see further under Procedural Matters below);

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

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

"the Warning Notice" means the Warning Notice given to Applicant A dated 1 October 2021.

FACTS AND MATTERS

11. Applicant A is a limited company which provides unregulated compliance consultancy services to financial services firms.
12. By way of the Application, Applicant A is seeking to obtain Part 4A permission so that it can provide a regulatory hosting service, whereby Applicant A, acting as principal, will enter into contracts with a limited number of ARs and enable those ARs to carry on regulated activities within Applicant A's permission under section 39 of the Act.
13. Applicant A seeks Part 4A permission to carry on regulated activities in relation to certain securities (shares, debentures, government and public securities, warrants and certificates representing certain securities), options and futures (excluding commodity options and futures). In the Application, Applicant A applied to arrange and advise on these products for retail clients, professional clients and eligible counterparties. Applicant A has since indicated that it will not, and did not intend to, seek permission to advise retail clients.

Applicant A's non-financial resources

14. Applicant A has one director who has applied for Part V approval to undertake all of Applicant A's required Senior Management Functions: SMF 1 (Chief Executive), SMF 3 (Executive Director), SMF 16 (Compliance Oversight) and SMF 17 (Money Laundering Reporting Officer).
15. Applicant A's Director has relevant and longstanding experience in compliance and money laundering reporting roles but has not previously been a Chief Executive or Executive Director of a regulated business and so has not previously held the SMF 1 or SMF 3 functions (or equivalent). They do not have any frontline experience of

advising on or arranging deals in investments or of running a business which carries on those regulated activities.

16. Applicant A has no other staff but intends to recruit one full-time and one part-time compliance consultant if permission were given. The Authority would expect Applicant A to recruit individuals with frontline experience of advising on or arranging deals in investments and/or of running a business which carries on those regulated activities. However, Applicant A could not explain what skills gaps it would need to recruit to fill and, although Applicant A provided an unsigned Heads of Terms document for a consultant with corporate finance experience to provide advisory services in respect of the onboarding of potential ARs, the Authority does not consider that this appointment would address its concerns. The Authority is therefore not persuaded that Applicant A's plans to recruit to address its skills gaps are particularly well developed.

Applicant A's systems and controls

Appropriateness Assessment

17. Section 39(3) of the Act provides that the principal of an AR is responsible for anything done or omitted to be done by its AR, as if the principal had expressly permitted it. If permission were granted, Applicant A would therefore be responsible for the products sold or arranged by its ARs, any advice given to customers and for the oversight and compliance of its ARs with the requirements of the regulatory system, as if Applicant A was carrying on those activities itself.
18. Applicant A has indicated that it expects its ARs would be arranging or dealing in certain investments for high net worth and sophisticated investors. COBS 10 requires Applicant A to ask those clients for information about their knowledge and experience in the investment field relevant to the specific type of product or service offered, in order to assess whether the service or product envisaged is appropriate for the client. As part of the Application, Applicant A was asked to provide its Appropriateness Assessment and on 4 February 2021 it produced a generic Appropriateness Assessment which fell significantly short of the requirements of COBS 10. In particular:
 - a. It did not relate to the specific types of products or services which Applicant A proposes to offer through its ARs;
 - b. It related to start-up funding and not to each of the specific products for which Applicant A seeks permission to carry on regulated activity; and
 - c. Although it indicated which answers in the assessment were correct, it did not contain any methodology or scoring matrix to enable Applicant A and its ARs to determine how many correct answers would indicate that the product or service would be appropriate for the client completing it.
19. In response to the Authority's concerns, Applicant A said it would be for its ARs to produce an Appropriateness Assessment suitable to their business and which complies with the requirements of COBS 10. It said in respect of the shortcomings in its methodology that "[t]his will depend on the nature of the product or service being offered" and that as part of its onboarding process it would "review all the Appointed Representatives policies and procedures [and] review their client categorisation documents and process. If their procedures are robust and compliant, we will sign it off. If their procedures appear to be inadequate, we will provide the necessary declarations and wording to the Appointed Representative."

20. Applicant A also said: *"It is not possible for the firm to determine at this stage how the Appointed Representatives will assess the appropriateness of an investment for their clients. We expect that business models, products and clients will vary therefore it will be for each Appointed Representative to demonstrate to [Applicant A] that they are able to ensure that the rules on appropriateness are complied with, both at the onboarding stage and whilst they remain an Appointed Representative."*
21. This response indicates that Applicant A intends to rely on its proposed ARs to create the systems and controls necessary to meet the requirements of the regulatory system, whereas this obligation would rest with Applicant A as the principal.
22. Following feedback from the Authority, on 23 February 2021 Applicant A provided a 'specific' version of its Appropriateness Assessment, tailored to a product that Applicant A said its ARs would have permission to provide. However, the specific version of the Appropriateness Assessment only appeared to relate specifically to shares in start-up companies. It also fell short of the requirements in COBS 10, in that it did not contain any methodology or scoring matrix to enable Applicant A to determine whether or not the product was suitable for the client. Applicant A was provided with several opportunities during the application process to recognise and address the Authority's concerns with the deficiencies identified in the generic and specific versions of its Appropriate Assessments but failed to do so.

Retail clients

23. In the Application, Applicant A indicated that it would be dealing with retail, professional and eligible counterparty client types. The Authority has detailed rules and guidance for firms which offer products and services to retail clients, which include high net worth and sophisticated investors.
24. Applicant A's responses to the Authority and its policies and procedures are inconsistent about whether it will be offering products and services to retail clients:
- a. In the Application, Applicant A selected the option for retail clients for all the regulated activities it applied for, including 'advising';
 - b. Applicant A's document entitled 'Investment Management Business Plan' says: *"The Appointed Representative may sell / market these products to the [sic] high net worth and sophisticated clients only. This may be conducted by telephone, marketing materials / documentary selling, or via an online portal."* As noted above at paragraph 23, high net worth and sophisticated clients are considered a type of retail client;
 - c. Applicant A's document entitled 'Regulatory Permissions' sets out that Applicant A requires the retail client type for all of the activities it has applied for. Under the heading 'Justification of the Retail Permission' that document says: *"The firm requires the retail client type permission in order to engage with high net worth and sophisticated clients. The firm does not intend to engage with ordinary retail clients";*
 - d. However, in its letter to the Authority dated 30 July 2021, Applicant A said: *"[Applicant A] is not advising retail clients. It has never been the firm's intention to deal with retail clients";* and
 - e. It went on to say: *"suitability in relation to advising retail clients is not applicable because [Applicant A] does not intend to give advice and / or make personal recommendations. This is clearly detailed in all our documents,*

compliance monitoring program and draft Appointed Representative agreements."

25. The inconsistencies in its policies and procedures and in its responses suggest Applicant A is unable to identify or articulate the types of clients that its ARs will be engaging with or which regulatory requirements it and its ARs need to meet. The Authority is particularly concerned that Applicant A does not understand that high net worth and sophisticated investors are types of retail client.
26. Applicant A has subsequently requested the removal of the retail client type from the advising activity within the Application, however, it has not revised its policies and procedures to reflect this.

Applicant A's Business Model

27. Applicant A's business plan provides that it seeks to extend its existing compliance consultancy by offering a regulatory hosting service, developing a "*robust oversight compliance framework and strategy*".
28. This does not appear to align with Applicant A's response mentioned in paragraphs 19 and 20 above, which indicates that it will rely on ARs to produce their own Appropriateness Assessment.
29. When asked about the types of businesses Applicant A seeks to onboard as ARs, Applicant A's Director said: "*At this time, I am unable to confirm the exact kind of clients and their business models that may approach the [Applicant A] [sic] for regulatory hosting services. However, I can be clear on the types of business that the firm will not appoint as an Appointed Representative...*". They went on to list several business types which would not be onboarded as ARs.
30. Applicant A provided very limited detail on two broad types of business it would be seeking to carry on (investment management and corporate finance) but it has not explained how the regulated activities in the permission applied for correspond with its proposed business. Applicant A appears to have applied for permission to carry on a wide range of regulated activities in the hope that it will recruit ARs which wish to utilise some or all of the regulated activities within the scope of that permission.

IMPACT ON THE THRESHOLD CONDITIONS

31. The regulatory provisions relevant to this Notice are referred to in Annex A.
32. In light of the facts and matters set out above and for the reasons set out below, the Authority cannot ensure that, if the Application were granted, Applicant A would satisfy, and continue to satisfy, Threshold Conditions 2D (Appropriate Resources), 2E (Suitability) and 2F (Business Model).

Appropriate Resources

33. The Authority is not satisfied that Applicant A's resources will be appropriate in relation to the regulated activities it seeks to carry on. In particular:
 - a. The resources of a firm must be appropriate in relation to the regulated activities that it carries on or seeks to carry on (COND 2.4.1A(1)). The matters which are relevant in determining whether this condition is met include:

- i. the nature and scale of the business carried on, or to be carried on, by the firm (COND 2.4.1A(2)(a)); and
 - ii. the risks to the continuity of the services provided by, or to be provided by, the firm (COND 2.4.1A(2)(b)).
 - b. The matters which are relevant in determining whether a firm has appropriate non-financial resources include:
 - i. the skills and experience of those who manage the firm's affairs (COND 2.4.1A(4)(a)).
 - c. Applicant A seeks permission to offer regulatory hosting services to investment businesses, whereby it will carry on regulated activities through appointed representatives under section 39 of the Act. Applicant A would be responsible for the products sold or arranged, any advice given to customers and for ensuring appointed representatives meet all the requirements of the regulatory system. It has applied to carry on the regulated activities of advising, arranging and making arrangements with a view to transactions in certain securities, options and futures (as set out in paragraph 6) for retail clients, professional clients and eligible counterparties.
 - d. Applicant A has one director (who has relevant and longstanding compliance experience but who has not previously been a Chief Executive or Executive Director of a regulated business. They do not have any frontline experience of advising on or arranging deals in investments or of running a business which carries on those regulated activities.
 - e. Applicant A currently has no other employees. It intends to recruit one full time and one part time compliance consultant but does not appear to have plans to recruit someone with frontline experience of advising on or arranging deals in investments or of running a business which carries on those regulated activities.
34. Carrying on a regulatory hosting service for investment products will require extensive oversight of an AR's day-to-day business. It requires a good understanding of all aspects of that business, including a clear understanding of when clients should be treated as retail clients, to ensure the oversight is robust and effective. Applicant A has not demonstrated that it will have the non-financial resources necessary for the nature and scale of the business it proposes to carry on.
35. For these reasons, the Authority does not consider that Applicant A will satisfy, and will continue to satisfy, Threshold Condition 2D (Appropriate Resources).

Suitability

36. Applicant A has not satisfied the Authority that it is a fit and proper person having regard to all the circumstances, including:
- a. the nature (including the complexity) of any regulated activity that it carries on or seeks to carry on (COND 2.5.1A(1)(b));
 - b. the need to ensure that its affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers and the integrity of the UK financial system (COND 2.5.1A(1)(c)); and

- c. whether its 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 (COND 2.5.1A(1)(f)).
- 37. The Appropriateness Assessment required by COBS 10 enables firms to determine whether a client has the necessary experience and knowledge to understand the risks involved in relation to the product or service offered. Applicant A has not prepared an Appropriateness Assessment for each of the products it intends to arrange and deal in. It has indicated that it intends to rely on proposed ARs to create those Appropriateness Assessments.
- 38. The obligation to create the systems and controls necessary to meet the requirements of the regulatory system rests with Applicant A as the authorised person and Applicant A has not demonstrated that it can meet this obligation.
- 39. For these reasons, the Authority does not consider that Applicant A will satisfy, and will continue to satisfy, Threshold Condition 2E (Suitability).

Business Model

- 40. Applicant A has not satisfied the Authority that its business model is suitable for a person carrying on the regulated activities that Applicant A proposes to carry on.
- 41. A firm's business model (that is, its strategy for doing business) must be suitable for a person carrying on the regulated activities which the firm carries on or seeks to carry on (COND 2.7.1). In deciding how it will satisfy, and will continue to satisfy, Threshold Condition 2F, a firm should consider matters including:
 - a. the rationale for the business the firm proposes to do or continues to do, its competitive advantage, viability and the longer-term profitability of the business (COND 2.7.8G(2));
 - b. the needs of and risks to consumers (COND 2.7.8G(3)); and
 - c. the products and services being offered and product strategy (COND 2.7.8G(5)).
- 42. Applicant A has not identified the types of businesses it is seeking to onboard as ARs, so it cannot articulate its rationale for the business it proposes to do, its competitive advantage, viability or the longer-term profitability of the business. It appears to have applied to carry on a wide range of regulated activities in the hope that it will recruit ARs which wish to utilise some or all of the regulated activities within the scope of that permission.
- 43. Applicant A's business plan suggests that it seeks to carry on a regulatory hosting service whereby it will offer ARs a compliance framework, however it has indicated that it will rely on ARs to produce their own detailed policies and procedures in respect of the Appropriateness Assessment.
- 44. For these reasons, the Authority does not consider that Applicant A will satisfy, and will continue to satisfy, Threshold Condition 2F (Business Model).
- 45. On the basis of the facts and matters described above, the Authority cannot be satisfied that Applicant A will meet, and will continue to meet, the Threshold Conditions in relation to all of the regulated activities it seeks to carry on and therefore has decided to refuse the Application.

REPRESENTATIONS

46. Annex B contains a brief summary of the key representations made by Applicant A and how they have been dealt with. In making the decision which gave rise to the obligation to give this Notice, the Authority has taken into account all of the representations made by Applicant A, whether or not set out in Annex B.

IMPORTANT NOTICES

Decision maker

47. The decision which gave rise to the obligation to give this Notice was made by the RDC.
48. This Final Notice is given under section 390 of the Act.

Publication

49. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of the information about the matter to which this Notice relates. Under those provisions, the Authority must publish such information about the matter to which the 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 publication would, in the opinion of the Authority, be unfair to you or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
50. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Authority contacts

51. For more information concerning this matter generally, contact Daniel Measor Manager, Authorisations Division at the Authority (direct line: 020 7066 2504 / email: Daniel.Measor@fca.org.uk).

ANNEX A – REGULATORY PROVISIONS RELEVANT TO THIS FINAL NOTICE

Relevant Statutory Provisions

1. Section 55A(1) of the Act provides for an application for permission to carry on one or more regulated activities to be made to the appropriate regulator. Section 55A(2) defines the “appropriate regulator” for different applications.
2. Section 55B(3) of the Act provides that, in giving or varying permission, imposing or varying a requirement, or giving consent, under any provision of Part 4A of the Act, each regulator must ensure that the person concerned will satisfy, and continue to satisfy, in relation to all of the regulated activities for which the person has or will have permission, the Threshold Conditions for which that regulator is responsible.
3. The threshold conditions that relate to the current application are set out in Part 2 of schedule 6 of the Act. In brief, the Threshold Conditions relate to:
 - a) Threshold condition 2D: Appropriate resources
 - b) Threshold condition 2E: Suitability
 - c) Threshold condition 2F: Business model

Relevant provisions of the Handbook

Threshold Conditions - COND

4. In exercising its powers in relation to the granting of a Part 4A permission, the Authority has regard to guidance published in the Authority’s Handbook, including the part entitled ‘Threshold Conditions’ (“COND”). Provisions relevant to the consideration of the current application include those set out below.

General guidance

5. COND 1.3.2G(2) states that, in relation to Threshold Conditions 2D to 2F, the Authority will consider whether a firm is ready, willing and organised to comply on a continuing basis with the requirements and standards under the regulatory system which will apply to the firm if it is granted Part 4A permission.
6. Under COND 1.3.3AG, in determining the weight to be given to any relevant matter, the Authority will consider its significance in relation to the regulated activities for which the firm has, or will have, permission, in the context of its ability to supervise the adequately, having regard to the Authority’s statutory objectives. In this context, a series of matters may be significant when taken together, even though each of them in isolation might not give serious cause for concern.
7. COND 1.3.3BG provides that, in determining whether the firm will satisfy, and continue to satisfy, the Threshold Conditions, the Authority will have regard to all relevant matters, whether arising in the United Kingdom or elsewhere.
8. COND 1.3.3CG provides that, when assessing the Threshold Conditions, the Authority may have regard to any person appearing to be, or likely to be, in a relevant relationship with the firm, in accordance with section 55R of the Act (Persons connected with an applicant). For example, a firm’s controllers, its

directors or partners, other persons with close links to the firm (see COND 2.3), and other persons that exert influence on the firm which might pose a risk to the firm's satisfaction of the Threshold Conditions, would be in a relevant relationship with the firm.

Threshold condition 2D: Appropriate Resources

9. COND 2.4.2G(2) states that the Authority will interpret the term 'appropriate' as meaning sufficient in terms of quantity, quality and availability, and 'resources' as including all financial resources (though only in the case of firms not carrying on, or seeking to carry on, a PRA-regulated activity), non-financial resources and means of managing its resources; for example, capital, provisions against liabilities, holdings of or access to cash and other liquid assets, human resources and effective means by which to manage risks.
10. COND 2.4.2G(3) states that high level systems and control requirements are in SYSC. The Authority will consider whether the firm is ready, willing and organised to comply with these and other applicable systems and controls requirements when assessing if it has appropriate non-financial resources for the purpose of Threshold Condition 2D.
11. COND 2.4.2G(4) states that detailed financial resources requirements are in the relevant section of the Prudential Standards part of the Handbook, including specific provisions for particular types of regulated activity. The Authority will consider whether firms (other than firms carrying on, or seeking to carry on, PRA-regulated activities) are ready, willing and organised to comply with these requirements when assessing if they have appropriate financial resources for the purposes of Threshold Condition 2D.

Threshold condition 2E: Suitability

12. COND 2.5.2G(2) states that the Authority will also take into consideration anything that could influence a firm's continuing ability to satisfy Threshold Condition 2E. Examples include the firm's position within a UK or international group, information provided by overseas regulators about the firm, and the firm's plans to seek to vary its Part 4A permission to carry on additional regulated activities once it has been granted that permission.
13. COND 2.5.4G(2) 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:
 - (a) conducts, or will conduct, its business with integrity and in compliance with proper standards;
 - (b) has, or will have, a competent and prudent management; and
 - (c) can demonstrate that it conducts, or will conduct, its affairs with the exercise of due skill, care and diligence.

Threshold condition 2F: Business Model

14. COND 2.7.7G states that, in assessing whether Threshold Condition 2F is satisfied, the Authority may consider all matters that might affect the design and execution of a firm's business model, taking into account the nature, scale and complexity of a firm's business.

15. COND 2.7.8G states that, in deciding how they will satisfy and continue to satisfy Threshold Condition 2F, firms should consider matters including (but not limited to) the following:

- a) the assumptions underlying the firm's business model and justification for it;
- b) the rationale for the business the firm proposes to do or continues to do, its competitive advantage, viability and the longer-term profitability of the business;
- c) the needs of and risks to consumers;
- d) the expectations of stakeholders, for example, shareholders and regulators;
- e) the products and services being offered and product strategy;
- f) the governance and controls of the firm and of any member of its group (if appropriate);
- g) the growth strategy and any risks arising from it;
- h) any diversification strategies; and
- i) the impact of the external macroeconomic and business environment.

Conduct of Business sourcebook - COBS

16. COBS 10.2.1R states that:

"(1) When providing a service to which this chapter applies, a firm must ask the client to provide information regarding his knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded so as to enable the firm to assess whether the service or product envisaged is appropriate for the client.

(2) When assessing appropriateness, a firm must determine whether the client has the necessary experience and knowledge in order to understand the risks involved in relation to the product or service offered or demanded."

17. COBS 10.2.2R states that:

"The information regarding a client's knowledge and experience in the investment field includes, to the extent appropriate to the nature of the client, the nature and extent of the service to be provided and the type of product or transaction envisaged, including their complexity and the risks involved, information on:

- (1) the types of service, transaction and designated investment with which the client is familiar;
- (2) the nature, volume, frequency of the client's transactions in designated investments and the period over which they have been carried out;
- (2) the level of education, profession or relevant former profession of the client."

ANNEX B – REPRESENTATIONS

1. A summary of Applicant A's key representations and the Authority's conclusions in respect of them (in bold), is set out below.

Appropriate Resources

Frontline skills and experience

2. Whilst it might be desirable for a person with management and oversight responsibilities to have direct and frontline skills and experience, it is not a mandatory requirement. It is also unclear why Applicant A's Director with their vast compliance skills and experience is deemed unfit to manage and oversee Applicant A's business, which is to be conducted through ARs. It therefore appears that, in considering whether Applicant A has appropriate non-financial resources, the Authority has applied a very narrow and restrictive requirement which has no legal basis.
3. **The Authority agrees that it is not a mandatory requirement that a person with management and oversight responsibilities must have direct and frontline skills and experience. The Authority has also not concluded that Applicant A's Director is 'unfit'. Instead, it has concluded that Applicant A's human resources are inadequate because they do not have: a) frontline experience of advising on or arranging deals in investments; or b) experience of running a business which carries on the regulated activities Applicant A seeks to carry on. The legal basis for the action is set out in this Notice and takes account of all the circumstances, including:**
 - a) **Applicant A's proposed business as a regulatory host in the investment sector and the regulatory responsibilities it would be taking on – including those which relate to its onboarding and continuous assessment of ARs;**
 - b) **Applicant A's policies and procedures for meeting those regulatory responsibilities; and**
 - c) **Applicant A's human resources for establishing, implementing and maintaining those policies and procedures, alongside all the other responsibilities of running a regulated firm.**

The role of Applicant A's policies and procedures and its impact on Applicant A's non-financial resources

4. Applicant A's Director will not be carrying on the regulated activities themselves, as these will be carried on by Applicant A's ARs. Applicant A's onboarding process for ARs is highly sophisticated rigorous and robust. As a result, the ARs will have the relevant qualifications, skills and experience needed for carrying on their chosen regulated activities. The role of Applicant A would simply be to manage and oversee the ARs to ensure they comply with relevant regulatory requirements. Further, Applicant A's policies and procedures are relevant to the Authority's assessment of non-financial resources and ought to have been considered because Applicant A's Director has the skills and experience to implement them.

5. **Applicant A's submission regarding the qualifications, skills and experience of its ARs suggests a failure by Applicant A to understand that Threshold Condition 2D (Appropriate Resources) is concerned with the skills and experience of those managing the principal firm, rather than its ARs. Further, Applicant A's submission regarding its role demonstrates that it does not understand the expectations placed by the Threshold Conditions on the principal.**
6. **A firm's policies and procedures cannot be viewed in isolation without considering the skills and experience of the human resources involved in establishing, implementing and maintaining them. Applicant A's Director's compliance experience may be helpful to Applicant A's proposed business model, but the Authority remains unsatisfied that Applicant A's policies and procedures will be robust if implemented and reviewed by Applicant A's current, limited human resources.**
7. **The Authority does not dispute that Applicant A's Director has extensive experience in compliance and money laundering functions, but notes that the last time Applicant A's Director was employed by an authorised firm with Part 4A permission to carry on investment business was for a period of 8 months in 2015. In this role they held the CF10 (Compliance Oversight) and CF11 (Money Laundering Reporting) controlled functions but they were not a director. For the reasons set out in this Notice, the Authority remains of the view that their skills and experience alone are insufficient for Applicant A to satisfy Threshold Condition 2D.**

Prospective additional staff

8. If the Application is granted, Applicant A is willing to recruit someone with relevant frontline experience. Applicant A has provided the Authority with the draft Heads of Terms with an individual it will employ as a consultant with corporate finance experience to advise and assist with the onboarding of ARs. However, there has been no consideration of this proposal by the Authority.
9. **The Authority has considered Applicant A's willingness to recruit someone with frontline experience but is not persuaded that its proposal, which is not fully thought through and which is conditional on the Application being approved, demonstrates that Applicant A satisfies, and will continue to satisfy, the Threshold Conditions.**

Prospective qualifications

10. Applicant A's Director is willing to undertake relevant training and exams in order to be able to demonstrate the relevant knowledge required for undertaking monitoring and oversight of Applicant A's ARs. Applicant A's Director has registered to enrol for a Chartered Institute for Securities and Investment ('CISI') qualifications pathway in Capital Markets and Corporate Finance. This programme, in addition to Applicant A's Director's experience, would equip them with the necessary practical skills and knowledge to carry out their oversight responsibilities.
11. **The Authority is not clear from the information provided by Applicant A which, if any, qualification on the CISI qualifications pathway Applicant A's Director has enrolled on, or how long they envisages it will take to complete. It appears to the Authority that completion of the whole pathway may take several years. The Authority also notes that Applicant A's Director proposes to undertake this qualification pathway in addition**

to running Applicant A's regulated business and its unregulated compliance consultancy business. Given that the Authority must make a decision based on whether Applicant A meets the Threshold Conditions from the moment it is authorised, a prospective qualification does not assist Applicant A in satisfying the Authority that it meets the Threshold Conditions.

Suitability

Adequacy of the Appropriateness Assessment

12. Applicant A is fully aware of its obligations under COBS 10. It provided a generic copy of an Appropriateness Assessment to the Authority as an example and subsequently provided a specific version that can be used by investment management firms. Whilst this specific version only relates to one product, it is flexible in its design and can be adapted to relate to every product and service to be offered to clients by Applicant A.
13. In addition, during a meeting on 11 June 2021, the Authority informed Applicant A that most firms have generic documents that are tailored to their clients. Therefore, the fact that Applicant A did not provide an Appropriateness Assessment for each product to be offered does not indicate an inability to conduct a satisfactory Appropriateness Assessment.
14. **The 'generic' Appropriateness Assessment provided to the Authority during the Application fell so far short of the requirements of COBS 10, as described in paragraph 19 of this Notice, that it gives rise to serious concerns about Applicant A's understanding of, and its ability to meet, the requirements of the regulatory system.**
15. **The 'specific' version of the Appropriateness Assessment subsequently provided to the Authority appears to relate specifically to shares in start-up companies and does not appear to be flexible in design. It also continues to fall short of the COBS 10 requirements and does not contain any methodology or scoring matrix to enable Applicant A to determine whether the product is appropriate for the client. The only way this Appropriateness Assessment could be adapted is if it were rewritten with completely different questions relevant to the specific type of product or service being offered.**
16. **In respect of Applicant A's meeting with the Authority on 11 June 2021, the Authority's note of that meeting records that it dealt mostly with the problem that Applicant A did not appear to be clear about the ARs it intends to work with and what kind of business it seeks to carry on. This meant the Authority did not have the necessary context against which to assess the Application. The Authority does not agree that Applicant A was told that a generic Appropriateness Assessment would be acceptable.**

Reliance on ARs to produce policies and procedures

17. It is not the case that Applicant A seeks to rely on ARs to create the systems and controls necessary to meet the requirements of the regulatory system. During the onboarding process, where an AR is already trading and already has an Appropriateness Assessment in place, Applicant A will review it. If the AR does not have an Appropriateness Assessment or it is inadequate, Applicant A will provide one for their use.

18. **SYSC 3.1.1R states that "A firm must take reasonable care to establish and maintain such systems and controls as are appropriate to its business." Therefore, SYSC requires Applicant A, and not its ARs, to establish appropriate systems and controls. The Appropriateness Assessments Applicant A has provided fall short of the requirements of COBS 10. As a result, Applicant A has not demonstrated that it would be able to produce a suitable Appropriateness Assessment even if it were to identify an AR which requires one.**

Retail Clients

19. Applicant A acknowledges that the 'retail clients' permission was ticked in the application form. This was because of the design of the application form and uncertainty on the part of Applicant A in respect of the types of permission outlined in the application form. Following discussions with the Authority, it became clear that a retail client's permission was not required for the products and services intended to be provided by Applicant A. Applicant A subsequently confirmed that it was not seeking authorisation for dealing with retail clients. Applicant A has revised its policies and procedures accordingly.
20. **The inconsistencies in Applicant A's responses relating to retail clients, and the significant change of Applicant A's position in this respect, suggest that Applicant A is unable to identify or describe the types of clients that its ARs will be engaging with and therefore which regulatory requirements it needs to meet.**

Business Model

21. Applicant A's business model is clear. It is that of a regulatory compliance consulting firm which now seeks to host investment firms as ARs to carry out regulated activities subject to its permission and oversight. The business model is permitted under section 39 of the Act and so the suitability of the business model is not an issue in this Application.
22. The Authority has conflated the fact that Applicant A does not yet have any ARs to onboard with the suggestion that it has not identified the types of business it seeks to carry on. Applicant A's Corporate Finance Business Plan sets out in detail the types of businesses it seeks to onboard.
23. Without prejudice to its representations summarised at paragraphs 21 and 22 above, if the Authority is of the view that Applicant A ought to have an AR in place in order to satisfy Threshold Condition 2F (Business Model), rather than rely on the lack of an AR in place as a ground to refuse the application, a condition could be imposed on Applicant A's authorisation requiring it to notify the Authority of any AR it seeks to onboard for the purposes of verification and approval. However, the onboarding of ARs should be largely a matter of judgment for Applicant A.
24. **The Authority agrees that regulatory hosts may operate in a principal-AR model under section 39 of the Act but that does not obviate the need for them to meet the Threshold Conditions.**
25. **The Authority's view on Applicant A's business model relates to its inability to explain which of the investment types would be used by each of the broad business models it has put forward. Whilst its Corporate Finance**

Plan refers to some investment types, its Investment Management Business Plan does not refer to any investment types.

- 26. Applicant A has also not been able to describe the competitive advantage of its business model. In the Application, Applicant A states that it has surveyed two firms who have comparable business models and has identified two main issues that Applicant A is best placed to deal with. There are currently around 40 regulatory hosts operating in this sector, so a survey of two firms appears to the Authority to be insufficient for Applicant A to understand its competitive advantage.**
- 27. For a firm to be authorised the Authority must be satisfied that it meets the Threshold Conditions. As the Authority is not so satisfied it is not appropriate for it to impose a requirement on Applicant A as part of an approval of the Application.**