



---

## FIRST SUPERVISORY NOTICE

---

**Catalyst Fund Management Limited**  
**68 Lombard Street**  
**London**  
**EC3V 9LJ**

Firm Reference Number: **479277**

**1 October 2013**

### **ACTION**

1. For the reasons listed below and pursuant to section 55J of the Act, the Authority has decided to vary the permission granted to Catalyst Fund Management Limited ("Catalyst") pursuant to Part 4A of the Act ("Catalyst's Part 4A permission"), by removing the 'Retail (Investment)' customer type from the regulated activity below with immediate effect. Accordingly, Catalyst may no longer conduct the regulated activity of advising on investments (except on Pension Transfers and Pension Opt Outs) in relation to retail customers.
2. The Authority has further decided to vary Catalyst's Part 4A permission by imposing the following further requirements, pursuant to section 55L of the Act, namely that Catalyst:
  - (a) must within 14 days notify in writing all its retail customers for the regulated activity listed in paragraph 1, that Catalyst is no longer permitted by the Authority to carry on that regulated activity in relation to retail customers; and
  - (b) must within 14 days provide the Authority with a copy of the written notification sent to all retail customers for the regulated activity listed at paragraph 1, pursuant to (a) above, together with a list of all clients to whom such notification has been sent.

## **REASONS FOR ACTION**

3. On the basis of the facts and matters described below, the Authority considers that the variation of Catalyst's Part 4A permission is necessary in order to advance the Authority's consumer protection objective.
4. Catalyst does not have any employees who are qualified retail investment advisers.
5. Firms who do not employ qualified retail investment advisers, whilst being permitted to provide investment advice to retail consumers, present a risk to the Authority's operational objective of consumer protection in that there is a risk that retail investment advice will be provided to consumers by individuals who have not attained the relevant regulatory module of an appropriate qualification, as required following the Retail Distribution Review.
6. In failing to employ qualified retail investment advisers Catalyst's resources are not appropriate in relation to the regulated activities in relation to the provision of investment advice (except on Pension Transfers and Pension Opt Outs) to retail customers, that Catalyst carries on or seeks to carry on.
7. Catalyst has not been open and co-operative in all its dealings with the Authority, in breach of Principle 11 (Relations with regulators) of the Authority's Principles for Businesses (the "Principles"), in failing to respond adequately to communications from the Authority requesting that it vary its permission to remove the Retail (Investment) customer type from its permitted regulated activity of advising on investments (except on pension transfers and opt outs).

## **DEFINITIONS**

The definitions below are also used in this First Supervisory Notice:

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

"the Authority" means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority;

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

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

## **FACTS AND MATTERS RELIED ON**

9. Catalyst is a personal investment firm and is permitted to conduct the regulated activity of advising on investments (except on Pension Transfers and Pension Opt Outs) in relation to retail customers.
10. Catalyst does not have any employees who are qualified retail investment advisers. Despite repeated requests from the Authority, Catalyst has failed to apply to vary its permission so that it is not permitted to conduct retail investment business.

## **FAILINGS**

11. The regulatory provisions relevant to this First Supervisory Notice are set out in the Annex.
12. From the facts and matters described above the Authority, having regard to its regulatory objectives, has reached the following conclusions. Catalyst:
  - is failing to meet the appropriate resources threshold condition in that its resources are not appropriate in relation to the regulated activities that Catalyst carries on or seeks to carry on;
  - is failing to comply with Principle 11 in that Catalyst has not been open and co-operative in all its dealings with the Authority, namely by failing to respond appropriately, or at all, to the Authority's repeated requests that Catalyst vary its permission;
  - is therefore posing a risk to the Authority's operational consumer protection objective, and it is desirable to exercise the Authority's own initiative power to vary Catalyst's Part 4A permission with immediate effect and to add the requirements specified at paragraphs 1 and 2 of this First Supervisory Notice; and
  - specifically, the variation of Catalyst's permission should take immediate effect to address the Authority's serious concern that Catalyst poses a risk to the Authority's ability to achieve its consumer protection objective.

## **PROCEDURAL MATTERS**

### **Decision Maker**

13. The decision which gave rise to the obligation to give this Warning Notice was made by the Regulatory Transactions Committee.
14. This First Supervisory Notice is given to Catalyst under section 55Y(4) and in accordance with section 55Y(5) of the Act, and is being served on Catalyst at the address Catalyst provided to the Authority as that of its principal place of business. The following statutory rights are important.

### **The Tribunal**

15. Catalyst has the right to refer the matter to which this First Supervisory Notice relates to the Tribunal. The Tax and Chancery Chamber is the part of the Tribunal which, amongst other things, hears references arising from decisions of the Authority. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, Catalyst has 28 days from the date on which this First Supervisory Notice is given to it to refer the matter to the Tribunal.
16. A reference to the Tribunal can be made by way of a reference notice (Form FTC3) signed by Catalyst and filed with a copy of this First Supervisory Notice. The Tribunal's contact details are: The Upper Tribunal, Tax and Chancery Chamber, 45 Bedford Square, London WC1B 3DN (telephone: 020 7612 9700; email: [financeandtaxappeals@tribunals.gsi.gov.uk](mailto:financeandtaxappeals@tribunals.gsi.gov.uk)).
17. Further details are contained in "Making a Reference to the UPPER TRIBUNAL (Tax and Chancery Chamber)" which is available from the Tribunal website:

<http://www.tribunals.gov.uk/financeandtax/FormsGuidance.htm>

18. Catalyst should note that a copy of the reference notice (Form FTC3) must also be sent to the Authority at the same time as filing a reference with the Tribunal. A copy of the reference notice should be sent to Alexander Banerjea at the Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS.

### **Representations**

19. Catalyst has the right to make written and oral representations to the Authority (whether or not Catalyst refers this matter to the Tribunal). If Catalyst wishes to make written representations it must do so by 17 October 2013, or such later date as may be permitted by the Authority, and sent to:

Mrs Kate Rowley  
Secretary to the RTC  
The Financial Conduct Authority  
25 The North Colonnade  
Canary Wharf  
London  
E14 5HS

20. The Authority must be informed in writing by 10 October 2013 if Catalyst wishes to make oral representations. If the Authority is not notified by 10 October 2013, Catalyst will not, other than in exceptional circumstances, be able to make oral representations.

### **Publicity**

21. Catalyst should note that section 391 of the Act requires the Authority, when the First Supervisory Notice takes effect (and this First Supervisory Notice takes immediate effect), to publish such information about the matter as it considers appropriate.

### **Contacts**

22. For more information concerning this matter generally, Catalyst should contact Alexander Banerjea at the Authority (direct line: 020 7066 7206).
23. If Catalyst has any questions regarding the procedures of the Regulatory Transactions Committee, it should contact the RTC Secretariat (email: [rtcsecretariat@fca.org.uk](mailto:rtcsecretariat@fca.org.uk)).

**Graeme McLean**  
**Chair, Regulatory Transactions Committee**

**ANNEX TO THE FIRST SUPERVISORY NOTICE ISSUED BY THE FINANCIAL CONDUCT AUTHORITY TO CATALYST FUND MANAGEMENT LIMITED ON 1 October 2013**

**RELEVANT STATUTORY PROVISIONS**

1. The Authority's operational objectives established in section 1(B) of the Act include securing an appropriate degree of consumer protection.
2. The Authority is authorised by section 55J of the Act to exercise the following powers:
  - to vary an authorised person's permission where it is desirable to do so in order to advance one or more of the Authority's operational objectives; and
  - to include any provision in the permission as varied that could be included if a fresh permission were being given in response to an application to the Authority under section 55A of the Act, including the imposition pursuant to section 55L of the Act of such requirements as the Authority considers appropriate.
3. Section 55N(1) of the Act states that a requirement may be imposed to require the person concerned to take, or refrain from taking, specified action.
4. Section 55Y of the Act allows such a variation to take effect on such date as is specified in the notice, or immediately if the Authority reasonably considers that it is necessary for the variation or the imposition of the requirement to take effect immediately.

**RELEVANT HANDBOOK PROVISIONS**

5. In exercising its power to cancel a Part 4A permission, the Authority must have regard to guidance published in the Authority's Handbook. 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 anything relating to the firm of which the Authority would reasonably expect notice.

**Guidance concerning the relevant Threshold Condition**

7. Guidance on the Threshold Conditions is set out in the part of the Handbook entitled Threshold Conditions ("COND").

COND 2.4 - Appropriate Resources (paragraph 2D of Part 1B of Schedule 6 to the Act)

8. COND 2.4.1AUK(1) reproduces the relevant statutory provision that the resources of A must be appropriate in relation to the regulated activities that A carries on or seeks to carry on.

9. COND 2.4.1BG provides that paragraph 2D of Schedule 6 to the Act sets out the appropriate resources threshold condition for firms carrying on, or seeking to carry on, regulated activities which do not include a PRA-regulated activity.
10. COND 2.4.1CUK(1) reproduces the relevant statutory provision (paragraph 3C of Schedule 6 to the Act) that:
 

“The non-financial resources of B must be appropriate in relation to the regulated activities that B carries on or seeks to carry on, having regard to the operational objectives of the FCA.”
11. COND 2.4.1CUK(2) states that the matters which are relevant in determining whether the appropriate resources threshold condition is met include:
 

“a) the nature and scale of the business carried on, or to be carried on, by B;

[...]

e) whether B’s non-financial resources are sufficient to enable B to comply with-

(i) requirements imposed or likely to be imposed on B by the FCA in the exercise of its functions...”

#### **OTHER RELEVANT REGULATORY PROVISIONS**

12. The Authority’s policy in relation to the allocation of decision making powers is set out in the Decision Procedure and Penalties Manual (DEPP), certain provisions of which are summarised below.
13. DEPP 2.5.7G provides that the RDC will take the decision to give a supervisory notice exercising the FCA’s own initiative powers (by removing a regulated activity, by imposing a limitation or requirement or by specifying a narrower description of a regulated activity) if the action involves a fundamental variation or requirement. Otherwise, the decision to give the supervisory notice will be taken by FCA staff under executive procedures.
14. DEPP 2.5.8G states that a fundamental variation or requirement means:
 

“(1) removing a type of activity or *investment* from the *firm’s permission*;  
or

(2) refusing an application to include a type of activity or *investment*; or

(3) [deleted]

(4) imposing or varying an assets requirement (as defined in section 55P of the *Act* (Prohibitions and restrictions)), or refusing an application to vary or cancel such a requirement.”
15. Prior to 1 April 2013, DEPP 2.5.8G stated that a fundamental variation or requirement included:
 

“...(3) restricting a *firm* from taking on new business, dealing with a particular category of *client* or handling *client money* by imposing a

*limitation or requirement, refusing an application to vary or cancel such a limitation or requirement;..."*

16. The Authority's policy in relation to its enforcement powers is set out in the Enforcement Guide (EG), certain provisions of which are summarised below.
17. EG 8.1(3) reflects section 55 of the Act under which the Authority may use its own-initiative power to vary or cancel the permission of an authorised firm where it is desirable to exercise the power where the person is failing or likely to fail the threshold conditions or in order to advance one or more of its operational objectives.

#### Varying a firm's Part 4A permission or imposing requirements on the Authority's own initiative

18. EG 8.1B provides that the Authority will have regard to its statutory objectives and the range of regulatory tools that are available to it, when it considers how it should deal with a concern about a firm.
19. EG 8.3 provides that the Authority will exercise its formal powers under sections 55J or 55L of the Act, where the Authority considers it is appropriate to ensure a firm meets its regulatory requirements. EG 8.3(1) specifies that the Authority may consider it appropriate to exercise its powers where it has serious concerns about a firm or the way its business is being or has been conducted.

#### Use of the own-initiative power in urgent cases

20. EG 8.6 states that the Authority may impose a variation of permission so that it takes effect immediately or on a specified date if it reasonably considers it necessary for the variation to take effect immediately (or on the date specified), having regard to the ground on which it is exercising its own-initiative power.
21. EG 8.7 provides the circumstances in which the Authority will consider exercising its own initiative power as a matter of urgency, including where circumstances indicate that it is appropriate to use statutory powers immediately to require and/or prohibit certain actions by the firm in order to ensure the firm addresses these concerns (EG 8.7(2)).
22. EG 8.8 provides a list of situations which will give rise to such serious concerns. Specifically, EG 8.8(1) includes where information indicates a risk of loss or other adverse effects for consumers, where action is necessary to protect their interests.
23. EG 8.9 sets out the factors the Authority may consider in addition to the full circumstances of each case when it decides whether an urgent variation of Part 4A permission is appropriate. In particular, EG 8.9(1) states a factor is the extent of any loss, or risk of loss, or other adverse effect on consumers, and EG 8.9(9) states that the Authority may take into account the (sometimes significant) impact that a variation of permission may have on a firm's business and on its customers' interests, including the effect of variation on the firm's reputation and on market confidence.
24. EG 8.10 provides that when varying a Part 4A permission at its own-initiative, the FCA may include in the Part 4A permission as varied any limitation or restriction which it could have imposed if a fresh permission were being given in response to an application under section 55A of the Act.

25. EG 8.11 states that examples of the limitations that the FCA may impose when exercising its own-initiative power in support of its enforcement function include limitations on the category of customers that a firm can deal with.