
FIRST SUPERVISORY NOTICE

To: **Alexander David Securities Limited**

Reference Number: **469150**

Address: **Albert Buildings
49 Queen Victoria Street
London EC4N 4SA**

Date: **29 April 2022**

1 ACTION

1.1 For the reasons given in this First Supervisory Notice, and pursuant to section 55L(2)(a) and (c) of the Financial Services and Markets Act 2000 ("the Act"), the Financial Conduct Authority ("the Authority") has decided to impose the following requirements ("the Requirements") on Alexander David Securities Limited ("Firm" or "ADSL") with immediate effect.

- 1) Save as set out in sub-paragraph (2), ADSL must not, without the prior written consent of the Authority, take any action which has, or may have, the effect of disposing of, withdrawing, transferring, dealing with or diminishing the value of any assets it holds or receives, for itself or on behalf of another (whether in the United Kingdom or elsewhere).
- 2) ADSL may continue dealing with or disposing of any of its own assets in the ordinary and proper course of business provided that the sum or value of such dealings or disposals, whether as a single transaction or a combination of related transactions, does not exceed £1,000 (or £3,000 in the case of legal expenses).
- 3) For the avoidance of doubt, for the purposes of sub-paragraph (2) above, the following would be in the ordinary and proper course of business:
 - a) Any and all fees incurred or paid in exchange for professional advisory services;
 - b) Any amounts due to be paid to legitimate creditors for sums incurred prior to the imposition of the requirements, including but not limited to suppliers' fees and sums owing to HMRC;

- c) Any income or sums collected and received by ADSL on behalf of any third parties and are to be paid to such third parties; or
 - d) Any and all salaries of ADSL staff, including to its directors, contractors or any other employees, where such salaries have been agreed prior to the imposition of the requirements.
- 4) For the avoidance of doubt, for the purposes of sub-paragraph (2) above, the following would not be in the ordinary and proper course of business:
 - a) The making of any distribution to ADSL's shareholders whether by way of capital distribution or dividends;
 - b) Subject to sub-paragraph (3)(d) above, any payment to ADSL's shareholders, directors, officers, employees, any connected entities or persons;
 - c) The making of any gift or loan by ADSL to any party; or
 - d) The entry into any financial reconstruction, sale of any part of ADSL (whether share or asset based) or reorganisation.
- 5) Sub-paragraphs (1) and (2) are assets requirements within the meaning of section 55P(4)(a) of the Act.
- 6) ADSL must secure all books and records and preserve all information and systems in relation to all activities carried on by it, including but not limited to regulated activities, and must retain these in a form and at a location within the UK, to be notified to the Authority in writing by no later than on 6 May 2022, such that they (or, so as not to hinder ADSL's performance of its business activities, true copies of them) can be provided to the Authority, or to a person named by the Authority, promptly on its request.
- 7) By close of business on 4 May 2022, ADSL must publish in a prominent place on its website in a form to be agreed in advance with the Authority, a notice setting out the terms and effects of these requirements.
- 8) ADSL must as soon as possible, and by no later than close of business on 4 May 2022, notify all its current customers in writing of the imposition of the terms and effects of these requirements. This must be in a form to be agreed in advance with the Authority.
- 9) Once the notifications referred to in sub-paragraph (8) have been made, on 3 May 2022 ADSL must provide to the Authority:
 - a) Copies of the template notifications sent to all recipients referred to in sub-paragraph (8);
 - b) A list of all parties to whom notifications have been sent pursuant to sub-paragraph (8); and
 - c) Confirmation that, to the best of its knowledge, ADSL has sent notifications pursuant to sub-paragraph (8) to all relevant parties.
- 10) The holder of a senior management function ("SMF") at ADSL must send to the Authority via email details of all bank accounts held by ADSL by close of business on 3 May 2022 and via email by 12 noon every Friday (or the following

business day should the Friday fall on a Bank Holiday), until such time as it is notified otherwise in writing by the Authority, copies of that week's bank statements for all bank accounts held by ADSL showing that ADSL is in compliance with these requirements.

- 1.2 These Requirements shall take immediate effect and remain in force unless and until varied or cancelled by the Authority (either on the application of the Firm or of the Authority's own volition).

2 REASONS FOR ACTION

Summary

- 2.1 The Authority has concluded, on the basis of the facts and matters described below that, in respect of the Firm, it is necessary to exercise its power under section 55L(2)(a) and (c) of the Act to impose the Requirements on the Firm because it is failing, or is likely to fail, to satisfy the Suitability and Appropriate Resources Threshold Conditions and/or it is desirable in order to advance one or more of the Authority's operational objectives, which includes securing an appropriate degree of protection for consumers.
- 2.2 The Authority has identified serious concerns relating to ADSL in that its conduct appears to demonstrate that it poses a significant risk of harm to consumers. Specifically:
 - a) ADSL is not a fit and proper person in relation to the regulated activities which it carries on or seeks to carry on as required by the Threshold Conditions at section 2E of Schedule 6 of the Act as it has failed to pay redress relating to seven decisions upheld by the Ombudsman Service against the Firm. These complaints relate to investment advice given by appointed representatives of ADSL, to transfer the customers' pensions into self-invested personal pensions ("SIPP") and to invest those funds in unsuitable investments;
 - b) ADSL has failed to pay to the Ombudsman Service £3,900 in fees for six cases involving the Firm which the Ombudsman Service had handled; and
 - c) The Ombudsman Service has informed the Authority that there are 32 open cases against ADSL, most of which were either at the investigation stage or have been referred to an Ombudsman for decision. Assuming an average claim value of £41,858 for each claim based on previous cases, the total claim value is estimated to be approximately £1,339,470. The Ombudsman has previously upheld 85% of decisions against ADSL. Therefore, assuming that the Ombudsman upholds 27 of the 32 cases, ADSL's potential liability is estimated to be approximately £1,138,550. This is substantially in excess of the Firm's net assets of £151,458 as at 31 December 2021 and its total cash balance as at 26 April 2022 of £433,353 as notified by ADSL's bank, Bank C. ADSL has not satisfied the Authority that it has sufficient resources to meet its potential liabilities to the complainants.
- 2.3 The Authority considers that imposition of the Requirements should take immediate effect because the matters set out in this First Supervisory Notice demonstrate that the Firm is unable to manage its affairs in a sound and prudent manner, and is putting consumers at risk.

3 DEFINITIONS

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

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

"the Authority" means the Financial Conduct Authority;

"the Firm" means Alexander David Securities Limited;

"Company A" means a company issuing debentures which customers of ADSL and/or their appointed representatives advised customers to invest in;

"Company B" means a claims management company acting on behalf of complainants against ADSL;

"Bank C" means a bank with whom ADSL holds bank accounts;

"D&I fee" means a distress and inconvenience fee as imposed by the Ombudsman Service;

"Handbook" means the Authority's online handbook of rules and guidance (as in force from time to time);

"Person D" means the director of ADSL;

"Person E" means an SMF holder of ADSL;

"Requirements" means the terms imposed on the Firm by this First Supervisory Notice as outline in section 1 above;

"SMF" means Senior Management Function under the Authority's Senior Management Regime;

"Threshold Conditions" are the minimum requirements that firms need to meet in order to be authorised and to continue carrying on regulated activities as set out in Schedule 6 to the Act;

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

"VREQ" means a voluntary requirement imposed on ADSL.

4 FACTS AND MATTERS

Background

4.1 ADSL was incorporated on 30 November 2006. The Firm is based in London and provides corporate finance advisory services which include initial public offerings, secondary fund raisings, mergers and acquisitions, and debt offerings. Its clients comprise corporate entities and fund managers.

4.2 ADSL has been authorised by the Authority to perform regulated activities since 30 January 2008. ADSL is supervised within the Authority's Wholesale Supervision Department and has permission relating to regulated activities which include advising on investments (except on pension transfers and pension opt outs), arranging (or bringing about) deals in investments, arranging, safeguarding and administration of assets, and dealing in investments as agent and principal.

- 4.3 The current director of ADSL is Person D. Person D also currently holds the SMF1 (Chief Executive) and SMF3 (Executive Director) roles. Person E currently holds the SMF16 (Compliance Oversight) and SMF17 (Money Laundering Reporting Officer) roles.

Failings and risks identified

- 4.4 On 22 and 23 June 2020, the Authority conducted a virtual firm visit at ADSL to assess the Firm's compliance with the Authority's regulatory standards. In the course of this visit, the Authority identified, amongst others, serious concerns with compliance around the Authority's rules and the Money Laundering Regulations. There were deficiencies in the Firm's financial crime and anti-money laundering systems as well as its approvals of financial promotions by third parties pursuant to section 21 of the Act. Consequently, the Firm was invited to sign a VREQ.
- 4.5 The Authority noted that *"the firm will remain authorised, but unable to conduct regulated business until it has resolved its sever [sic] compliance issues, remediated its client files, and strengthened its team"*.
- 4.6 On 29 June 2020, ADSL applied for a VREQ which imposed the following requirements, specifically that it would:
- a) Not carry on any regulated activities;
 - b) Not approve (for the purposes of section 21 of the Act) or communicate the content of any financial promotion;
 - c) Withdraw any existing approvals of all financial promotions as soon as reasonably possible;
 - d) Not act as a receiving or paying agent in respect of funds connected to the investments which are subject to financial promotions which have been approved by ADSL; and
 - e) Not to hold client money and/or assets. ADSL will also return all client money and safe custody assets to its clients.
- 4.7 On 3 July 2020 the Authority wrote to ADSL to provide its feedback on the areas of concern identified during the recent firm visit. The letter stated that *"due to the severity of our concerns and the impact on our consumer protection objective, we have already written to ADSL asking for the firm's agreement to a Voluntary Requirement ("VREQ") to cease all regulated activity, until such time as the firm can demonstrate its compliance with the applicable rules and laws"*.
- 4.8 On 8 December 2020, an internal review conducted by the Authority found that the Ombudsman Service upheld and published 16 final decisions made by customers against ADSL, ordering ADSL to pay financial redress to those complainants.
- 4.9 On 4 January 2021, the Ombudsman Service notified the Authority that between June 2017 and December 2020, there were a total of 39 outstanding complaints which were lodged against ADSL. It appears that these 39 complaints are in addition to the 16 final decisions referred to in paragraph 4.8 above and relate to allegations that one of its approved representatives provided unsuitable investment advice to customers to move funds in their self-invested personal pensions into debentures issued by Company A with its shares quoted on the Cyprus and Vienna Stock Exchanges.

- 4.10 On 17 February 2021, the Authority had a call with ADSL to discuss the status of the outstanding complaints and how the Firm intended to manage them. ADSL asserted that they had spoken with investors and the majority had decided to opt for ADSL's alternative approach of redeeming or reinvesting their debentures with Company A which ADSL contended was financially more beneficial to investors than paying them the compensation awarded by the Ombudsman Service. The Authority has serious concerns that in spite of the Ombudsman's awards against the Firm for unsuitable investment advice in relation to Company A's debentures, these complainants continued to be advised and arranged by the Firm for reinvestment in the very investments which were the subject of their upheld complaints.
- 4.11 Also on 17 February 2021, following the call with ADSL, the Authority sent the Firm an email to request the provision of a table setting out the alternative arrangements which the complainants have entered into as well as details of the Company A's debentures issued since 1 January 2019.
- 4.12 On 11 March 2021, ADSL wrote an email to the Authority in response to the Authority's request of 17 February 2021. Amongst other things, ADSL sent the Authority a spreadsheet providing details of 18 complaints against the Firm which were being dealt with by the Ombudsman Service as at February 2021. According to ADSL, the total investments made by the 18 complainants amounted to £591,478, most of whom had chosen to reinvest their investments in Company A's debentures.
- 4.13 On 10 June 2021, the Authority wrote to ADSL to inform it that where complainants have chosen not to take the Ombudsman Service's redress, the Firm will not have to pay out the redress amount. In any event, the Firm has a duty to pay each complainant a distress and inconvenience fee ("D&I fee"), as the Ombudsman Service has determined that the complainant is entitled to some compensation due to the distress and inconvenience of having to follow a complaints process. The Authority also instructed ADSL to:
- a) Communicate with all complainants concerning the compensation they are owed, including any D&I fee;
 - b) Liaise with the Ombudsman Service to identify the exact amount of compensation owed and organise the appropriate payment to complainants of this fee;
 - c) Provide the Authority with confirmation all compensation payments being made to complainants; and
 - d) Review and update its financial accounts to take into account the Ombudsman Service's awards as liabilities, so that the Firm can identify how this might affect their financial stability.
- 4.14 On 17 June 2021, ADSL agreed to write to each relevant party to pay compensation of the D&I fee due to them. The Firm stated this would be completed by mid-July 2021 and that it would write to the Authority to confirm this had been done. ADSL stated that the Ombudsman Service notified the Firm that the compensation payments totalled £5,000. ADSL said that "*this amount can be settle [sic] from our cash reserves*". Nevertheless, the Authority failed to receive any confirmation from ADSL that this was done.
- 4.15 On 22 June 2021, the Ombudsman Service notified the Authority that a claims management company called Company B had informed the Ombudsman Service that there were approximately 20 cases with final decisions issued against ADSL which

the Firm had not paid.

- 4.16 On 18 October 2021, the Authority wrote to ADSL reminding the Firm that it had previously agreed to pay the D&I fee to all complainants by mid-July 2021 and provide written confirmation to the Authority as evidence that this had been done. However, this had not happened. The Authority requested an update on the 20 cases that Company B was handling.
- 4.17 Additionally, the Authority also made an information requirement pursuant to section 165 of the Act which requested, amongst other things, confirmation by ADSL of the total number of complaints that Company B was dealing with, the Firm's plans for customer redress, the total redress amounts of these complaints, details of other complaints against it, a copy of its new business register and the Firm's management accounts since 1 May 2020 ("First IR").
- 4.18 On 1 November 2021, ADSL provided a brief response to the First IR which failed to satisfactorily address the requests. ADSL failed to provide confirmation of the number of complaints Company B were managing for complainants and details of its remedial plan to address those complaints. The Firm said that it would be sending the Authority "*a set of ADS management accounts showing an analysis of ADS activities*". In reality, no such management accounts were forthcoming and the Authority did not receive ADSL's management accounts.
- 4.19 On 2 November 2021, the Authority emailed ADSL requesting an update on when they would provide a full response to the First IR.
- 4.20 On 10 November 2021, the Authority sent ADSL a further email noting that its outstanding requests set out in the First IR was now nine days overdue and "*failure to comply with a requirement imposed... without reasonable excuse may result in a referral to our Enforcement & Market Oversight Division and potential disciplinary action*".
- 4.21 On 15 November 2021, ADSL responded to the First IR by stating that 16 of the 18 complainants chose to reinvest their Company A debentures but two complainants chose to redeem their investments. ADSL, however, did not state which complaints were handled by Company B. It also continued to fail to provide its management accounts and although ADSL did state that these would be sent to the Authority later that week, but this did not occur.
- 4.22 On 24 November 2021, Company A announced it had "*requested the suspension of trading of the shares of the company pending publication of the December 2020 accounts*".
- 4.23 On 16 December 2021, Company A made an announcement to the market that it was experiencing liquidity issues and that they had requested "*the continued suspension of trading of the shares of the company pending completion of the restructuring*". On the same day, Company A also announced that it for its 2021, 2023 and 2025 secured debentures, it did "*not anticipate that it will be able to pay, wholly or partly, the December Interest Payment on 31 December 2021... Accordingly, the Company anticipates that an Event of Default will arise on 14 January 2022 in respect of the non-payment of interest*".
- 4.24 On 17 December 2021, the Authority was notified by Bank C that as at 16 December 2021 the Firm had a total of £2,388,041 in its three bank accounts.
- 4.25 On 20 December 2021, the Authority met the Ombudsman Service to understand the status of all complaints made against ADSL. The Ombudsman Service confirmed

that there were 35 open cases against ADSL and 47 closed cases with decisions made on each case. It appears that the 16 published decisions referred to at paragraph 4.8 above were included in the 47 closed cases.

- 4.26 On 31 January 2022, the Authority held a conference call with ADSL to explain that the Authority viewed the Firm's response to the First IR as being inadequate and the Authority wanted to understand how the Firm was dealing with the outstanding complaints. Person E informed the Authority that Company A was entering a debt equity swap and he noted that *"all claims were either redeemed or reinvested [the Company A debentures], with no complainants choosing to opt for [the Ombudsman Service's] compensation"*. The Authority notes that ADSL did not appear to have calculated any redress amounts due to the successful complainants, as required by the Ombudsman Service.
- 4.27 Also on 31 January 2022, the Authority sent ADSL a second information requirement pursuant to section 165 of the Act requiring the Firm to provide outstanding information from the First IR as well as the production of a further set of documents and information ("Second IR"). The Authority also required ADSL to provide, amongst other things, proposals on how and when each amount still owing to the complainants will be paid in full, copies of banks statements for accounts the Firm held, the Firm's financial statements for the year ended 31 December 2020, its management accounts for the year ended 31 December 2021 and copies of correspondence between ADSL, the Ombudsman Service and complainants.
- 4.28 On 8 February 2022, ADSL responded by email to the Second IR providing the unaudited financial statements for the year ended 31 December 2020 which showed that the Firm then had cash at bank of £13,954 and net assets of £166,993. ADSL also provided working papers which showed a net loss of £16,527 for the Firm in the period ended 31 December 2021. The Firm's net asset position was £151,458 (which included cash at bank of £149,405) as at 31 December 2021.
- 4.29 On 23 February 2022, the Authority sent ADSL a further information requirement pursuant to section 165 of the Act ("Third IR") requiring the Firm to provide outstanding information from the Second and further information on complaints it received over the past 12 months, a short-term cash flow forecast and its new business register.
- 4.30 On 2 March 2022, ADSL provided its response to the requests in the Third IR and noted that it had generated a profit of £224,381 in the year ended 31 December 2021. The Authority notes that this profit figure is significantly different from the net loss of £16,527 in the period ended 31 December 2021 which the Firm informed the Authority of on 8 February 2022.
- 4.31 ADSL produced statements for two bank accounts which it held showing that the Firm had £158,928 in its business current account and a further £14,807 in a client deposit management account.
- 4.32 ADSL has failed to pay compensation awarded by the Ombudsman Service on seven final determinations of complaints which have been referred to the Authority. These relate to advice provided by its approved representatives in transferring customers' pensions to SIPP's and investing those funds in unsuitable investments.
- 4.33 The total claim value of complaints against either ADSL or its approved representative that were managed by Company B and upheld by the Ombudsman Service was estimated to be £1,213,895. There were 29 claims in total which equates to an average of £41,858 per claim.

- 4.34 On 23 March 2022 the Ombudsman Service notified the Authority that ADSL had also failed to pay to the Ombudsman Service £3,900 in fees for six cases involving the Firm which the Ombudsman Service had handled.
- 4.35 On 21 April 2022, the Ombudsman Service revealed to the Authority that there were currently 32 open cases against ADSL, most of which were either at the investigation stage or have been referred to an Ombudsman for decision. Assuming the average per claim was £41,858, the total claim value is estimated to be approximately £1,339,470, which represents the 32 open cases multiplied by £41,858. The Ombudsman has previously upheld 85% of decisions against ADSL. Therefore, assuming that the Ombudsman upholds 27 of the 32 cases, ADSL's potential liability is estimated to be approximately £1,138,550. This is substantially in excess of the Firm's net assets of £151,458 as at 31 December 2021.
- 4.36 DISP 1.4.4R provides that where a complaint against a firm is referred to the Ombudsman Service, the firm must cooperate fully with the Ombudsman Service and comply promptly with any settlements or awards made by it. DISP 3.7.12R provides that a firm must comply promptly with any award or direction made by the Ombudsman Service.
- 4.37 On 26 April 2022, the Authority was further notified by Bank C that as of 26 April 2022 the total balance that ADSL held in its bank accounts had reduced to £433,353. This represented a significant decrease when compared to the total balance of £2,388,041 that the Firm held as at 16 December 2021.

5 CONCLUSION

- 5.1 The regulatory provisions relevant to this First Supervisory Notice are set out in the Annex.

Analysis of failings and risks

- 5.2 The Authority has serious concerns about ADSL's compliance with the Threshold Conditions. The Threshold Conditions are minimum requirements that firms need to meet in order to be authorised and to continue carrying on regulated activities. The Authority considers that ADSL is failing, or is likely to fail, to satisfy the Suitability Threshold Condition because:
- a) ADSL is not a fit and proper person in relation to the regulated activities which it carries on or seeks to carry on as it has failed to pay redress relating to seven decisions upheld by the Ombudsman Service against the Firm. These complaints relate to advice provided by its approved representatives in transferring customers' pensions to SIPPs and investing those funds in unsuitable investments; and
 - b) Further, ADSL has failed to pay to the Ombudsman Service £3,900 in fees for six cases involving the Firm which the Ombudsman Service had handled.
- 5.3 In addition, the Authority considers that ADSL is failing, or is likely to fail, to satisfy the Appropriate Resources Threshold Condition. Its potential liability is likely to be substantially in excess of its net asset position as at 31 December 2021. The Firm has not satisfied the Authority that it has sufficient resources to meet its potential liabilities to complainants.
- 5.4 There are potentially 32 other complainants who may not be paid redress by ADSL as the Authority is not satisfied that the Firm has sufficient resources to meet its

potential liabilities to these complainants.

- 5.5 The Authority is concerned that there is a present risk of a dissipation of the remaining assets of ADSL to avoid paying complainants any redress. The reasons for the Authority's concerns lie in the fact that the balances in the ADSL's bank accounts have substantially decreased from £2,388,041 as at 16 December 2021 to £433,353 as at 26 April 2022 and the Firm has continued to refuse to make full redress payments to its customers.
- 5.6 As a result of these matters, it appears to Supervision that ADSL has not ensured that the Firm's affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers (sub-paragraph (c) of paragraph 2E of Schedule 6 to the Act).
- 5.7 The Authority has concluded, in light of the matters set out above, that it is necessary to exercise its own-initiative power under section 55L(2)(a) and (c) of the Act by imposing the Requirements to prevent any dissipation of assets in order to protect the interests of consumers.
- 5.8 The Authority considers that the Requirements are a proportionate and appropriate means to address the current and immediate risks, and are desirable in order to advance the Authority's operational objective of consumer protection.

Timing and duration of the Requirements

- 5.9 It is necessary to impose the Requirements on an urgent basis given the seriousness of the risks and the need to protect consumers.
- 5.10 The Authority considers that it is necessary for the Requirements to remain in place indefinitely.

6 PROCEDURAL MATTERS

Decision-maker

- 6.1 The decision which gave rise to the obligation to give this First Supervisory Notice was made by an Authority staff member under executive procedures according to DEPP 2.3.7G and DEPP 4.1.7G.
- 6.2 This First Supervisory Notice is given under section 55Y(4) and in accordance with section 55Y(5) of the Act.
- 6.3 The following statutory rights are important.

Representations

- 6.4 The Firm has the right to make written representations to the Authority (whether or not it refers this matter to the Tribunal). The Firm may also request to make oral representations but the Authority will only consider this in exceptional circumstances according to DEPP 2.3.1AG. The deadline for providing written representations and notifying the Authority that the Firm wishes to make oral representations is 13 May 2022 or such later date as may be permitted by the Authority. Any notification or representations should be sent to Lucy Hartley (Lucy.Hartley@fca.org.uk) and the SPC Decision Making Secretariat (SPCDecisionMakingSecretariat@fca.org.uk).

The Tribunal

- 6.5 The Firm has the right to refer the matter to which this First Supervisory Notice relates to the Tribunal. The Tax and Chancery Chamber is 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, the Firm has 28 days from the date on which this First Supervisory Notice is given to it to refer the matter to the Tribunal.
- 6.6 A reference to the Tribunal can be made by way of a reference notice (Form FTC3) signed by or on behalf of the Firm and filed with a copy of this First Supervisory Notice. The Tribunal's contact details are: The Upper Tribunal, Tax and Chancery Chamber, 5th Floor, Rolls Building, Fetter Lane, London EC4A 1NL (telephone: 020 7612 9730; email: uttc@hmcts.gsi.gov.uk).
- 6.7 Further information on the Tribunal, including guidance and the relevant forms to complete, can be found on the HM Courts and Tribunal Service website: <http://www.justice.gov.uk/forms/hmcts/tax-and-chancery-upper-tribunal>
- 6.8 The Firm should note that a copy of the reference notice (Form FTC3) must also be sent to the Authority at the same time as a reference is filed with the Tribunal. A copy of the reference notice should be sent to Lucy Hartley (Lucy.Hartley@fca.org.uk) and the SPC Decision Making Secretariat (SPCDecisionMakingSecretariat@fca.org.uk).

Confidentiality and publicity

- 6.9 The Firm should note that this First Supervisory Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining legal advice on its contents).
- 6.10 The Firm should note that section 391(5) of the Act requires the Authority, when the First Supervisory Notice takes effect, to publish such information about the matter to which the notice relates as it considers appropriate.

Authority contacts

- 6.11 For more information concerning this matter generally, contact Lucy Hartley (Lucy.Hartley@fca.org.uk).
- 6.12 Any questions regarding the executive procedures decision-making process should be directed to the SPC Decision Making Secretariat (SPCDecisionMakingSecretariat@fca.org.uk).

Edwin Schooling Latter
Director, Wholesale Supervision

Annex

RELEVANT STATUTORY PROVISIONS

1. The Authority's operational objectives established in section 1B of the Act include securing an appropriate degree of protection for consumers, and protecting and enhancing the integrity of the UK financial system.
2. Section 55L of the Act allows the Authority to impose a new requirement on an authorised person if it appears to the Authority that the authorised person is failing, or likely to fail to satisfy the Threshold Conditions (section 55L(2)(a)), or it is desirable to exercise the power in order to advance one or more of the Authority's operational objectives (section 55L(2)(c)).
3. Section 55N of the Act allows a requirement to be imposed under section 55L of the Act so as to require the person concerned to take specified action (section 55N(1)(a)), or to refrain from taking specified action (section 55N(1)(b)).
4. Section 55P of the Act allows a requirement to be imposed under section 55L of the Act prohibiting the disposal of, or other dealing with, any of an authorised person's assets (whether in the UK or elsewhere), or restricting such disposals or dealings.
5. Section 55Y(3) of the Act allows a requirement to take effect immediately (or on a specified date) if the Authority, having regard to the ground on which it is exercising its own-initiative power, reasonably considers that it is necessary for the requirement to take effect immediately (or on that date).
6. Section 391 of the Act provides that:
“[...]”
 - (5) When a supervisory notice takes effect, the Authority must publish such information about the matter to which the notice relates as it considers appropriate.
 - (6) But the Authority may not publish information under this section if in its opinion, publication of the information would, be unfair to the person with respect to whom the action was taken or proposed to be taken [or] prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
 - (7) Information is to be published under this section in such manner as the Authority considers appropriate.”

RELEVANT REGULATORY PROVISIONS

The Threshold Conditions

7. The section of the Handbook entitled “Dispute Resolution: Complaints” (DISP) contains the rules governing the handling of complaints by authorised firms and the procedures of the Ombudsman Service.
8. DISP 1.4.4R provides that where a complaint against a firm is referred to the Ombudsman Service, the firm must cooperate fully with the Ombudsman Service and comply promptly with any settlements or awards made by it.
9. DISP 3.7.12R provides that a firm must comply with any award or direction made by the Ombudsman Service.

10. The section of the Handbook entitled "Threshold Conditions" (COND) gives guidance on the Threshold Conditions. COND 1.2.3G provides that the Authority may exercise its own-initiative powers under section 55L of the Act if, among other things, a firm is failing to satisfy any of the Threshold Conditions or is likely to do so.
11. COND 2.4.1AUK reflects the provisions of the Act (Paragraph 2D of Schedule 6) to the effect that the resources of a firm must be appropriate in relation to the regulated activities that it carries on or seeks to carry on.
12. COND 2.5.1AUK reflects the provisions of the Act (Paragraph 2E of Schedule 6) in that a firm must be a fit and proper person having regard to all the circumstances.

The Enforcement Guide

13. The Authority's approach in relation to its enforcement powers is set out in Chapter 8 of the Enforcement Guide (EG), certain provisions of which are summarised below.
14. EG 8.1.1 reflects the provisions of section 55L of the Act by stating that the Authority may use its own-initiative power to impose requirements on an authorised person where, amongst other factors, the person is failing or is likely to fail to satisfy the threshold conditions for which the Authority is responsible (EG 8.1.1(1)), or it is desirable to exercise the power in order to advance one or more of its operational objectives (EG 8.1.1(3)).
15. EG 8.2.1 states that when the Authority considers how it should deal with a concern about a firm, it will have regard to its statutory objectives and the range of regulatory tools that are available to it. It will also have regard to the principle that a restriction imposed on a firm should be proportionate to the objectives the Authority is seeking to achieve (EG 8.2.1(2)).
16. EG 8.2.3 states that in the course of its supervision and monitoring of a firm or as part of an enforcement action, the Authority may make it clear that it expects the firm to take certain steps to meet regulatory requirements. In the vast majority of cases the Authority will seek to agree with a firm those steps the firm must take to address the Authority's concerns. However, where the Authority considers it appropriate to do so, it will exercise its formal powers under section 55L of the Act to impose a requirement to ensure such requirements are met. This may include where, amongst other factors, the Authority has serious concerns about a firm, or about the way its business is being or has been conducted (EG 8.2.3(1)), or is concerned that the consequences of a firm not taking the desired steps may be serious (EG 8.2.3(2)).
17. EG 8.3.1 states that the Authority may impose a requirement so that it takes effect immediately or on a specified date if it reasonably considers it necessary for the requirement to take effect immediately (or on the date specified), having regard to the ground on which it is exercising its own-initiative powers.
18. EG 8.3.2 states that the Authority will consider exercising its own-initiative power as a matter of urgency where: 1) the information available to it indicates serious concerns about the firm or its business that need to be addressed immediately; and 2) 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.
19. EG 8.3.3 states that it is not possible to provide an exhaustive list of the situations that will give rise to such serious concerns, but they are likely to include one or more of four listed characteristics, these include: 1) information indicating significant loss,

risk of loss or other adverse effects for consumers, where action is necessary to protect their interests; 2) information indicating that a firm's conduct has put it at risk of being used for the purposes of financial crime, or of being otherwise involved in crime; 3) evidence that the firm has submitted to the Authority inaccurate or misleading information so that the Authority becomes seriously concerned about the firm's ability to meet its regulatory obligations; 4) circumstances suggesting a serious problem within a firm or with a firm's controllers that calls into question the firm's ability to continue to meet the threshold conditions.

20. EG 8.3.4 states that the Authority will consider the full circumstances of each case when it decides whether an imposition of a requirement is appropriate and sets out a non-exhaustive list of factors the Authority may consider.
21. EG 8.3.4(1) includes the extent of any loss, or risk of loss, or other adverse effect on consumers. The more serious the loss or potential loss or other adverse effect, the more likely it is that the FCA's exercise of own-initiative powers will be appropriate, to protect the consumers' interests.
22. EG 8.3.4(4) includes the seriousness of any suspected breach of the requirements of the legislation or the rules and the steps that need to be taken to correct that breach.
23. EG 8.3.4(5) includes the financial resources of the firm. Serious concerns may arise where it appears the firm may be required to pay significant amounts of compensation to consumers. In those cases, the extent to which the firm has the financial resources to do so will affect the FCA's decision about whether exercise of the FCA's own-initiative powers is appropriate to preserve the firm's assets, in the interests of the consumers.
24. EG 8.3.4(8) includes the firm's conduct. The Authority will take into account whether the firm identified the issue, brought it promptly to the Authority's attention and what steps the firm has taken or is taking to address the issue.
25. EG 8.3.4(9) includes the impact that use of the Authority's own-initiative powers will have on the firm's business and on its customers. The Authority will need to be satisfied that the impact of any use of the own-initiative power is likely to be proportionate to the concerns being addressed, in the context of the overall aim of achieving its statutory objectives.