
FIRST SUPERVISORY NOTICE

To: City & Merchant Limited

Reference Number: 154182

Address: Level 30 The Leadenhall Building
122 Leadenhall Street
London
EC3V 4AB

Date: 14 June 2024

1 ACTION

- 1.1 For the reasons given in this First Supervisory Notice ("FSN"), and pursuant to section 55L(3)(a) and 55L(3)(b) 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 City & Merchant Limited ("Firm" or "CML") with immediate effect.

Restriction on carrying on regulated activities

- 1) The Firm (and its Appointed Representatives) must immediately cease carrying on all regulated activities for which it has a Part 4A permission, other than where it has the express written consent of the Authority.

Retention and notification requirements

- 2) By close of business on 20 June 2024, the Firm must notify in writing all its clients/investors of the terms and effect of these Requirements.
- 3) The Firm must secure and preserve all records and/or information (physical or electronic) relating to its regulated activities in their original form, or in a copy

to be identical to the source material. These must be retained in a form and at a location within the United Kingdom, to be notified to the Authority in writing by 25 June 2024 such that they can be provided to the Authority, or to a person named by the Authority, promptly on its request.

- 1.2 The requirements in the VREQ remain in effect and in force, save for that paragraph 7(1) of the VREQ is superseded by the imposition of Requirement 1.1(1) above.
- 1.3 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(3)(a) and section 55L(3) (b) of the Act to impose the Requirements on the Firm because it is failing, or is likely to fail, to satisfy the Threshold Conditions and it is desirable in order to advance one or more of the Authority's operational objectives, which include protecting and enhancing the integrity of the UK financial system.
- 2.2 The Authority is seeking the imposition of requirements because it has serious concerns that the Firm is not capable of being effectively supervised by the Authority (COND 2.3.1A, paragraph 2C of Schedule 6 to the Act) because:
 - i. The Firm has repeatedly failed to report all transactions it has executed since 1 April 2023, as it is required to by Article 26(1) of UK MiFIR;
 - ii. The Authority has serious concerns that the Firm has not been open and co-operative with the Authority regarding its transaction activity contrary to Principle 11 and that any information provided by it has been either incomplete or inaccurate;
 - iii. The Firm has not submitted audited accounts for the year ended 31 March 2023, which were due for submission by 28 July 2023, as it is required to have done pursuant to SUP16.7A.3R; and
 - iv. The Firm has failed to notify the Authority of a notice by the Registrar of Companies on 28 May 2024 to strike it off the Register of Companies, contrary to the requirements in SUP15.3.21(2)R and despite its obligations under Principle 11.
- 2.3 The Authority is also seeking the imposition of requirements because it considers the integrity objective (Section 1D of the Act) is engaged.
- 2.4 The Authority considers that the imposition of the Requirements should take immediate effect because the matters set out in this First Supervisory Notice demonstrate that the Firm is failing, or is likely to fail, to satisfy the Effective Supervision Threshold Condition and because it is desirable to advance the Authority's operational objective of protecting and enhancing the integrity of the UK financial system.

3 DEFINITIONS

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

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

"AIF" means an Alternative Investment Fund;

"ARs" means the Firm's Appointed Representatives;

"the Authority" means the Financial Conduct Authority;

"CIS" means a Collective Investment Scheme;

"CML" means the Firm;

"Company A" means a third-party service provider for the Firm;

"the Complainants" means the two investors whose complaints in respect of the Firm were upheld by the FOS;

"Financial Services Register" means the public record maintained by the Authority;

"FOS" means the Financial Ombudsman Service;

"the FOS awards" means the two directions made by the FOS to the Firm that it pay redress in respect of the complaints made by each of the Complainants;

"FSN" means the First Supervisory Notice;

"the Firm" means City & Merchant Limited;

"the First Feedback Letter" means the letter to the Firm from the Authority dated 20 December 2023;

"FSCS" means the Financial Services Compensation Scheme;

"Fund" means a fund that the Firm operated and managed as set up in 2013 and which was wound up in 2018.

"Further VREQ" means the proposed further VREQ that the Authority sent to the Firm on 26 April 2024;

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

"MAR" means the Market Abuse Regulation;

"MiFID" means the Markets in Financial Instruments Directive;

"Principles" means the Authority's Principles for Businesses, as contained in the "PRIN" sourcebook of the Authority's Handbook;

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

"RegData" means the Authority's data collection platform for gathering regulatory data from firms;

"the Second Feedback Letter" means the letter to the Firm from the Authority dated 26 April 2024;

"STOR" means Suspicious Transaction and Order Report;

"SUP" means the Supervision manual, which is part of the Handbook;

"SUP 15 notification" means a notification to the Authority in accordance with the rules and guidance contained in the Supervision sourcebook of the Handbook;

"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);

"UK MiFIR" means the UK version of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, which is part of UK law by virtue of the EUWA; and

"VREQ" means the application by the Firm to the Authority for the imposition of certain requirements to apply to its Part 4A permission. The Firm signed a VREQ on 22 January 2024, which took effect on 23 January 2024.

4 FACTS AND MATTERS

Background

4.1 The Firm was incorporated on 17 June 1992 and was authorised by the Authority on 1 December 2001. It holds permission for the following regulated activities:

- 1) Advising on investments (except on Pension Transfers and Pension Opt Outs).
- 2) Advising on P2P agreements.
- 3) Arranging (bringing about) deals in investments.
- 4) Arranging safeguarding and administration of assets.
- 5) Dealing in investments as agent.
- 6) Dealing in investments as principal.
- 7) Establishing, operating, or winding up a collective investment scheme.
- 8) Making arrangements with a view to transactions in investments.
- 9) Managing an unauthorised AIF.
- 10) Managing investments.
- 11) Agreeing to carry on a regulated activity.

4.2 The Firm has two directors, who hold between them the SMF 3, SMF 16 and SMF 17 functions at the Firm.

4.3 The Firm is a principal for two ARs. In the Firm's email to the Authority dated 20 February 2024, it stated "The ARs have been given 3 months' notice as per contractual requirements. Remove AR notice will be given on expiry of the 3 months." The Authority understands that this means the Firm is taking steps to terminate the contractual relationships between it and the two ARs, and that the Firm's email of 20 February 2024 indicates that the relevant contractual notice

period for each AR has now ended. The Authority also understands the reference to the "Remove AR notice" to be the notice a firm provides to the Authority when it terminates a relationship with an AR and seeks to remove the reference to the AR from the Financial Services Register page for that firm. As of the date of this Notice, the Authority has not received the relevant notice from the Firm. The Authority has also not received confirmation as to whether or not the arrangements between the ARs and the Firm have ended.

- 4.4 The Authority understands that the Firm provides corporate finance advice, fund management and execution only trading services. The Firm is adviser to one company quoted on the AQUIS Stock Exchange. It is noted that the Firm's "fund management" appears to be a service that assists clients in trading non-mainstream assets within a fund structure.
- 4.5 The Firm reported corporate finance revenues of £8,000, funds under management of £1,577,000 and gross commission and brokerage revenues of £101,000 for the period 1 January 2024 to 31 March 2024.

Background in relation to the Firm's unpaid FOS awards

- 4.6 The Firm operated and managed the Fund. The Authority understands that the Fund was wound up in 2018 with no assets. Two investors in the Fund subsequently made complaints to the FOS (the "Complainants"). On 11 April 2023 and 12 April 2023, the FOS upheld the two complaints against the Firm. The FOS awards were subsequently accepted by the Complainants on 18 April 2023. The Firm was therefore required to pay redress and compensation to the Complainants as a result of the FOS awards.
- 4.7 Due to the Firm's financial position, the Authority understands that the Firm has not yet paid the FOS awards. The Firm informed the Authority that it was instead pursuing a potential sale of the business, which would enable it to settle the FOS awards, among other things. As at the date of this Notice, the Firm has not completed a sale of its business.

Failings and risks identified

Transaction reporting

- 4.8 On 10 August 2023, the Authority wrote to the Firm and requested an explanation as to why the Firm had not submitted transaction reports to the Authority.
- 4.9 During a telephone conversation with the Authority on 13 September 2023, the Firm confirmed that because of operational changes to its execution-only client business, whereby the Firm changed its market access service provider to Company A, the Firm had in fact been required to report transactions to the Authority since 1 April 2023. Further, it was confirmed that whilst the Firm had been conducting reportable activity, it had not submitted any transaction reports to date, nor did it have in place appropriate arrangements to enable it to do so.
- 4.10 On 20 September 2023, the Firm confirmed that it had appointed a third party to provide UK MiFIR transaction reporting services to it. The Firm stated that this service would include submitting transaction reports relating to transactions executed from 1 April 2023.
- 4.11 On 20 December 2023, the Authority sent the First Feedback Letter to the Firm, stating the Authority was not satisfied that the Firm was meeting the Threshold Conditions, and invited the Firm to apply for the Authority to impose voluntary

requirements on its Part 4A permission see paragraph 4.13 below. Amongst other issues, including the continued failure of the Firm to pay FOS awards, the Authority set out concerns about the Firm's ongoing failure to comply with its obligation to submit transaction reports as required under Article 26(1) of UK MiFIR.

4.12 On 11 January 2024, in response to the First Feedback Letter, the Firm informed the Authority that it had recognised it had been operating in breach of the relevant transaction reporting rules under Article 26(1) of UK MiFIR since 1 April 2023 and stated that it had taken steps to rectify the situation as soon as possible.

4.13 On 22 January 2024, the Firm applied for the voluntary requirements to be imposed (the "VREQ"). The Authority accepted the Firm's application on 23 January 2024. Amongst other things, the following requirements were imposed on the Firm:

- (1) The Firm and its ARs must not, without the prior written consent of the Authority, onboard any new clients;
- (2) The Firm and its ARs must not in the course of business, market or communicate any invitation to non-existing clients to engage in investment activity;
- (3) The Firm and its ARs must not raise funds from investors;
- (4) The Firm must not appoint any additional ARs under and for the purposes of section 39 FSMA;

Asset requirement

- (5) The Firm must not, without the prior written consent of the Authority, in any way dispose of, withdraw, lend, transfer, deal with or diminish the value of any of its own assets, and of any funds it holds for, or to the order of, its customers (whether in the United Kingdom or elsewhere);
- (6) The asset restriction above did not apply to monetary payments, or the disposal of assets made by the Firm in the ordinary course of business, amounting to no more than £1,000, whether as a single transaction or a combination of related transactions. The Firm required the Authority's consent for payments/transactions not regarded to be in the ordinary course of business (as set out in the requirements),
- (7) The asset restriction did not apply to transactions giving effect to instructions initiated by customers, payments or funds made to suppliers in the ordinary course of business, usual and proper salary payments, and payments made in accordance with any award or direction made by the FOS.
- (8) In the event of there being a sale of the Firm as a whole or any part of its business or assets to a third party, the VREQ terms required the Firm to ringfence the net proceeds of any such sale, and stated that the Firm must not without the prior written consent of the Authority dispose of any such proceeds of sale.

4.14 On 30 January 2024, the Authority sent a letter pursuant to section 165 of the Act to the Firm seeking the provision of certain transaction data by 6 February 2024.

4.15 The Firm did not provide information in response to the Authority's request of 30 January 2024 until 23 February 2024. In its response, the Firm provided details of 251 trades it had placed covering the period from 2 October 2023 to 31 January

2024. The Firm had not submitted the corresponding transaction reporting data to the Authority, as required by Article 26(1) of UK MiFIR.

- 4.16 Since 1 April 2023, the Authority has received transaction reports from UK MiFID investment firms which identified the Firm as a counterparty. Based on these reports, the Firm appeared to have executed around 2,310 transactions between 1 April 2023 and 30 April 2024. The Firm did not submit corresponding transaction reporting data to the Authority for those trades as required by Article 26 of UK MiFIR.
- 4.17 On 4 April 2024, the Firm submitted 6 transaction reports relating to trades executed on 3 April 2024.
- 4.18 On 26 April 2024, the Authority sent the Second Feedback Letter to the Firm. Amongst other things, the Authority noted that despite stating to the Authority that it would take steps to comply with its obligation to submit transaction reports as required under Article 26(1) of UK MiFIR, the Firm had failed to do so.
- 4.19 The Authority requested, by 10 May 2024, that the Firm provide, amongst other things, the following information:
- (1) Details of all reportable transactions covering the period from 1 April 2023 to date;
 - (2) Documentation evidencing the Firm is ready, able and will begin ongoing transaction reporting on 13 May 2024;
 - (3) Details of the Firm's arrangements, systems, and procedures for detecting and reporting market abuse, as required under Article 16 of UK MAR; and
 - (4) Details of the last five instances of potential market abuse that were reviewed but ultimately not submitted to the Authority as a STOR.
- 4.20 The Authority invited the Firm to apply for the Further VREQ if it failed to provide the required information by the deadline. The Further VREQ was to supplement the requirements contained in the VREQ and sought to prevent the Firm from dealing as agent, dealing as principal, managing an unauthorised AIF, establishing/operating/winding up a CIS and managing investments. It also sought to prevent the Firm from effecting transactions further to instructions initiated by its customers.
- 4.21 On 1 May 2024, the Firm sent an email to the Authority by way of an initial response to the Second Feedback Letter, stating that it had ceased trading activity "a little while ago".
- 4.22 On 6 May 2024, the Firm provided its full response to the Second Feedback Letter. Amongst other things, the Firm responded to the Authority's assertion that despite the Firm having stated to the Authority that it would take steps to rectify its failure to submit transaction reports, it had to date failed to do so. The Firm, amongst other things, stated that:
- "While we immediately contracted [a third-party provider] to undertake the relevant reporting (agreement signed September 2023) they completed take-on on 20/03/2024 ..."*
- 4.23 The Firm provided a document entitled "All [Company A] trades 23-24", understood to be in response to the Authority's request that it provide "Details of all reportable

transactions covering the period from 1 April 2023 to date". The document contained a list of 609 transactions covering the period from 2 May 2023 to 2 February 2024. Further, the Firm stated that "*[Company A] has decided not to continue our accounts with them, and the activity has now ceased*".

- 4.24 In response to the request that it provides documentation evidencing the Firm is ready, able and will begin ongoing transaction reporting on 13 May 2024, the Firm attached an email purportedly confirming that, "*the account is open and transaction reporting is ready*". However, the Firm stated that this "*is not currently required as there are no accounts open. We are aware that to open a new account under the same legal structure would require transaction reporting to be in place prior to commencement*".
- 4.25 In response to the request that it provides details of the Firm's arrangements, systems, and procedures for detecting and reporting market abuse, as required under Article 16 of UK MAR, the Firm stated:
- "Not currently required as there are **no accounts open** [emphasis added]. However, for your information, previously, all trades were passed through the firm to be processed with oversight of each and every trade monitored by the account executive who was able to escalate any concern to a director. Directors also received daily trading statements after the event for monitoring"*.
- 4.26 The Firm also provided another document which referred to 5 transactions conducted by a client of the Firm across 4 April 2024, 10 April 2024, and 11 April 2024, in purported response to the Authority's request as described at paragraph 4.19 (4) above.
- 4.27 As regards its future, the Firm explained that it was continuing to search for a buyer and that, should a sale not be achieved, the Firm will "*have to close down*", albeit that it had in any case "*been reducing our client base over the past few years..., a process accelerated by the current VREQ in place which meant that even if we had been asked to do something we would not have been able to take on the business*".
- 4.28 The Firm declined the invitation to sign the Further VREQ, stating that the "new VREQ" would thwart a potential sale and prevent the Firm repaying the Complainants. The Firm also stated that it would be grateful for the opportunity to seek to complete any potential sale, particularly as "*in the meantime*" the Firm was engaged in "*no trading*" and had "*only one corporate finance client remaining*".
- 4.29 Despite the Firm stating on 6 May 2024 that it had ceased trading as a counterparty on all transactions and that "no accounts" were "open", the Authority has received information which shows the Firm as a counterparty for 169 transactions between 1 May 2024 and 30 May 2024. These reports indicate that the Firm is conducting trading activity. The most recent transaction was on 30 May 2024. The Authority has not received transaction reports relating to these trades from the Firm, nor any information relating to this activity from the Firm. The Authority has very serious concerns that the information provided by the Firm, including on 6 May 2024, was inaccurate and that the Firm is continuing to facilitate trading activity without the necessary systems to manage this activity and whilst providing no reporting to the Authority as required. Further, and irrespective of the role provided by the Firm in these transactions, the fact that it has not been able to identify them and report on them appropriately strongly suggests that its systems for monitoring and reporting on such transactions are not meeting regulatory requirements.

Audited accounts for the year ended 31 March 2023

- 4.30 The Firm has not submitted the FIN-A Annual Report and Accounts, for the period 1 April 2022 to 31 March 2023, which were due for submission by 28 July 2023.
- 4.31 The issue of the non-submission of the audited accounts for the year ended 31 March 2023 was set out in the First Feedback Letter, where it was noted that the audit of the accounts was on hold. The Authority requested, by 5 January 2024, that the Firm provide written confirmation from its auditor as to whether CML remain a going concern.
- 4.32 On 11 January 2024, in its response to the First Feedback Letter, the Firm explained that it had discussed matters relating to its accounts with its auditors, including relating to its treatment of certain contingent assets, and had been informed that its approach would not at that point "pass muster for audit purposes". The Firm also explained other potential proposals were being considered to deal with its financial position and that discussions with its auditor were ongoing.
- 4.33 In the Second Feedback Letter, the Authority again referred to the fact that the Firm had failed to submit the relevant accounts.
- 4.34 In the Firm's response of 6 May 2024, the Firm did not provide further information as regards the position of its accounts and stated instead that the Authority was fully aware of the reasons for the delay in the submission of the audited accounts and that the Firm was in regular contact with its auditors.
- 4.35 The Authority notes that notwithstanding the failure to finalise audited accounts for the year ended 31 March 2023, the Firm has since submitted the following regulatory returns (described as "FSA029 - Balance sheet returns") on RegData:
- (1) 30 September 2023: Net Assets £82,000, including a non-trade debtor of £194,000 which the Firm had confirmed to the Authority related to the Waterman Claim.
 - (2) 31 December 2023: Net Assets £77,000, including a non-trade debtor of £175,000.
 - (3) 31 March 2024: Net Assets £75,000, including a non-trade debtor of £227,000.
- 4.36 The Authority is concerned that despite the Firm having stated that its auditors have indicated that the approach to the accounting treatment of its contingent assets would not "pass muster" for audit purposes, such that this was delaying the completion of the audited accounts, the Firm may have subsequently provided inaccurate or incomplete data to the Authority (including relating to its asset position) via the above regulatory returns.
- 4.37 On 28 May 2024, a First Gazette notice for compulsory strike-off of the Firm, was published on Companies House. The strike off notice states that, unless cause is shown to the contrary, the Firm will be struck off the register and dissolved not less than 2 months from 28 May 2024.
- 4.38 The Firm has not notified the Authority of the strike it off application on the Register of Companies.

5 CONCLUSION

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

Analysis of failings and risks

Effective Supervision

- 5.2 The Authority considers that the Firm is failing to satisfy the Effective Supervision Threshold Condition as set out in COND 2.3.1A.
- 5.3 COND 2.3.1A sets out that a Firm must be capable of being effectively supervised, including: (a) the nature (including the complexity) of the regulated activities that the firm carries on or seeks to carry on; (b) the complexity of any products that the firm provides or will provide in carrying on those activities; and (c) the way in which the firm's business is organised.
- 5.4 In assessing whether a firm is meeting the Effective Supervision Threshold Condition, factors which the Authority will take into consideration include whether it is likely that the Authority will receive adequate information from the firm to enable it to determine whether the firm is complying with the requirements and standards under the regulatory system for which the Authority is responsible and to identify and assess the impact on its statutory objectives; this will include consideration of whether the firm is ready, willing and organised to comply with Principle 11 (Relations with regulators) and the relevant rules in the Authority Handbook on the provision of information to the Authority.
- 5.5 Article 26(1) of UK MiFIR requires investment firms that execute transactions in financial instruments to report complete and accurate details of such transactions to the Authority as quickly as possible, and no later than the close of the following working day.
- 5.6 The Firm has not reported all its transactions since 1 April 2023 and has not been open and co-operative with the Authority regarding its trading activity.
- 5.7 Since entering into the VREQ, the Firm has continued to fail to comply with its regulatory requirements, including its transaction reporting requirements whilst its trading activity has continued, even after the Firm stated to the Authority that it had ceased trading activity. The Authority is therefore concerned that it is unable to effectively supervise the Firm, and also that it is not able to monitor the level and extent of transaction activity that the Firm is participating in.
- 5.8 The Authority considers that given the Firm's failure to report its transactions and submit its audited accounts and, as noted in paragraph 4.37 above, submit accurate returns on its financial position, the Authority cannot effectively supervise the Firm.
- 5.9 The Authority considers that, as the Firm is no longer capable of being effectively supervised, it should not be undertaking any regulated activity.

Principle 11

- 5.10 Principle 11 provides that a firm must deal with its regulators in an open and cooperative way and must disclose to the Authority appropriately anything relating to the firm of which that regulator would reasonably expect notice.
- 5.11 SUP15.3.21(2)R provides that a firm must notify the Authority immediately if an

application is made to dissolve the firm or to strike it off the Register of Companies.

- 5.12 The Firm has not notified the Authority of the proposed strike off action, in accordance with its obligation under SUP15.3.21(2)R.
- 5.13 Further, as noted above, on 1 May 2024, the Firm sent an email to the Authority stating that it had ceased trading activity "a little while ago". This position was reiterated in the Firm's response of 6 May 2024 in which the Firm stated that it "currently" had no accounts and was doing "no trading".
- 5.14 The Authority accepts that the Firm has submitted some transaction reports, but these do not represent the entirety of the reports the Authority expects the Firm to have submitted. Despite the Firm stating on 6 May 2024 that it had ceased trading as a counterparty on all transactions and that "no accounts" were "open", the Authority has received information which shows the Firm as a counterparty for 169 transactions between 1 May 2024 and 30 May 2024. These reports indicate that the Firm is conducting trading activity and continuing to fail to report appropriately about it. Further, the Authority has very serious concerns that the information provided by the Firm, including on 6 May 2024, was inaccurate and that the Firm is continuing to facilitate trading activity without the necessary systems to manage this activity and whilst providing no reporting to the Authority as required.
- 5.15 Therefore, the Authority is concerned that the Firm has not been open and co-operative with the Authority regarding its transaction activity and may have provided the Authority with incomplete and/or inaccurate information.
- 5.16 Therefore, the Authority considers that the Firm may have failed to comply with the requirements of Principle 11.

The integrity objective

- 5.17 The Firm's failing to submit transaction reports poses an unacceptable risk to the Authority's operational objectives. The Authority uses transaction reports to help detect and investigate potential market abuse. The prevention and detection of market abuse is important to enable the Authority to enhance market integrity and the Authority expects firms to have the appropriate safeguards and systems in place to comply to meet the relevant regulatory requirements in this respect.
- 5.18 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 protecting and enhancing the integrity of the UK financial system.

Timing and duration of the Requirements

- 5.19 It is necessary to impose the Requirements immediately given the seriousness of the risks and the need to protect and enhance the integrity of the UK financial system.
- 5.20 The Authority considers that it is necessary for the Requirements to remain in place until varied or cancelled by the Authority (either on the application of the Firm or of the Authority's own volition).

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 2.5.7G 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 2 July 2024 or such later date as may be permitted by the Authority. Any notification or representations should be sent to the Executive Decision-Making Secretariat (EDMCaseInbox@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 the Executive Decision-Making Secretariat (EDMCaseInbox@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 Any questions regarding the executive procedures decision-making process should be directed to the Executive Decision-Making Secretariat (EDMCaseInbox@fca.org.uk).

Director, Supervision, Policy & Competition

Annex

RELEVANT STATUTORY PROVISIONS

1. The Authority's operational objectives established in section 1B of the Act include protecting and enhancing the integrity of the UK financial system.
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 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).
5. 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 Enforcement Guide

6. 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.
7. 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)).
8. 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)).

9. 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)).
10. 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.
11. EG 8.3.2 states that the Authority will consider exercising its own-initiative power 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.
12. 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.
13. 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, these include:
 - (3) The nature and extent of any false or inaccurate information provided by the firm. Whether false or inaccurate information warrants the Authority's exercise of its own-initiative powers will depend on matters such as:
 - (a) the impact of the information on the Authority's view of the firm's compliance with the regulatory requirements to which it is subject, the firm's suitability to conduct regulated activities, or the likelihood that the firm's business may be being used in connection with financial crime;
 - (b) whether the information appears to have been provided in an attempt knowingly to mislead the Authority, rather than through inadvertence;
 - (c) whether the matters to which false or inaccurate information relates indicate there is a risk to customer assets or to the other interests of the firm's actual or potential customers.
 - (4) 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.
 - (5) 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 Authority's decision about whether exercise of the Authority's own-initiative powers is appropriate to preserve the firm's assets, in the interests of the consumers. The Authority will take account of any insurance cover held by the firm. It will also consider the likelihood of the firm's assets being dissipated without the Authority's intervention, and whether the exercise of the Authority's power to petition for the winding up of the firm is more appropriate than the use of its own-initiative powers.

(6) The risk that the firm's business may be used or has been used to facilitate financial crime, including money laundering. The information available to the Authority, including information supplied by other law enforcement agencies, may suggest the firm is being used for, or is itself involved in, financial crime. Where this appears to be the case, and the firm appears to be failing to meet the threshold conditions or has put its customers' interests at risk, the Authority's use of its own-initiative powers may well be appropriate.

(8) The firm's conduct. The Authority will take into account:

- (a) whether the firm identified the issue (and if so whether this was by chance or as a result of the firm's normal controls and monitoring);
- (b) whether the firm brought the issue promptly to the Authority's attention;
- (c) the firm's past history, management ethos and compliance culture;
- (d) steps that the firm has taken or is taking to address the issue.

14. 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.