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**FIRST SUPERVISORY NOTICE**

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**To:** **Colbourne & Company**

**Reference Number:** **125003**

**Date:** **23 June 2022**

**1 ACTION**

1.1 For the reasons given in this First Supervisory Notice, and pursuant to sections 55L(1)(a) and (c) of the Act, the Authority has decided to impose with immediate effect the following requirements on Colbourne's Part 4A Permission:

Business Restrictions

- a) Colbourne 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, given subsequent to this FSN, to carry on said activities;
- b) Colbourne must immediately cease carrying on all regulated activities for which it does not hold a Part 4A permission. This means that Colbourne is not permitted to provide investment advice to, or arrange deals in investments for, retail clients. For the avoidance of doubt, Colbourne is not permitted to conduct any other regulated activities which fall outside its Part 4A permission, in addition to the requirement at (a) above that it immediately cease carrying on all regulated activities for which it does hold a Part 4A permission;
- c) Colbourne must immediately cease invoicing for or collecting all charges, fees and

commissions for regulated activities it has carried out for 'Retail (Investment)'-type customers (those that were removed from its Part 4A permission on 22 November 2014), or with whom it is otherwise not authorised to deal;

- d) Colbourne must not on-board any new customers;

#### Notification Requirements

- e) Colbourne must, within 72 hours of the receipt of this notice write to (i) all clients and; (ii) all platforms upon which its clients are placed informing them of the imposition of this requirement and its effects. The wording of this communication in the form of a template communication that will be supplied by the Authority. The method of delivery must be agreed in advance by the Authority;
- f) Once the notifications referred to in (e) above have been made, within 24 hours, Colbourne must supply to the Authority:
- i. Copies of the template notification sent to all recipients;
  - ii. A list of all parties to whom notifications have been sent; and
  - iii. Confirmation that, to the best of its knowledge, Colbourne has sent the specified notifications to all relevant parties

#### Record Retention

- g) Colbourne must secure all books and records and preserve all information, including material held via online/cloud-based systems to which the Firm has access, in relation to regulated activities carried on by it and, in addition, regulated activities carried out for or in relation to customers with whom it is not authorised to deal. These include but are not limited to all: (i) all client lists; (ii) all communications with clients; (iii) all financial records. These books and records must be retained in a form and at a location within the UK to be notified to the Authority within 24 hours of the receipt of this notice. The records must be retained in a form and at a location such that they can be provided to the Authority, or to a person named by the Authority, promptly upon its request;

#### Asset Requirement

- h) Save as set out in sub-paragraph (j) below, Colbourne must not, without the prior written consent of the Authority, take any action which has, or may have the effect of in any way disposing of, withdrawing, transferring, dealing with or diminishing the value of any of its own assets. whether in the United Kingdom or elsewhere;
- i) For the avoidance of doubt (h) means, in particular (though the contents of this sub-paragraph do not represent the full extent of (h), merely an example of how the Asset Requirement operates) that save as permitted by (j) below, Colbourne must not in any way diminish or transfer the funds in the accounts Colbourne holds with Bank A, with account numbers ending [575] and [339];
- j) The Assets Restriction does not apply to monetary payments or the disposal of assets in the following circumstances:

- i. Payments to the Firm's suppliers and in satisfaction of the Firm's contractual obligations in the ordinary course of business where the supplier and contractual obligation been notified to and approved by the Authority, subsequent to the imposition of this FSN;
  - ii. Payments to legal advisors;
  - iii. Where the Firm can demonstrate to the Authority's satisfaction that a particular account which may contain a mix of Firm and personal funds is used to pay necessary living expenses (such as mortgage payments etc) then the payment of a list of those expenses, to be agreed in writing with the Authority;
  - iv. Monthly withdrawals from the [575] account of amounts equivalent to state benefits and pension payments received during that period to which any person who uses the account to receive such payments is entitled; and
  - v. Payments of redress, where the individual or entity to receive payments has been approved in writing by the Authority subsequent to this notice.
- k) The following will not be regarded as payments in the ordinary course of business or necessary living expenses:
- i. Payment of any unusual or significant sum (meaning in excess of £100 whether as a single transaction or combination of transactions) to either individual who is a signatory on the [575] or [339] account and any person connected with them;
  - ii. The making of any capital distribution;
  - iii. The making of any gift, loan, or dividend;
  - iv. The sale or other disposal of the Firm's client book;
  - v. Salaries to any of Colbourne's employees the payment of which has not been approved in writing by the Authority
- l) The terms and effect of (h)-(k) above comprise an asset requirement within the meaning of Section 55P(4)(a) of the Act.

## **2 REASONS FOR ACTION**

### **Summary**

- 2.1 The Authority has concluded, on the basis of the facts and matters described below, that it is appropriate to exercise its power under sections 55L(1)(a) and (c) to impose these requirements because Colbourne is failing, or is likely to fail, to satisfy the Suitability Threshold Condition (paragraph 2E of Schedule 6 to the Act). The action is also desirable in order to advance the Authority's operational objective of securing an appropriate degree of protection for consumers (section 1C of the Act).
- 2.2 The Authority has identified serious concerns relating to Colbourne, in particular that it

may have taken from clients significant sums – believed to be at least £218,000 - in fees to which it was not entitled. Analysis of bank accounts and the surrounding circumstances suggests there is a significant risk of dissipation of the funds taken.

- 2.3 In addition, and significantly aggravating the Authority's concerns, it appears that Colbourne may not have had the requisite Part 4A permissions to advise the individuals whose funds have been misused, or indeed, regarding investments, any retail clients at all. The Firm must or should have been aware of the position as it applied for the variation of its Part 4A permission which meant it was not permitted to advise retail clients. Colbourne applied for this variation because its SMF function holder does not have the requisite SPS qualification to advise retail clients on investments.
- 2.4 The Authority considers that the proposed requirements should take immediate effect because the matters set out in this First Supervisory Notice demonstrate that Colbourne is not fit and proper and that it poses a serious risk which needs to be addressed on an urgent basis.

### **3 DEFINITIONS**

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

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

"Asset Requirement" means a requirement which can be added to a firm's Part 4A permission and which is defined in Section 55P(4)(a) of the Act;

"the Authority" means the Financial Conduct Authority;

"Bank A" means the bank at which Colbourne holds the accounts referred to in the Asset Requirement;

"Colbourne"/"the Firm" means Colbourne & Company, an unincorporated financial advisory firm;

"COND" means the part of the Authority's handbook that contains the Threshold Conditions and related guidance;

"EG" means the Enforcement Guide, part of the Authority's Handbook

"Firm A" means a firm which hosts a platform used by financial advisers to manage their clients' investments ;

"Firm B" means a firm which hosts a platform used by financial advisers to manage their clients' investments

"FSN" means a First Supervisory Notice;

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

"Part 4A permission" means permission to conduct regulated activities, granted by the Authority under Part 4A of the Act

"SMF Function Holder" means the individual who holds the SMF 16 senior management function at Colbourne;

"SPS" means Statement of Professional Standing issued by an appropriate accredited body

"Suitability Threshold Condition" means the condition set out in Paragraph 2E of Schedule 6 of the Act and COND 2.5

"Supervision" means the Authority's Supervision Division; and

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

## 4 FACTS AND MATTERS

### Background

4.1 Colbourne is an unincorporated entity based in Tamworth, Staffordshire. It has been authorised since 1 December 2001. It has a single SMF Function Holder who appears to conduct most of the Firm's business.

4.2 Colbourne has the following Part 4A permissions:

Regulated Product	Regulated Activities	Permitted Customer Types
Insurance	<ul style="list-style-type: none"> <li>Advising on Investments (except pension transfers &amp; opt outs)</li> <li>Arranging Deals in Investments</li> <li>Assisting in the Administration of a Contract of Insurance</li> <li>Making Deals With a View to Transactions in Investments</li> </ul>	<ul style="list-style-type: none"> <li>Commercial</li> <li>Professional</li> <li>Retail (Non-Investment Insurance)</li> </ul>
Pensions	<ul style="list-style-type: none"> <li>Advising on Investments (except pension transfers &amp; opt outs)</li> <li>Arranging Deals in Investments</li> <li>Making Deals With a View to Transactions in Investments</li> </ul>	<ul style="list-style-type: none"> <li>Commercial</li> <li>Professional</li> <li>Retail (Non-Investment Insurance)</li> </ul>
Investments	<ul style="list-style-type: none"> <li>Advising on Investments (except pension transfers &amp; opt outs)</li> <li>Arranging Deals in Investments</li> <li>Making Deals With a View to Transactions in Investments</li> </ul>	<ul style="list-style-type: none"> <li>Commercial</li> <li>Professional</li> <li>Retail (Non-Investment Insurance)</li> </ul>
	<ul style="list-style-type: none"> <li>Agreeing to carry on a regulated activity</li> </ul>	

4.3 In November 2014, Colbourne submitted an application to the Authority to vary its Part

4A permission to remove the 'Retail (Investment)' customer type. Colbourne's Part 4A permission was varied accordingly on 22 November 2014. Colbourne submitted the application following discussions with the Authority regarding the SMF Function Holder's lack of an SPS. The effect of the variation is that Colbourne was no longer permitted to conduct retail investment business.

### **Failings and risks identified**

#### Consumer reports to the Authority

- 4.4 The Authority has received reports and documentation from consumers demonstrating that significant unauthorised sums have been taken by Colbourne from their investment funds. Those sums, which records indicate were largely denoted as "fees" were taken subsequent to Colbourne no longer being permitted to conduct retail investment business. Almost £20,000 was taken from these individuals, though an as yet unclear amount, believed to be less than half the total, has been returned.

#### Firm A

- 4.5 Firm A runs an investment platform which hosts "*clients*" of Colbourne. These clients appear to be retail investors, though – as noted above – it appears that the Firm is not permitted to conduct such business.
- 4.6 Firm A has become aware of instances of Colbourne taking very significant sums from the investment funds of clients which purport to be "*fees*" for the Firm's services. The alleged "*fees*" taken from two clients, a couple, total approximately £218,000 in a period of just over 3 years. The effect has been to greatly deplete their investment fund. Information received by the Authority suggests that these "*fees*" were not authorised by clients or were otherwise justified/appropriate, even had the Firm been permitted to advise on or arrange investments for retail clients. The fees taken do not accord with material submitted by Colbourne to the Authority.
- 4.7 The conduct in question appears to have taken place over a number of years. The conduct also appears to relate to multiple clients. Further, there are significant concerns about the nature of the advice and documentation given by Colbourne to certain clients: analysis by Firm A indicates that certain documents may have been altered and/or contain false information. For example, it appears that documents given to one client, purporting to have been produced by Firm A, contained handwritten corrections and a false valuation of their fund.

#### Firm B

- 4.8 Firm B informed the Authority that an individual had reported significant unauthorised charges, linked to Colbourne, being taken from a SIPP. The sums significantly depleted the value of the SIPP over the course of a year, with more taken out during that period than was left after the discovery of the situation. Approximately £28,000 in "*fees*" had been taken during the period in question. Firm B also reported that other clients had been subject to "*ad hoc*" charges from Colbourne, but fewer details of those incidents are available.

#### Bank Accounts

- 4.9 The account held by Colbourne referred to at Bank A, with an account number ending

[575] above has been identified as Colbourne's business bank account and the account to which alleged fees were paid by the clients Firm A identified. The SMF function holder is one of the signatories to the account. Analysis indicates that this account appears to have been used for personal spending – leisure/travel/shopping - and that the current balance is only a very small proportion of the substantial and apparently unauthorised fees that have been deposited. A more substantial sum is held in the [339] account (also a business account), which relies as a source of income entirely on transfers from the [575] account.

## **5 CONCLUSION**

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

### **Analysis of failings and risks**

#### Failure to meet with the Threshold Conditions

- 5.2 The Authority has serious concerns about Colbourne's ability to meet 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. In particular, the Authority considers that Colbourne is failing, or is likely to fail, to satisfy the Suitability Threshold Condition because it is not conducting its affairs in an appropriate manner regarding the interests of consumers.

#### The Authority's operational objective of consumer protection

- 5.3 The Authority's operational objective of consumer protection requires the Authority to ensure an appropriate degree of protection for consumers. The Firm appears to have exposed some its "*clients*" to the risk of loss, by removing on an unauthorised basis significant sums from their investment funds which have then been dissipated. Further, the Firm appears to have been advising clients with whom it is not authorised to deal – the same clients, amongst others, from whom it has taken unauthorised fees.
- 5.4 On the basis of the facts and matters set out, it appears to the Authority that it is desirable to impose these requirements in order to advance the consumer protection objective contained in Section 1C of the Act.

#### Timing and duration of the Variation

- 5.5 It is necessary to impose the requirements on an urgent basis to take immediate effect given the seriousness of the risks and the need to protect consumers. The facts and matters set out above indicate that Colbourne has potentially misappropriated funds, dissipated them and carried on regulated investment business without required permissions. The Authority has therefore identified the following factors from those listed in EG 8.3.3:
- a) Information indicating significant loss, risk of loss or other adverse effects for consumers, where action is necessary to protect their interests (EG 8.3.3(1));

- b) Information indicating that the Firm's conduct has put at risk of being used for the purposes of financial crime, or of being otherwise involved in crime (EG 8.3.3(2)); and
- c) Circumstances suggesting a serious problem with the Firm and/or its controllers that calls into question the Firm's ability to meet the Threshold Conditions (EG 8.3.3(4)).

5.6 The Authority will consider full circumstances of each case when it decides whether an urgent requirement is appropriate. The Authority has identified the following relevant factors within the circumstances of this case:

- a) The extent of any loss, or risk of loss, or other adverse effect on consumers (EG 8.3.4(1));
- b) The extent to which customer assets appear to be at risk (EG 8.3.4(2));
- c) The seriousness of any suspected breach of the requirements of the legislation (EG 8.3.4(4));
- d) The financial resources of the Firm (EG 8.3.4(5));
- e) The risk that the Firm's business may be used or has been used to facilitate financial crime (EG 8.3.4(6));
- f) The Firm's conduct (EG 8.3.4(8));
- g) The impact that use of these powers will have on the firm's business and on its customers (EG 8.3.4(9))

5.7 The Authority considers that it is necessary for the requirement to remain in place indefinitely.

## **6 PROCEDURAL MATTERS**

6.1 This First Supervisory Notice is given under section 55Y(4) and in accordance with Section 55Y(5) of the Act and is being served on the Firm at its principal place of business as last notified to the Authority.

### **Decision-maker**

6.2 The decision which gave rise to the obligation to give this First Supervisory Notice was made under Executive Procedures.

6.3 The following statutory rights are important.

### **Representations**

6.4 Colbourne has the right to make written representations to the Authority. The Authority will consider oral representations only in exceptional circumstances where it is determined that prohibiting oral representations will impact upon the fairness of the decision. The deadline for notifying the Authority that Colbourne wishes to make oral representations and for providing written representations is 11 July 2022 .



Supervision, Policy and Competition Decision Making Secretariat  
The Financial Conduct Authority  
12 Endeavour Square  
London  
E20 1JN  
Email: [SPCDecisionMakingSecretariat@fca.org.uk](mailto:SPCDecisionMakingSecretariat@fca.org.uk)

- 6.5 All written representations and any notification of a request to make oral representations should also be copied to xxx@fca.org.uk.

### **The Tribunal**

- 6.6 Colbourne 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, Colbourne has 28 days from the date on which this First Supervisory Notice is given to it to refer the matter to the Tribunal.
- 6.7 A reference to the Tribunal can be made by way of a reference notice (Form FTC3) signed by or on behalf of Colbourne and filed with a copy of this First Supervisory Notice. The Tribunal's contact details are: The Upper Tribunal, Tax and Chancery Chamber, 5<sup>th</sup> Floor, Rolls Building, Fetter Lane, London EC4A 1NL (telephone: 020 7612 9730; email: [uttchmcts.gsi.gov.uk](mailto:uttchmcts.gsi.gov.uk)).
- 6.8 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>
- 6.9 Colbourne 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 xxx@fca.org.uk at the Financial Conduct Authority, 12 Endeavour Square, London, E20 1JN.

### **Confidentiality and publicity**

- 6.10 Colbourne 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).
- 6.11 Colbourne 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**

- 6.12 For more information concerning this matter generally, contact xxx@fca.org.uk
- 6.13 Any questions regarding the Decision-Making procedures relevant to this FSN should be directed to the Decision Making Secretariat by email:

[SPCDecisionMakingSecretariat@fca.org.uk](mailto:SPCDecisionMakingSecretariat@fca.org.uk)

**[Signature]**  
**Decision Made Under Executive Procedures**

## **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 (section 1C).
2. Section 20(1) of the Act provides that, if an authorised person carried on a regulated activity otherwise than in accordance with its Part 4A permissions, it is taken to have contravened a requirement imposed under the Act.
3. Section 55L of the Act allows the Authority to impose a requirement on the Part 4A permission of 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)). This power is referred to as the Authority's own-initiative requirement power.
4. 55P(4)(a) defines an Asset Requirement as a requirement imposed under section 55L which prohibits the disposal of, or other dealing with, any of a Firm's assets (whether in the UK or elsewhere) or restricting such disposals or dealings.
5. Section 55Y(3) of the Act allows a requirement imposed under the own-initiative requirement power 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 'Threshold Conditions' (COND) gives guidance on the Threshold Conditions. COND 1.2.3G provides that the Authority may exercise its own-initiative powers under either section 55J of the Act if, among other things, a firm is failing to satisfy any of the Threshold Conditions or is likely to do so.

8. COND 2.5.1AUK reflects the provisions of FSMA (Paragraph 2E to Schedule 6) to the effect that a firm must be fit and proper having regard to all the circumstances. These can include the nature of the firm's connection with any person (COND 2.5.1AUK(1)(a) and the need to ensure its affairs are conducted in an appropriate manner having regard to the needs of consumers (COND 2.5.1AUK(c)) and whether the firm has complied and is complying with the Authority's requirements (COND 2.5.1AUK(1)(d)).
9. COND 2.5.4G provides examples of the kind of general considerations to which the Authority may have regard when assessing whether a firm will satisfy, and continue to satisfy, the Suitability Threshold Condition. These include, but are not limited to, whether the firm conducts its business with integrity and in compliance with proper standards, has a competent and prudent management and can demonstrate that it conducts its affairs with the exercise of due skill, care and diligence.

### The Enforcement Guide

10. The Authority's approach in relation to its own-initiative powers is set out in Chapter 8 of the Enforcement Guide (EG), certain provisions of which are summarised below.
11. 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 a variation 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)).
12. 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)).
13. 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 55J of the Act to impose a variation 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)).
14. EG 8.3.1 states that the Authority may impose a variation 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 powers.
15. 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.

16. 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, but are not limited to: 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.
  
17. EG 8.3.4 states that the Authority will consider the full circumstances of each case when it decides whether an imposition of a variation is appropriate and sets out a non-exhaustive list of factors the Authority may consider. 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.