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## FIRST SUPERVISORY NOTICE

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**To: Cou tts Automobiles Limited**

**Address: 40 – 44 Western Avenue  
London  
W3 7TZ**

**FRN: 697633**

**Date: 20 December 2018**

### **ACTION**

1.1 For the reasons given in this Notice, and pursuant to section 55J of the Act, the Authority has decided to vary the permission granted to Cou tts Automobiles Limited ("CAL"), by removing all of its regulated activities with immediate effect. Accordingly, CAL's Part 4A permission no longer includes the following regulated activities:

- Credit Broking;
- Debt Adjusting;
- Debt Counselling; and
- Agreeing to carry on a regulated activity

For the avoidance of doubt, this means that CAL must immediately cease performing any of the above regulated activities.

### **REASONS FOR ACTION**

#### **Summary**

2.1 On the basis of the facts and matters described in this Notice, the Authority is taking the action set out in paragraph 1.1, for the following reasons:

- The Authority considers that CAL is failing to satisfy the threshold condition set out in paragraph 2E (Suitability) of Schedule 6 to the Act; and;
  - The Authority considers that it is desirable to do so in order to advance the Authority's consumer protection objective (set out in Section 1C of the Act) and the Authority's integrity objective (set out in Section 1D of the Act).
- 2.2 CAL and its employees are subject to investigation by law enforcement agencies resulting in a series of events which include: the arrest of a senior employee; the execution of search warrants CAL's premises; the seizure (by law enforcement) of cash and other items from its premises; litigation to repossess high value vehicles from CAL. A number of bank accounts that CAL used for the purposes of its business have been closed by its banks. CAL has failed to notify the Authority of these matters despite the fact that it was clearly obliged to inform the Authority by virtue of its obligations under SUP 15 and Principle 11.
- 2.3 Further, CAL submitted false documents to Firm J (a lender also regulated by the Authority) in connection with applications for finance connected to the purchase of high value vehicles by CAL or by customers for whom CAL was acting as a broker.
- 2.4 In the light of the ongoing law enforcement proceedings and CAL's willingness to provide false documents for the purpose of obtaining finance, it appears to the Authority that CAL has put itself at risk of being used for the purposes of financial crime or of being otherwise involved in crime.
- 2.5 Based on the conduct detailed in paragraphs 2.2 to 2.4 the Authority concludes that CAL is not a fit and proper person. It is therefore necessary for its Part 4A permission to be varied with immediate effect so as to further the Authority's operational objectives of protecting consumers and enhancing the integrity of the UK financial system. .
- 2.6 Where a firm appears to be involved in financial crime and where it is not meeting the threshold conditions, it is appropriate for the Authority to exercise its powers on an urgent basis to ensure that consumers are protected and the integrity of the market is maintained.

## **DEFINITIONS**

3.1 The definitions below are used in this Notice.

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

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

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

"the Register" means the Financial Services Register, published at <https://register.fca.org.uk/>;

"Bank 1" means a particular authorised UK bank;

"Bank 2" means a particular authorised UK bank;

"CAL" means Coutts Automobiles Limited;

"CF8" means the Apportionment & Oversight function as defined in the Handbook at SUP 10A.7;

"COND" means the part of the Handbook that contains guidance on the Threshold Conditions;

"the Director" means the director of CAL;

"EDF Energy" means EDF Energy Customers Limited, a company supplying electricity and gas to customers in the UK;

"Firm J" means an authorised independent finance lender;

"Mr A" means the manager of CAL;

"Mr C" means a salesperson at CAL;

"Mr H" means a customer of CAL;

"Mr S" means a potential claimant for cash seized from CAL's premises;

"Mr T" means a potential claimant for cash seized from CAL's premises;

"NCA" means the National Crime Agency;

"Part 4A Permission" means the permission granted to CAL, pursuant to Part 4A of the Act, to carry on regulated activities;

"Principle(s)" means the Authority's Principles for Businesses, contained in the part of the Authority's handbook entitled "PRIN";

"POCA 2002" means the Proceeds of Crime Act 2002;

"SUP" means the part of the Handbook entitled "Supervision";

"Thames Water" means Thames Water Utilities Ltd, a company responsible for water supply in the Greater London area;

"Threshold Conditions" mean the threshold conditions set out in Part 1B of Schedule 6 to the Act; and

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

## **FACTS AND MATTERS**

### **Background**

- 4.1 CAL was incorporated on 16 April 2015. CAL specialises in selling high value and rare automobiles manufactured by brands such as Rolls Royce, Aston Martin and Lamborghini. The Director is CAL's sole director and was appointed on the date of incorporation. The Director also holds the CF8 controlled function at CAL.

4.2 CAL has been authorised by the Authority since 26 August 2015. It has part 4A permission to carry out various credit related regulated activities, namely:

- Credit Broking;
- Debt Adjusting;
- Debt Counselling; and
- Agreeing to carry on a regulated activity

4.3 CAL's registered address at Companies House is 40 – 44 Western Avenue, London W3 7TZ. This is also its principal place of business on the Register and is also the location of the showroom at which it displays the luxury cars it offers for sale.

4.4 Mr A is the manager of CAL, attending meetings with the Director, and playing a leading role in brokering deals and arranging the purchase of vehicles by CAL. CAL has other employees, including Mr C, a salesperson.

#### **Failure to make appropriate notifications to the Authority**

4.5 Principle 11 requires a firm to be open and cooperative in its dealings with the Authority and to disclose to the FCA anything relating to the firm of which the FCA would reasonably expect notice. Further, Chapter 15 of SUP includes detailed rules and guidance on information that a firm should provide to the Authority.

4.6 In particular, SUP 15.3.1R states that a firm must notify the Authority immediately if it becomes aware, or has information which reasonably suggests that, the firm is failing to satisfy one or more of the threshold conditions, or any other matter which could affect the firm's ability to continue to provide adequate services to its customers and which could result in serious detriment to a customer of the firm or of any matter which could have significant adverse impact upon the firm's reputation.

4.7 The Authority considers that CAL is in breach of its obligations under SUP 15.3.1R and Principle 11 because it has failed to notify the Authority of the matters set out in paragraphs 4.8 to 4.24 below. The Authority considers that the Director knew or should have known about these matters.

#### NCA Action

4.8 On 9 June 2016, the NCA arrested Mr A and Mr C on suspicion of involvement in serious criminal offences. Mr A is a manager at CAL, with significant influence in the running of the business. Mr C worked at CAL as a salesperson. Both men were released on bail by the NCA. The Authority would have expected notification of this matter pursuant to SUP 15 and Principle 11 because it is a matter which could have a significant adverse impact upon CAL's reputation. However, the Authority has never been notified by CAL that two of its employees were arrested and remain on bail for serious criminal offences.

4.9 The NCA obtained a search warrant for CAL's premises (at 40 – 44 Western Avenue). This was executed on 23 February 2017. A copy of the search warrant, listing the reasons for the search and the items sought, was left at the premises. The warrant was executed during business hours, with staff including Mr A and Mr C present. This is a matter which could have a significant adverse impact upon CAL's reputation and one that should have raised concerns at CAL that its business had been used or may be used for criminal purposes. Therefore, the Authority

would have expected notification of these matters pursuant to SUP 15 and Principle 11. However, the Authority has never been notified of these matters.

- 4.10 Whilst on the premises of CAL, the NCA discovered that within the strong room safe was £80,000 in £50 notes. The safe in the manager's office contained: \$72,000 in \$100 notes; €3900; 11,500 Moroccan Dirhams; and 3300 UAE Dirhams. Counterfeit monies with a purported value of £1300 were also found within the manager's office, within a desk. Mr C denied knowledge of the monies. Mr A was questioned about the origins of the funds. He claimed that the £80,000 belonged to his client/friend Mr S, and represented the proceeds of gambling. Mr A told the NCA that the \$72,000 represented the proceeds from the sale of a high value watch.
- 4.11 Mr A's answers caused the NCA officers to form a reasonable suspicion that the monies were recoverable property for the purposes of POCA 2002 and were intended to be used in unlawful conduct. The cash was seized from Mr A, who received and signed the necessary paperwork.
- 4.12 The seizure of cash from CAL's premises is a matter which could have a significant adverse impact on CAL's reputation and, further, is a clear indicator that CAL had been used or may have been used for the purposes of financial crime. Therefore, the Authority would have expected notice to be given pursuant to SUP 15 and Principle 11. However, the Authority has never been notified of these matters.
- 4.13 The NCA commenced court proceedings and sought orders for the continued detention of the cash, pursuant to POCA 2002, with hearings on 23 May 2017 and 23 November 2017. Mr A was a named party in the proceedings as the individual from whom the funds were seized (though the funds were seized from CAL's premises). Mr A remained a senior employee of CAL throughout the proceedings.
- 4.14 In the course of the NCA's cash detention/forfeiture proceedings, Mr A (or his legal representatives) was served with documentation setting out: details of the NCA's investigation as it related to CAL; evidence obtained to date; reasons for suspicion that the monies seized from CAL's offices were linked to criminal offences; and grounds for detention. After the hearings, copies of the court orders would have been served on Mr A (or his legal representatives).
- 4.15 Mr S initially tried to claim the £80,000 as gambling proceeds. Further investigations by the NCA concluded that the evidence did not support his claims and he withdrew his claim on 23 December 2017. Mr T claimed that the \$72,000 represented the proceeds of the sale of a high value watch. However, NCA investigations revealed that the watch had been stolen before it was purportedly sold by Mr T and on 16 April 2018, Mr T withdrew his claim to the money.
- 4.16 The £80,000 was permanently forfeited by court order on 21 May 2018. The \$72,000 has also been paid out, pursuant to POCA 2002, to a legitimate watch dealer who was unaware the watch was stolen and who lost money as a result of purchasing the watch from Mr T for onward sale. These court applications were notified to Mr A (or his legal representative), along with paperwork providing details about the failure of Mr S and Mr T to establish that the funds were legitimate.
- 4.17 The POCA proceedings and the subsequent discovery that proceeds of stolen goods had been stored on CAL's premises are matters that could have a significant adverse impact upon CAL's reputation. They are matters that should have caused CAL to consider whether it had been used for the purpose of financial crime or

otherwise of being involved in crime. Despite this CAL did not notify the Authority of these matters.

#### Metropolitan Police/Litigation

- 4.18 On 7 December 2017, the Metropolitan Police executed a search warrant at 40 – 44 Western Avenue. As with the NCA’s raid, a copy of the search warrant would have been left at the premises.
- 4.19 The Metropolitan Police were (and are) investigating CAL’s alleged direct involvement in serious criminal offences.
- 4.20 The investigation of serious criminal offences by the police is a matter which could have a significant adverse impact on CAL’s reputation. These matters also suggest that CAL has been or may have been used for criminal purposes.
- 4.21 Further, witness statements detailing CAL’s involvement in serious criminal offences were served on CAL in November 2018 as part of civil proceedings to repossess a number of high value vehicles. The litigation is on-going. CAL has never notified the Authority of these proceedings or of the serious criminal allegations made against it. The Authority would have expected notification of these matters pursuant to SUP 15 and Principle 11.

#### Banking Facilities

- 4.22 CAL had business banking relationships with, inter alia, Bank 1 and Bank 2. On 30 May 2018, Bank 1 wrote to CAL, stating that “*a thorough review*” had been conducted of its banking relationship with CAL and that an irrevocable decision had been taken to cease providing banking products and services and to close the (four) business banking accounts CAL held. , Three of CAL’s accounts were closed on 3 August 2018 and one other was closed on 23 August 2018.
- 4.23 On 3 July 2018, Bank 2 wrote to CAL and stated that “*following a review of your account(s) with us and after careful consideration, we are unable to continue to act as your bankers*”. CAL’s accounts were formally closed on 17 August 2018. The balance of the account, £202,868.51, was retained by Bank 2.
- 4.24 The closure of CAL’s bank accounts could have adversely affected the services it provided to its customers, in that CAL’s ability to effect transactions required for the normal running of its credit broking business could have been seriously impaired. The Authority would have expected notification of these matters pursuant to SUP 15 and Principle 11.

#### **Concerns that CAL has been used for the purposes of crime**

- 4.25 As stated above, the Metropolitan police are investigating CAL for a variety of criminal offences, though no findings have been made. However, in relation to the NCA’s investigation, a large amount of cash was found on CAL’s premises, placed there by or with the knowledge of Mr S, and:
- a. Some of the funds transpired to be the proceeds of stolen property;
  - b. The remainder was forfeited pursuant to POCA 2002 because its provenance could not be ascertained.

These matters raise concern that the firm has been used for the purposes of criminal activity.

- 4.26 Further, CAL provided false information to a finance provider, Firm J, on a number of occasions as set out in paragraphs 4.28 to 4.37 below. Providing false information to obtain credit demonstrates a lack of integrity and potentially undermines the effectiveness of the due diligence financial/lending institutions are required to undertake to mitigate against the risk of financial crime.

Provision of false documents in support of finance applications

- 4.27 In light of the matters set out below, the Authority considers that CAL submitted false documents in relation to five separate applications it made to obtain finance, and considers it reasonable to infer that CAL did so knowingly. This is because
- a. CAL itself was the beneficiary of the deception, in that the documents were provided in order to help CAL to either prove ownership of a vehicle it intended to sell and/or obtain finance to refinance its borrowings on existing vehicles, and all the false documents were sent from CAL's corporate email address;
  - b. A senior employee, Mr A, appears to be responsible for sending the majority of the documents; and
  - c. The majority of the documents related to The Director.

*McLaren P1*

- 4.28 A Mr H purportedly agreed to purchase this high-value car from CAL in 2017. CAL then introduced Mr H to Firm J, to whom he made an application to borrow £2,000,000 to pay the purchase price.
- 4.29 By an email dated 19 October 2017, CAL sent an invoice and bank statement to Firm J to prove its ownership of the car it had agreed to sell to Mr H. The relevant documents were:
- a. An invoice purportedly issued by the vendor to record the purchase by CAL of the McLaren P1, dated 12 May 2017. The McLaren P1 is identified with reference to its UK registration plate. However, documentation for the vehicle records that it was not registered in the UK (and thus allocated a registration number) until September 2017, several months after the date of the invoice; and
  - b. A bank statement purportedly demonstrating CAL's bank transfer, to the vendor, of the purchase price recorded in the above invoice. By a letter dated 9 November 2018, Bank 1 confirmed to the Authority that the bank statement does not match its records, and the Authority infers from this that the statement is not genuine.

CAL benefitted from the deception, because it allowed Firm J to lend the funds to Mr H to purchase the vehicle from CAL. These documents related to CAL's ownership of the vehicle, rather than Mr H himself.

#### *Bugatti Veyron*

- 4.30 In March 2018, CAL made an application to Firm J for finance for an amount of £750,000, secured against this vehicle. The Director and Mr A held a meeting of the board of directors (at which only Mr A and the Director were present) and approved the application. Both the Director and Mr A provided individual personal guarantees to Firm J to secure the finance for CAL. The Director signed the finance agreement.
- 4.31 Firm J's application process required the applicant/guarantor to provide proof of their address. By an email dated 15 March 2018, Mr A sent to Firm J, from a CAL email address, a copy of documents purporting to be proofs of address for himself and The Director (a Thames Water bill and an EDF Energy bill, respectively). By a letter to the Authority dated 1 November 2018, Thames Water confirmed that the "bill" is not a genuine document. By a letter to the Authority dated 19 November 2018, EDF Energy confirmed that the "bill" is not a genuine document.
- 4.32 CAL benefitted from the deception as the application was successful and the funds were paid out to CAL on 16 March 2018. Further, Firm J used the proof of address documents sent by Mr A on 15 March 2018 when assessing an April 2018 application by CAL to refinance its existing borrowings (from Firm J) in respect of a Lamborghini Aventador (see below). The Director signed the finance agreement on behalf of CAL on 20 April 2018 and the funds were released to CAL on 25 April 2018.

#### *Lamborghini Aventador*

- 4.33 In April 2017, CAL made an application to Firm J to borrow £350,000, secured against this vehicle. The Director signed the finance agreement on behalf of CAL and Mr A sent the agreement to Firm J on 19 April 2017 (from CAL's corporate email address). Attached to the same email was a document purporting to be an EDF Energy bill in The Director's name, to serve as proof of address.
- 4.34 By a letter to the Authority dated 19 November 2018, EDF Energy confirmed that this document is not genuine. CAL benefitted from the deception because the application was successful and the funds were released to CAL on 20 April 2017.

#### *Ferrari 458*

- 4.35 In January 2017, CAL made an application to Firm J to borrow £200,000, secured against this vehicle. The Director signed the agreement and it was witnessed by Mr A. By an email dated 9 January 2017, Mr A sent Firm J a copy of a document purporting to be an EDF Energy bill in the Director's name to serve as proof of address.
- 4.36 By a letter to the Authority dated 19 November 2018, EDF Energy confirmed that this document is not genuine. CAL benefitted from the deception because the application was successful and the funds were released on 12 January 2017.

#### *Range Rover Sport*

- 4.37 In November 2017, CAL made an application to Firm J for finance for an amount of £40,000 to fund its purchase of this vehicle. The Director signed the agreement on behalf of CAL. Firm J's credit file for this agreement holds a proof of address document for The Director, namely a document purporting to be an EDF Energy bill



in the Director's name. By a letter dated 19 November 2018, EDF Energy confirmed that this document is not genuine.

## **FAILINGS**

- 5.1 The regulatory provisions relevant to this Notice are set out in the Annex.
- 5.2 On the basis of the facts and matters set out above, the Authority considers that CAL is not fit and proper having regard to all the circumstances. It appears to the Authority that:
- a. By repeatedly failing to demonstrate compliance with the requirements of SUP 15 and Principle 11 in relation to serious matters of which the Authority would reasonably expect to have been notified, CAL is failing to satisfy the threshold condition in paragraph 2E of Schedule 6 of the Act (Suitability). CAL's affairs are not being conducted in an appropriate manner (COND 2.5.1A(c)) and it is not complying with requirements imposed upon it by Authority relating to the provision of information (COND 2.5.1A(d)) – it is not being open, co-operative or demonstrating that it is ready, willing and organised to comply with the requirements of the regulatory system (COND 2.5.6G(1));
  - b. By repeatedly submitting false documents to Firm J in connection with applications for finance, CAL has failed to act with integrity and, as a result, CAL is failing to satisfy the threshold condition in paragraph 2E of Schedule 6 to the Act (Suitability). CAL's affairs are not being conducted in an appropriate manner (COND 2.5.1A(1)(c)) and it has failed to minimise the extent to which it was possible for its business to be used for a purpose connected with financial crime (COND 2.5.1A(1)(g)).
  - c. the conduct detailed in (a) and (b) above in particular poses a risk to the Authority's operational objectives of protecting consumers and enhancing the integrity of the UK financial system.
- 5.3 As a result of the serious concerns occasioned by CAL's conduct, and the risks it poses to the Authority's operational objectives, it is appropriate and proportionate to vary CAL's Part 4A permission in the manner set out in paragraph 1.1 with immediate effect, so as to prevent it from carrying on any regulated activities.

## **PROCEDURAL MATTERS**

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

### **Decision maker**

- 6.2 The decision which gave rise to the obligation to give this Notice was made by the Deputy Chair of the Regulatory Decisions Committee.

### **Representations**

- 6.3 CAL has the right to make written and oral representations to the Authority (whether or not it refers this matter to the Tribunal).

- 6.4 The deadline for providing written representations and/or notifying the Authority that CAL wishes to make oral representations is 9 January 2019, or such later date as may be permitted by the Authority. The address for doing so is:

Lynn Cheesman  
Decision-Making Committees Secretariat  
Financial Conduct Authority  
12 Endeavour Square  
London  
E20 1JN

### **The Tribunal**

- 6.5 CAL has the right to refer the matter to which this Notice relates to the Tribunal. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, CAL has 28 days from the date on which this 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 CAL and filed with a copy of this Notice. The Tribunal's contact details are: The Upper Tribunal, Tax and Chancery Chamber, Fifth Floor, Rolls Building, Fetter Lane, London, EC4A 1NL (telephone: 020 7612 9730; email: [uttc@hmcts.gsi.gov.uk](mailto:uttc@hmcts.gsi.gov.uk)).
- 6.7 For further information on the Tribunal (including the power to vary time periods) CAL should refer to the HM Courts and Tribunal Service website which will provide guidance and the relevant form to complete. The relevant page on HM Courts and Tribunal Service website can be accessed via the following link:
- <https://www.gov.uk/courts-tribunals/upper-tribunal-tax-and-chancery-chamber>
- 6.8 A copy of the Form FTC3 should also be sent to Sam Clyndes at the Financial Conduct Authority, 12 Endeavour Square, London E20 1JN at the same time as filing a reference with the Upper Tribunal.

### **Access to Evidence**

- 6.9 Section 394 of the Act does not apply to this Notice.

### **Publicity**

- 6.10 CAL should note that section 391 of the Act requires the Authority, when the Notice takes effect, to publish such information about the matter as it considers appropriate.

### **Authority contacts**

- 6.11 For more information concerning this matter generally, contact Sam Clyndes, Enforcement and Market Oversight Division at the Authority (direct line: 020 066 9062 or email [sam.clyndes@fca.org.uk](mailto:sam.clyndes@fca.org.uk)).

6.12 If you have questions about the RDC procedure, you should contact Lynn Cheesman (Tel: 020 7066 3192).

**Elizabeth France**  
**Deputy Chair, Regulatory Decisions Committee**

## **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) and protecting and enhancing the integrity of the UK financial system (section 1D). The integrity of the UK financial system includes that system not being used for a purpose connected with financial crime.
2. The Authority is authorised by section 55J of the Act to exercise the following powers:
  - to vary an authorised person's permission where it appears to the Authority that such a person is failing to satisfy the Threshold Conditions (section 55J(1)(a)) or it is desirable to exercise the power in order to advance [...] one or more of its operational objectives (section 55J(1)(c)); and
  - to vary such a permission by removing a regulated activity from those for which the permission is given (section 55J(2)(a)(ii));
3. Section 55Y(3) of the Act allows such a variation to take effect immediately only 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 variation to take effect immediately.
4. Section 391 of the Act provides that, when a supervisory notice takes effect, the Authority must publish such information about the matter to which the notice relates as it considers appropriate. However, the Authority may not publish information 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.
5. The Threshold Conditions represent the minimum standards which a firm is required to satisfy, and continue to satisfy, in order to be given and to retain a permission to carry on regulated activities. The relevant Threshold Conditions are set out in Part 1B of Schedule 6 to the Act. Paragraph 2E of Schedule 6 to the Act states that:

"A must be a fit and proper person having regard to all the circumstances, including –

[...]

  - (c) the need to ensure that A's affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers and the integrity of the UK financial system;
  - (d) whether A has complied and is complying with ... requirements made by the [Authority] in the exercise of its functions ... relating to the provision of information to the [Authority] ...

- (g) the need to minimise the extent to which it is possible for the business carried on by A, or to be carried on by A, to be used for a purpose connected with financial crime

### **RELEVANT REGULATORY PROVISIONS**

- 6. In exercising its power to vary a Part 4A permission, the Authority must have regard to guidance published in the Handbook. The relevant main considerations in relation to the action specified above are set out below.

#### **Relevant Principles**

- 7. Principle 11 (Relations with regulators) of the Principles, states that a firm must deal with the Authority in an open and co-operative way and must disclose to the FCA appropriately anything relating to the firm of which that regulator would reasonable expect notice.

#### **Duty to notify the Authority**

- 8. SUP 15.3.1R of the Supervision Manual states that a firm must notify the Authority immediately if it becomes aware, or has information which reasonably suggests: that the firm is failing to satisfy one or more of the threshold conditions; or any matter which could affect the firm's ability to continue to provide adequate services to its customers and which could result in serious detriment to a customer of the firm; or of any matter which could have a significant adverse impact upon the firm's reputation.

#### **Threshold Conditions**

- 9. The part 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 55J of the Act if, among other things, a firm is failing to satisfy any of the Threshold Conditions.
- 10. COND 2.5.3G(1) states that, in certain circumstances, the Authority may consider that a firm is not suitable because of doubts over the individual or collective suitability of persons connected with the firm.
- 11. COND 2.5.4G(2) provides examples of the general considerations to which the Authority may have regard when assessing whether a firm will satisfy, and continue to satisfy, the suitability threshold condition. This includes whether the firm conducts, or will conduct, its business with integrity and in compliance with proper standards.
- 12. COND 2.5.6G provides examples of particular 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: whether the firm has been open and co-operative in all its dealings with the Authority (COND 2.5.6G(1)); whether the firm has contravened...any provisions of the...regulatory system (COND 2.5.6G(4)).

## Enforcement Guide

13. EG 8.2.1 provides that the Authority will have regard to its statutory objectives and the range of regulatory tools that are available to it, when it considers how it should deal with a concern about a firm. It will also have regard to the responsibilities of a firm's management to deal with concerns about the firm or about the way its business is being or has been run and the principle that a restriction imposed on a firm should be proportionate to the objectives the FCA is seeking to achieve.
14. EG 8.2.3 provides that the Authority will exercise its formal powers under section 55J of the Act where the Authority considers it is appropriate to ensure a firm meets its regulatory requirements. EG 8.2.3(1) and (2) specifies that the Authority may consider it appropriate to exercise its powers where it has serious concerns about a firm or the way its business is being or has been conducted.
15. EG 8.2.6 gives examples of the circumstances in which the Authority will consider varying a firm's Part 4A permission because it has serious concerns about a firm, or about the way its business is being or has been conducted. These include:
  - "(1) in relation to the grounds for exercising the power under section 55J(1)(a) or section 55L(2)(a) of the Act, the firm appears to be failing, or appears likely to fail, to satisfy the threshold conditions relating to one or more, or all, of its regulated activities, because for instance:
    - [...]
    - (b) the firm appears not to be a fit and proper person to carry on a regulated activity because:
      - (i) it has not conducted its business in compliance with high standards which may include putting itself at risk of being used for the purposes of finance crime or being otherwise involved in such crime
        - [...]
      - (iii) it has breached requirements imposed on it by or under the Act (including the Principles and the rules), for example in respect of its disclosure or notification requirements, and the breaches are material in number or in individual seriousness;
        - [...]”
16. EG 8.3.1 provides 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.
17. EG 8.3.2 provides 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 needs 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.

18. EG 8.3.3 provides some examples of situations which may give rise to such serious concerns. These include circumstances suggesting a serious problem within a firm (or with a firm's controllers) that calls into question the firm's ability to meet the threshold conditions or 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 (see also EG 8.3.4(6)).