

Finteractive Limited has referred this First Supervisory Notice to the Upper Tribunal where each party will present their respective cases. The Tribunal will consider this and either dismiss it or ask the FCA to reconsider and reach a decision in line with the findings of the Tribunal. The Tribunal's decision will be made public on its website.

FIRST SUPERVISORY NOTICE

1 ACTION

1.1 For the reasons given below and pursuant to section 55L(3) of the Act, the Authority has decided to impose the following requirements on Finteractive with immediate effect:

- 1) Finteractive must not conduct any regulated activities with, or in respect of, any client who is resident in the United Kingdom, except as is necessary to comply with requirements 3) and 4) below.
- 2) Finteractive must not conduct any marketing activity to persons resident in the United Kingdom.
- 3) By 9 April 2021, in respect of all its clients who are resident in the United Kingdom, Finteractive must close all open trading positions and liquidate the positions into pound sterling balances (save for hedged positions which should be netted off rather than closed individually). Any positive cash balance held by a client resident in the United Kingdom must be paid to a bank or payment account held in the client's name as soon as practicable and, in any event, by 14 April 2021.
- 4) By 8 April 2021, Finteractive must notify all its clients who are resident in the UK by email that it is no longer able to provide investment services to them and will be taking all reasonable steps to return all balances held by Finteractive on their behalf.
- 5) By 8 April 2021, Finteractive must display on all websites used by it in the course of providing regulated activities, including but not limited to www.fxvc.eu, a notice of such size and prominence that all viewers of the website will inevitably see and be able to read it, which states: "Finteractive Limited is not permitted to provide regulated financial services to residents of the United Kingdom."
- 6) By 8 April 2021, Finteractive must display on its trading platform, at the point when clients log into the trading platform, a notice of such size and prominence

that all users seeking to log into the trading platform will inevitably see and be able to read it, which states: "Finteractive Limited is not permitted to provide regulated financial services to residents of the United Kingdom."

- 7) Finteractive must secure all books and records and preserve information and systems relating to regulated activities carried on by it, and must retain these in a form at a location, to be notified to the Authority in writing no later than 7 calendar days after the coming into force of these Requirements, such that they (or, so as not to hinder Finteractive's performance of its business activities, true copies of them) can be provided to the Authority, or to a person named by the Authority, promptly on its request.
- 1.2 The Requirements shall remain in force unless and until varied or cancelled by the Authority (either on the application of Finteractive or on the Authority's own initiative).

2 REASONS FOR ACTION

- 2.1 Finteractive is an investment firm registered in Cyprus. It trades as 'FXVC'. It has a temporary permission under the TPR. It provides consumers with the ability to trade CFDs using an online platform, accessible through its website, www.fxvc.eu.
- 2.2 Trading in CFDs involves significant risks and can lead to substantial monetary losses in short spaces of time. CFDs are not generally suited to retail investors who are not sufficiently sophisticated to understand and manage the risks involved. For that reason, the Authority has imposed rules which restrict the marketing and sale of CFDs to retail consumers.
- 2.3 Since February 2019, the Authority has received 47 complaints or expressions of concern about the activities of Finteractive. These complaints have increased in frequency in 2021. The complaints disclose serious misconduct by Finteractive including the use of misleading financial promotions, failures to inform customers about the nature and risks of CFDs, applying pressure to invest additional funds and failing to allow customers to withdraw funds.
- 2.4 As a result of Finteractive's activities, some customers have lost very significant sums of money.
- 2.5 In the circumstances, the Authority considers that the continuing provision of regulated activities by Finteractive to UK consumers presents unacceptable risks. As a result, the Authority considers that it is desirable to impose requirements on Finteractive which prevent it from conducting regulated activities in respect of, and marketing its products to, UK consumers and ensures that the effect of these measures is brought to the attention of its current and potential future UK clients.
- 2.6 This action is taken in order to advance the Authority's consumer protection objective.

3 DEFINITIONS

3.1 In this Notice:

“the Act” means the Financial Services and Markets Act 2000;

“the Authority” means the Financial Conduct Authority;

“CFD” means contracts for differences;

“COBS” means the Conduct of Business Sourcebook, part of the Handbook;

“Finteractive” means Finteractive Limited (FRN 716911), which trades as ‘FXVC’;

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

“MiFID” means the recast Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU;

“the Principles” means the Principles for Businesses, rules of the Authority in the section of the Handbook entitled PRIN;

“the Requirements” mean the requirements set out at paragraph 1.1 of this Notice;

“the RTC” means the Authority’s Regulatory Transactions Committee;

“the TPR” means the temporary permissions regime for firms previously operating in the UK under European Economic Area passporting provisions; and

“the Tribunal” means the Upper Tribunal (Tax and Chancery Chamber).

4 FACTS AND MATTERS

Background

- 4.1 Finteractive is a company registered in Cyprus. Until November 2020, it was named Centralspot Trading Limited. It trades as ‘FXVC’. From 24 August 2017 to the introduction of the TPR (save for a period of a month in November to December 2019), it had the right to provide cross-border services into the UK pursuant to EEA passporting provisions.
- 4.2 On 28 March 2019, Finteractive provided notice of its intention to enter the TPR and was thus given a temporary permission when the TPR was introduced on 1 January 2021. The TPR was designed to be a temporary regime for former passported firms until applications for full authorisation could be considered. The effect of this is that Finteractive is deemed to be an authorised person but the Authority has not yet assessed the ownership, internal controls and business practices of Finteractive.
- 4.3 Finteractive’s principal activity is the provision of CFDs on a trading platform which is accessed via its website – www.fxvc.eu.

- 4.4 CFDs are complex financial derivative products which are used to speculate on the movement in prices on a wide range of assets. They frequently involve high levels of leverage which creates the risk of substantial losses in the event of even small adverse price fluctuations in the underlying assets. CFDs present significant risks to investors who lack the necessary experience, knowledge and expertise to make appropriate investment decisions. As a result, they are generally unsuitable products for inexperienced investors.
- 4.5 Under the terms of MiFID, investment firms are required to assess the compatibility of financial instruments with the needs of its clients and ensure that the financial instruments are offered or recommended only when this is in the interest of the client. They are also required to ensure that their marketing communications are fair, clear and not misleading, that they provide appropriate information to clients and that they act honestly, fairly and professionally in accordance with the best interests of its clients.
- 4.6 Although not subject to most of the Authority's rules, firms in the TPR are obliged to comply with the Principles which include, in particular, treating their customers fairly and communicating information to them in a way which is fair, clear and not misleading.
- 4.7 In addition, firms selling CFDs are subject to UK restrictions in respect of sales to retail consumers, including limits on the leverage that may be used. These requirements are different in respect of clients who elect to be treated as professionals but firms may only treat a client as professional if, among other requirements, it has undertaken an adequate assessment that the client is capable of making his own investment decisions and understands the risks involved and the client satisfied certain criteria in respect of their experience. Such 'elective professionals' do not benefit from the same degree of protection as retail clients.

Complaints

- 4.8 Since February 2019, the Authority has received 47 complaints or expressions of concern from consumers about the business activities of Finteractive. Of these, 22 have been made in 2021, while Finteractive was in the TPR.
- 4.9 These complaints present a consistent pattern of the commission by Finteractive of serious misconduct in the provision of its services to UK consumers.
- 4.10 This includes the use of misleading financial promotions to attract customers, typically advertised online. These advertisements were misleading about the nature of the financial products being marketed and, on occasion, used celebrities or trusted corporations to attract the interest of consumers.
- 4.11 As a result, many of the consumers attracted by Finteractive's marketing materials were unclear as to the nature of the investments they were being persuaded to make and the risks attached to trading in CFDs. Representatives of Finteractive, who typically engaged with its clients by telephone, failed to ensure that they understood the true position.
- 4.12 After consumers opened trading accounts with Finteractive, typically with small initial sums, the accounts of numerous complainants described how pressure

was applied to invest greater and greater sums of money. Clients described this as “relentless”. The frequency and consistency of these accounts demonstrate that this was a common and accepted means of Finteractive’s representatives’ engagements with clients.

- 4.13 Although Finteractive’s regulatory permissions allowed it to provide investment advice, its terms and conditions stated that it did not advise clients on the merits of particular transactions. Despite this, many complainants described how Finteractive’s representatives provided direction and instructions on the trades to make.
- 4.14 Several complainants described how Finteractive induced them to upgrade to elective professional status despite the clients not meeting the requisite criteria.
- 4.15 Ten complainants stated that Finteractive failed to comply with requests to return funds to them.
- 4.16 As a result of transacting with Finteractive, some consumers lost very significant sums of money. 13 consumers lost over £20,000, with 5 consumers losing over £100,000.
- 4.17 An example of Finteractive’s treatment of its clients is Consumer A, who invested £1,000 with Finteractive in December 2020. Consumer A made it clear to Finteractive that he had no trading experience and was not willing to take high risks. Shortly after investing, Consumer A received up to 4 “*high pressure*” calls per day, persuading him to invest further funds. Finteractive’s representative directed Consumer A on what trades to make without providing any information about the investments or their risks. Initially, Consumer A made profits but, having made a significant loss, he was told that depositing further funds was the only way to make back his losses. Having deposited a further £20,000, he was directed to take a short position and then received repeated calls from Finteractive, informing him that, if he did not invest further funds to maintain his margin, all his monies would be lost.
- 4.18 Consumer A invested a total of £123,000, including £50,000 which he obtained on credit. He was left with just £22,500. When he tried to withdraw this, he was informed by Finteractive that his account had been suspended.

5 FAILINGS

- 5.1 The regulatory provisions relevant to this First Supervisory Notice are set out in the Annex.
- 5.2 From the facts and matters described above, the Authority considers that Finteractive has acted in contravention of its obligations under MiFID and in breach of Principle 7 of the Principles by failing to ensure that its marketing communications are fair, clear and not misleading.
- 5.3 The Authority further considers that Finteractive has acted in contravention of its obligations under MiFID and in breach of Principle 6 of the Principles by failing:
 - a) to assess the compatibility of the financial instruments with the needs of the clients to whom Finteractive provides investment services;
 - b) to provide appropriate information in good time to clients or potential clients with regard to Finteractive and its products;

- c) to act honestly, fairly and professionally in accordance with the best interests of its clients by pressuring customers to invest money and declining to action requests to return investment monies; and
 - d) to ensure that clients were categorised as elective professionals only in appropriate circumstances.
- 5.4 The Authority considers that the ongoing provision by Finteractive of regulated activities presents serious risks to the interests of UK consumers. As a result, the Authority has concluded that it is desirable to exercise its power to impose requirements to prevent Finteractive from providing any further regulated services to UK consumers, to ensure that all monies held by Finteractive on behalf of UK clients are returned as quickly as possible and to alert its UK clients to the imposition of the Requirements.
- 5.5 This action is taken to advance the Authority's consumer protection objective.
- 5.6 The Authority considers that the Requirements are an appropriate and proportionate means to protect against the risks identified.

6 PROCEDURAL MATTERS

Decision Maker

- 6.1 The decision which gave rise to the obligation to give this First Supervisory Notice was made by the RTC. The RTC is a committee of the Authority which takes certain decisions on behalf of the Authority.
- 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 Finteractive has the right to make representations to the Authority (whether or not it refers this matter to the Tribunal). The deadline for providing written representations and/or notifying the Authority that Finteractive wishes to make oral representations is 21 April 2021 or such later date as may be permitted by the Authority. The address for doing so is:

RTC Secretariat
Financial Conduct Authority
12 Endeavour Square
London
E20 1JN
Email: RTCSecretariatMailbox@fca.org.uk

The Tribunal

- 6.5 Finteractive has the right to refer the matter to which this First Supervisory Notice relates to the Tribunal, which considers references arising from decisions of the Authority. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, Finteractive 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 Finteractive and filed with a copy of this First Supervisory Notice. The Tribunal's contact details are: Upper Tribunal (Tax and Chancery Chamber), 5th Floor, Rolls Building, Fetter Lane, London EC4A 1NL (telephone: 020 7612 9730; email: uttc@justice.gov.uk).
- 6.7 Further details can be found on the Upper Tribunal's website at <https://www.gov.uk/guidance/refer-a-financial-service-or-energy-market-decision-to-a-tribunal>.
- 6.8 A copy of Form FTC3 must also be sent to Susan Ledger at the Financial Conduct Authority, 12 Endeavour Square, London, E20 1JN at the same time as a reference is filed with the Tribunal.

Confidentiality and publicity

- 6.9 Finteractive 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 Finteractive should note that section 391(5) of the Act requires the Authority, when this First Supervisory Notice takes effect (and this First Supervisory Notice takes immediate effect), to publish such information about the matter to which the notice relates as it considers appropriate.

Authority contacts

- 6.11 For more information concerning this matter generally, contact Susan Ledger (email susan.ledger@fca.org.uk , direct line 020 066 6046) at the Authority.

Katherine Browne
Chair, Regulatory Transactions Committee

Annex

RELEVANT STATUTORY PROVISIONS UNDER THE ACT

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 55L of the Act allows the Authority to impose a new requirement, or to vary a requirement previously imposed by the Authority under section 55L, on an authorised person if it appears to the Authority that 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.
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)). Section 55N(2) provides that a requirement may extend to activities which are not regulated activities.
4. 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) 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 MiFID PROVISIONS

5. Article 24 of MiFID concerns general principles and information to clients.
6. Article 24.1 of MiFID requires that, when providing investment or ancillary services, investment firms act honestly, fairly and professionally in accordance with the best interests of their clients.
7. Article 24.2 of MiFID requires that investment firms assess the compatibility of the financial instruments with the needs of the clients to whom they provide investment services and ensure that the financial instruments are offered or recommended only when this is in the interest of the client.
8. Article 24.3 of MiFID requires that all information, including marketing communications, addressed by investment firms to clients or potential clients shall be "fair, clear and not misleading". It also requires marketing communications shall be clearly identifiable as such.
9. Article 24.4 of MiFID requires appropriate information to be provided in good time to clients or potential clients with regard to the investment firm and its services,

the financial instruments and proposed investment strategies, execution venues and all costs and related charges.

10. Article 24.5 of MiFID requires that the information referred to in paragraph 24.4 shall be provided in a comprehensible form in such a manner that clients or potential clients are reasonably able to understand the nature and risks of the investment service and of the specific type of financial instrument that is being offered and, consequently, to take investment decisions on an informed basis.

RELEVANT REGULATORY PROVISIONS

The Principles

11. Principle 6 states "*A firm must pay due regard to the interests of its customers and treat them fairly*".
12. Principle 7 states: "*A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is fair, clear and not misleading*".

COBS

13. COBS 22.5 sets out restrictions on the retail marketing, distribution and sale of CFDs. By COBS 22.5.1-AG, these apply to firms in the TPR.
14. COBS 22.5.6R provides that a firm must not: (a) market, publish, provide or communicate in any other way any communication or information in a durable medium or on a webpage or website to a retail client or in such a way that it is likely to be received by a retail client; (b) approve or communicate a financial promotion in a durable medium or on a webpage or website; or (c) disseminate such a communication, information or financial promotion to a retail client, or in such a way that it is likely to be received by a retail client unless the firm includes a specified risk warning.
15. COBS 22.5.11R provides minimum levels of margin (which depend on the underlying asset) which a firm must require a retail client to post to open a position.
16. COBS 3.5.3R provides that, in relation to MiFID business, a firm may treat a retail client as an elective professional client if:
 - 1) The firm undertakes an adequate assessment of the expertise, experience and knowledge of the client that gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the client is capable of making his own investment decisions and understanding the risks involved;
 - 2) At least two of the following criteria are satisfied:
 - a) The client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters;
 - b) the size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments, exceeds €500,000;

- c) the client works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged;
- 3) the following procedure is followed:
- a) the client must state in writing to the firm that it wishes to be treated as a professional client either generally or in respect of a particular service or transaction or type of transaction or product;
 - b) the firm must give the client a clear written warning of the protections and investor compensation rights the client may lose; and
 - c) the client must state in writing, in a separate document from the contract, that it is aware of the consequences of losing such protections.

The Enforcement Guide

- 17. The Authority's policy 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.
- 18. 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 Authority is seeking to achieve.
- 19. EG 8.2.3 provides that the Authority will exercise its formal powers under section 55L 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, where it is concerned that the consequences of a firm not taking the desired steps may be serious or where the imposition of a formal statutory requirement reflects the importance the Authority attaches to the need for the firm to address its concerns.
- 20. EG 8.2.6 provides examples of 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 where the firm appears to be failing to satisfy the Threshold Conditions because its material and financial resources appear inappropriate for the scale or type of regulated activity it is carrying on, for example, where it has failed to take account of the need to manage risk professional indemnity insurance or where it is unable to meet its liabilities as they have fallen due; or the firm appears not to be a fit and proper person to carry on a regulated activity because it has breached requirements imposed on it by or under the Act, and the breaches are material in number or in individual seriousness.
- 21. 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.
- 22. 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.

23. 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;..."*.
24. 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:
- "(1) The extent of any loss, or risk of loss, or other adverse effect on consumers. The more serious the loss or potential loss or other adverse effect, the more it is that [the Authority]'s urgent exercise of its own-initiative powers will be appropriate, to protect the consumers' interests.*
- (2) The extent to which customer assets appear to be at risk. Urgent exercise of [the Authority]'s own-initiative power may be appropriate where the information available to [the Authority] suggests that customer assets held by, or to the order of, the firm may be at risk.*
- ...
- (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.*
- ...
- (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.*
- (9) 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 take into account the (sometimes significant) impact that a variation of permission may have on a firm's business and on market confidence. [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."*