



12 Endeavour Square
London
E20 1JN

Tel: +44 (0)20 7066 1000
Fax: +44 (0)20 7066 1099
www.fca.org.uk

FIRST SUPERVISORY NOTICE

To: **Independently East Limited
(also referred to as Independently East Ltd)**

Reference Number: **488046**

Date: **13 February 2023**

1 ACTION

1.1 For the reasons given in this First Supervisory Notice, the Financial Conduct Authority ("the Authority") has decided to impose on Independently East Limited ("the Firm") a variation of the Firm's Part 4A permission to perform regulated activities ("the Variation") and requirements ("the Requirements") pursuant to sections 55J(1)(a), 55J(1)(c)(i), 55J(2)(a)(ii) and sections 55L(2)(a), (c) and 55L(3)(a) of the Financial Services and Markets Act 2000 ("the Act").

1.2 The Authority has decided to vary with immediate effect the Part 4A permissions granted to the Firm by removing all of its regulated activities. Accordingly, the Firm's Part 4A permission no longer include:

Insurance

1. advising on investments (except on Pension Transfer and Pension Opt Outs);
2. arranging (bringing about) deals in investments;
3. making arrangements with a view to transactions in investments;

Pensions

4. advising on investments (except on Pension Transfers and Pension Opt Outs);
5. arranging (bringing about) deals in investments;
6. making arrangements with a view to transactions in investments;

Investments

7. advising on investments (except on Pension Transfers and Pension Opt Outs);
8. advising on P2P agreements;
9. arranging (bringing about) deals in investments;
10. making arrangements with a view to transactions in investments; and

Other activities

11. agreeing to carry on a regulated activity.

1.3 The effect of the Variation is that the Firm no longer has permission to conduct any regulated activities.

1.4 The Authority has also decided to impose the following Requirements:

Asset Requirements

- 1) Save as set out in sub-paragraph (2) and (3), IEL must not, without the prior written consent of the Authority, take any action which has, or may have, the effect of disposing of, withdrawing, transferring, dealing with or diminishing the value of any assets it holds or receives, for itself or on behalf of another (whether in the United Kingdom or elsewhere).
- 2) IEL may continue dealing with or disposing of any of its own assets in the ordinary and proper course of business provided that the sum or value of such dealings or disposals, whether as a single transaction or a combination of related transactions, does not exceed £1,000 (or £5,000 in the case of legal expenses).
- 3) For the avoidance of doubt, for the purposes of sub-paragraph (2) above, the following would be in the ordinary and proper course of business:
 - a) Any and all fees incurred or paid in exchange for professional advisory services;
 - b) Any amounts due to be paid to creditors (other than any creditors that are also identified at sub-paragraph 4(b) below) for sums incurred prior to the imposition of the cancellation of permission and Requirements, including but not limited to suppliers' fees and sums owing to HMRC; or
 - b) Any income or sums collected and received by IEL on behalf of any third parties and which are to be paid to such third parties (other than any third party that is also identified at sub-paragraph 4(b) below).

- 4) For the avoidance of doubt, for the purposes of sub-paragraph (2) above, the following would not be in the ordinary and proper course of business:
 - a) The making of any distribution to IEL's shareholders whether by way of capital distribution or dividends;
 - b) Any payment to directors, officers, employees, and/or any connected entities or persons;
 - c) The making of any gift or loan by IEL to any party; or
 - d) The entry into any financial reconstruction, sale of any part of IEL (whether share or asset based) or reorganisation.
- 5) Sub-paragraphs (1) and (2) are assets requirements within the meaning of section 55P(4)(a) of the Act.

Retention and notification requirements

- 6) IEL must secure all books and records and preserve all information and systems in relation to all activities carried on by it, including but not limited to regulated activities, and must retain these in a form and at a location within the UK, to be notified to the Authority in writing by no later than on **24 February 2023**, such that they can be provided to the Authority, or to a person named by the Authority, promptly on its request.
- 7) By close of business on **17 February 2023**, IEL must publish in a prominent place on its website in a form to be agreed in advance with the Authority, a notice setting out the terms and effects of these Requirements and use its best endeavours to place notice of the terms and effects of these Requirements on web-based profiles.
- 8) IEL must as soon as possible, and by no later than close of business on **23 February 2023**, notify all its current customers in writing of the imposition of the terms and effects of these Requirements. This must be in a form to be agreed in advance with the Authority.
- 9) Once the notifications referred to in sub-paragraph (8) have been made, IEL must provide to the Authority **within 24 hours**:
 - a) Copies of the template notifications sent to all recipients referred to in sub-paragraph (8);
 - b) A list of all parties to whom notifications have been sent pursuant to sub-paragraph (8); and
 - c) Confirmation that, to the best of its knowledge, IEL has sent notification pursuant to sub-paragraph (8) to all relevant parties.

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

2 REASONS FOR ACTION

Summary

- 2.1 The Authority has decided to take this action because it appears that the Firm is failing, or is likely to fail, to satisfy the following Threshold Conditions set out in Schedule 6 to the Act on the basis that:

Effective Supervision Threshold Condition

- a) The Firm is failing, or likely to fail, to satisfy the Effective Supervision Threshold Condition set out at paragraph 2C of Schedule 6 to the Act because the Firm has been unwilling to engage substantively with the Authority to provide responses to three information requests and additional requests for information.

Appropriate Resources Threshold Condition

- b) The Firm is failing, or likely to fail, to satisfy the Appropriate Resources Threshold Condition set out at paragraph 2D of Schedule 6 to the Act because there are no reasonable prospects that the Firm is able to settle an outstanding Financial Ombudsman award of approximately £70,000. The Authority has serious concerns that the director does not have a viable plan, or the means, to fully repay the loan within a reasonable timeframe. The Authority has been unable to determine IEL's true financial position because the Firm has failed to provide information and documents requested by the Authority. It therefore has not satisfied the Authority that it has sufficient resources to meet its liabilities as they fall due.

Suitability Threshold Condition

- c) The Firm is failing, or likely to fail, to satisfy the Suitability Threshold Condition set out at paragraph 2E of the Act because it does not appear to be a fit and proper person.
- d) The Authority therefore has serious concerns that the Firm is not conducting its affairs in an appropriate manner, having regard in particular to the interests of consumers. Further, the Authority has serious concerns that the Firm's business is not being, or will not be, managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner.
- i. The Firm appears to have provided inaccurate information to the Authority in relation to its submission of regulatory data, bank details and correspondence it has had with the Financial Ombudsman Service (FOS);
 - ii. The Firm has also failed to provide information to the Authority and the FOS when sought and it has failed to pay an outstanding FOS award.

Principle 11

- 2.2 Principle 11 of the Authority's Principles for Businesses provides that a firm must

deal with its regulators in an open and cooperative way and must disclose to the Authority appropriately anything relating to the firm of which that regulator would reasonably expect notice. The Authority is concerned, in light of the IEL's failure to substantively respond to requests for information from the Authority, that IEL may also be failing to comply with Principle 11.

- 2.3 It is desirable to exercise the Authority's power to impose the Variation and the Requirements in order to advance its operational objectives of securing an appropriate degree of protection for consumers.
- 2.4 The Authority considers that the Variation and the imposition of Requirements as set out above should take place with immediate effect and is desirable to protect consumers.

3 DEFINITIONS

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

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

"the Authority" means the Financial Conduct Authority;

"the Firm" means Independently East Limited;

"the First s165 Letter" means a letter from the Authority to the Firm dated 9 November 2022 requesting information pursuant to s165 of the Act;

"the FOS" means the Financial Ombudsman Service;

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

"IEL" means Independently East Limited;

"Part 4A permission" means a permission given by the Authority under Part 4A of the Act to carry on regulated activities;

"Principle" means one of the Authority's Principles for Businesses;

"RMA-A" means a form supplied to the Authority by the Firm relating to their Retail Mediation Activities, specifically details of their balance sheet;

"RDC" means the Regulatory Decisions Committee of the Authority (see further under Procedural Matters below);

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

"the Second s165 Letter" means a letter from the Authority to the Firm dated 15 December 2022 requesting information pursuant to s165 of the Act;

"Supervision" means the Authority's Supervision Division;

"the Third s165 Letter" means a letter from the Authority to the Firm dated 9 January 2023 requesting information pursuant to s165 of the Act;

“the Telephone Call” means a telephone call held between the Authority and the Firm on 29 November 2022;

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

“Variation” means the terms imposed on the Firm by this First Supervisory Notice as outlined in section 1 above.

4 FACTS AND MATTERS

Background

- 4.1 The Firm was incorporated on 11 January 1996 (company number 3144885) and was authorised by the Authority to perform regulated activities from 4 November 2008.
- 4.2 The Firm has one director who is also the Firm’s shareholder (the “Director”). The Director holds the SMF1 (Chief Executive), SMF3 (Executive Director), SMF16 (Compliance Oversight), SMF17 (Money Laundering Reporting Officer (“MLRO”)) roles and is ‘responsible for Insurance Distribution’.

Failings and risks identified

Consumer complaint

- 4.3 On 20 September 2022, the FOS upheld a complaint by a customer of IEL’s, Mr B, against IEL. Mr B paid money, totalling £70,000, into IEL’s business account.
- 4.4 IEL did not provide Mr B with any documentation to support the investment but Mr B understood that his money would be paid into a bond with a 3.25% interest rate below £50,000 and a 4.25% interest rate above that sum. Mr B raised a complaint with the FOS to recover his initial investment and interest. The complaint was upheld on 20 September 2022 on the basis that:
 - 1) The Firm failed to provide Mr B with any information regarding his investment in a bond, including the name of the provider;
 - 2) The Firm did not arrange the intended investment discussed with Mr B;
 - 3) In the alternative, even if IEL did arrange an investment, this was not suitable based on the discussions between Mr B and IEL; and
 - 4) In the further alternative, that IEL failed to give Mr B clear, fair, and not misleading information about the investment and if it had done so Mr B would not have invested.
- 4.5 The FOS award, which was accepted on 4 October 2022 by Mr B, requires IEL to pay him £70,000 plus interest calculated at 1.5% per annum plus £500 for the distress and inconvenience that was caused.
- 4.6 The Authority understands that the FOS made a number of requests for information from IEL about Mr B’s investment in the bond, but no documentation was provided nor was the name of the investment provider ever given. On 27 September 2021 the FOS requested IEL’s files and submissions. On 13 and 14 October 2021 IEL confirmed the requested documentation would be forwarded to the FOS and that it would make submissions in response to the complaint. The FOS made further attempts to contact IEL without success and a response to their

queries appears not to have been provided by IEL. The FOS issued a provisional decision on 25 August 2022, which IEL acknowledged receipt of on 12 September 2022. The Authority understands that, as no response was received despite a further extension, a final decision was issued by the FOS on 20 September 2022 which was sent to IEL by email and post.

- 4.7 On 12 November 2022, the Director informed the Authority that they were arranging *"the full return of his monies"* which was also repeated during the Telephone Call in which the Director said that they were *"going to repay in full."* As at 3 February 2023, the debt is still outstanding.
- 4.8 The Authority has tried to ascertain information about Mr B's investment from IEL, to no avail. The Director has failed to respond to information requests and during the Telephone Call the Authority understood from the Director that Mr B's funds related to moving and investing in an office property for IEL. The Director noted during the call that the funds *"weren't earmarked, I thought we were going to move into an office. We think we have found serviced office and will move in soon"*. They were also of the view that it was a *"private financial arrangement between two individuals and not regulated or anything but a friendly discussion, to do something together"*, *"It was not a regulated discussion ...outside my working life"*.
- 4.9 The explanation the Director has given to the Authority does not correspond with the banking information and the account the Director gave to Mr B in correspondence on 4 February 2020 in which they stated *"...the typical term is 3 years but it could be two years, but it can also be longer with your continued agreement and involvement. They are mainly used in the process of buying and renting out commercial property so a very steady income stream and 100% safe."*
- 4.10 The Authority has found no evidence to suggest that the sums transferred by Mr B to IEL were invested in a bond or any other form of investment by IEL. It also appears that some of Mr B's funds were transferred to a personal account of the Director.

Firm's response to FCA correspondence

First information request

- 4.11 On 9 November 2022, the Authority requested, amongst other items, details of two FOS decisions and financial information from IEL pursuant to s165 of the Act (the "First s165 Letter"). The information requested from IEL included: full details of the investments, where the funds were paid to, an explanation as to why IEL did not supply details of their investments to consumers, an explanation of the Firm's tangible and intangible assets as at 31 May 2022 and any significant changes since that date, account details and bank statements, cash flow and profit and loss projections. The First s165 Letter was attached to an email from Supervision which asked the Director to confirm receipt by 17:00 on 11 November 2022 and respond to the request of information and documents by 17:00 on 16 November 2022.
- 4.12 On 11 November 2022, the Director acknowledged receipt of the email attaching the First s165 letter during a telephone call with Supervision and provided a written acknowledgement of the same on 12 November 2022.

4.13 There were then various emails between the Director and Supervision from 14 November 2022. The Director informed Supervision that they had recently given their bank statements to their accountant and therefore needed an extension of time to comply with the First s165 Letter. Supervision agreed to this request, and suggested that the Director provide the information over several tranches. Supervision noted that specific documentation referred to in the First s165 Letter on the following dates as follows:

- i) Thursday 16 November 2022;
- ii) Monday 21 November 2022; and
- iii) Wednesday 23 November 2022.

Within the same email, Supervision asked the Director to supply the required documents electronically (via email).

4.14 On 18 November, Supervision wrote to the Director again advising that the deadline for the documents due on 16 November 2022 had now lapsed. Supervision reiterated that the information and documents should be provided electronically but if they had been sent by post, the Director should "*advise the method of postage, date sent and a tracking number*" and if the documents have not been sent, they should be provided "*electronically by return of email*".

4.15 On the same day, the Director responded to Supervision indicating they were going through all the Authority's requirements and stated, they were "*...not party to the - now obvious - FoS discussions and decision. I am the sole person with my firm...I have posted out the first two items as requested already*". The Director noted, however, that the fact of a postal strike may have delayed the Authority receiving the information allegedly sent.

4.16 On 21 November 2022, the Director wrote to Supervision again referring to the postal strike and stating "*Being open and honest I have not declared the "award" against me as I was not aware of it on their website so against my firm, and it was you that actually informed me...I enclose the PI certificate/s as requested*". Two high efficiency image container ("HEIC") documents were attached to the email but the Authority was unable to open them.

4.17 There was further correspondence between Supervision and the Director relating to the provision of information by IEL pursuant to the First s165 Letter, culminating the Telephone Call on 29 November 2022.

The Telephone Call

4.18 On 29 November 2022, the Authority spoke with IEL ("the Telephone Call") to discuss the outstanding information requested pursuant to the First s165 Letter and to discuss the deadlines to produce the documents. The Authority referred to the First s165 Letter and asked IEL to provide answers, amongst others, to:

- i. Question 7 (cash flow and profit and loss projections for the Firm over the next 3 months);
- ii. Question 12 (an explanation on the nature and details of the Firms' tangible assets and intangible assets as at 31 May 2022); and
- iii. Any significant changes in relation to the Firm's assets.

4.19 IEL did not provide answers to these questions. During the Telephone Call, the

Director said they would ask their accountant for the information. When the Authority asked the Director about the Firm's overall assets the Director stated "Not huge. Not quite sure... have my share in the office." The Authority has not been able to establish what the Director meant by 'share in the office'.

- 4.20 The Authority asked IEL for information about the outstanding FOS award and the arrangements the Director had put in place to pay it. The Director stated that they would sell either company or personal assets to meet this liability, whichever was quicker. The Director also said that IEL owned a property in London. Supervision queried with the Director the nature of the ownership of the property, which remained unclear. The Authority has subsequently obtained official copies of title from the land registry for the property which shows that it is owned by two individuals and not the Firm.
- 4.21 When the Authority asked the Director for details of IEL's bank accounts, the Director confirmed that IEL had a business account (with a balance of less than £5000) and he also had a personal account. The FCA has subsequently identified that IEL has two business accounts, with balances of £30.04 and £649.25, as at 13 January 2023. The Authority is also aware that the Director has a personal account with a different bank.
- 4.22 Additionally, the Authority tried to ascertain what documents (if any) had been sent in the post in response to the First s165 Letter. The Director confirmed that they had posted to the Authority an acknowledgement of receipt of the First s165 Letter and what the Authority understood to be evidence of the Firm's professional indemnity insurance for the previous 2 years. Although the Director said that they had collated half of the documents to send to the Authority during the Telephone Call, notwithstanding the confirmation of receipt and HEIC files which the Authority was unable to open, it has not received any documents from IEL in response to the First s165 Letter.
- 4.23 During the Telephone Call, the Authority received contradictory and potentially misleading information from the Director. When asked about two consumer complaints (one of which related to Mr B), the Director stated that he "had no knowledge of them going to FOS", he "didn't get any comms from FOS" and that the complaint/award "came out of the dark as I had no idea". However, the Director also stated during the Telephone Call that he had received 2 letters from the FOS.
- 4.24 The FOS has informed the Authority that, in relation to the complaint from Mr B: "IEL did not send over requested information, however they did respond to emails including confirming they were aware of the decision." The Authority has also seen correspondence between the FOS and the Director which suggests that the Director was aware of the complaint, at the latest, on 13 October 2021. Mr B also copied the FOS into communications when writing to the Director on 16 September 2021 and 19 December 2021. Certain of the Director's statements during the Telephone Call appear to contradict the contemporaneous information, which had the potential to mislead the Authority as to their knowledge and awareness of the complaint made by Mr B.
- 4.25 The Authority followed up the Telephone Call with an email on 29 November 2022, informing IEL of an extended deadline for IEL to respond to various questions in the First s165 Letter. This was extended to 4.30pm on Wednesday 30 November 2022. In addition to responses to all the remaining information pursuant to the

First s165 Letter, the Authority also asked specific questions regarding IEL's assets and for information as to what had happened to the £70,000 paid to IEL by Mr B. To date, IEL has not responded to the Authority's email of 29 November 2022.

Second s165 Information Request

4.26 On 15 December 2022, the FCA sent a covering email attaching a further s165 information request to IEL (the "Second s165 Letter"). Within the email, Supervision highlighted that the Authority had not received any responses to the First s165 Letter and that IEL was required to provide a response to the Second s165 Letter by no later than 4pm, Monday 19 December 2022. Supervision also asked that the information be provided by email by IEL, to avoid any issues arising in connection with any ongoing industrial action of postal workers. Within the Second s165 Letter, the Authority requested, amongst other items:

- i. recent financial statements, management accounts comprising of balance sheet and profit and loss statement;
- ii. an explanation of entries on IEL's micro financial statement, dated 30 November 2021, relating to the 'called up share capital not paid', 'current assets' and 'creditors', and 'amounts falling due within one year';
- iii. a breakdown of assets listed on the RMA-A for the reporting period 01 June 2021 to 30 November 2021;
- iv. a list of all of IEL's assets and their current value (or value at the last valuation date).

4.27 IEL has failed to respond to the Second s165 Letter.

Third Information Request and duplicate documents

4.28 On 9 January 2023, Supervision sent a covering letter to IEL along with the following documents:

- i) The First s165 Letter and its covering email;
- ii) The email request dated 29 November 2022;
- iii) The Second s165 Letter and its covering email;
- iv) A third information requirement pursuant to s165 of the Act, which sought the answers to 3 questions set out in the email of 29 November 2022 (see below) (the "Third s165 Letter"); and
- v) The FOS decision relating to Mr B.

4.29 Supervision requested, in the Third s165 Letter, that IEL produce the following information:

- i) a description of the assets IEL holds including approximate value and nature of the asset;
- ii) specific details on how IEL plans to meet its liabilities as they fall due and meet outstanding liabilities (including the outstanding FOS award); and
- iii) an explanation of what happened to the £70,000 paid to IEL by Mr B.

4.30 The deadline to respond to the Third s165 Letter was 16 January 2023. The covering letter reminded IEL of the possible consequence of failure to provide the

information. The letters and documents were sent to IEL by email and by special delivery to IEL's registered address and were signed for on 10 January 2023.

- 4.31 On 13 January 2023, during a telephone call with Supervision, the Director stated that they had not received the documents set out at 4.27 above. The Director subsequently confirmed, during a voicemail to the Authority on 18 January 2023, that they had in fact collected the documents (which included the Third s165 Letter) on 13 January 2023, after the call with Supervision earlier that day. The Authority is unaware whether anybody else, other than the Director, is able to accept special deliveries of post on behalf of IEL (as appears to have happened on 10 January 2023), but notes that, irrespective of this, the Director was in receipt of the Third s165 Letter (and other documents set out above) by 13 January 2023 at the latest, and therefore ought to have understood the importance of responding to it in full.
- 4.32 As a result of IEL failing to provide the information requested under each of the First s165 Letter, the Second s165 Letter and the Third s165 Letter, the Authority does not have up to date accounts and financial information from IEL. It is therefore unclear what assets IEL has and how it is going to be able to pay the FOS award.

Financial information provided by IEL

- 4.33 On 25 August 2022, IEL submitted micro accounts to Companies House which were signed off by the Director. The accounts state that IEL had, as at 30 November 2021, capital and reserves of £36,259. Of this amount recorded as IEL's available capital and resources, the Authority notes that £59,971 of IEL's assets is in respect of called-up share capital (not paid).
- 4.34 IPRU-INV 13.15.3 provides that the calculation of firm's capital resources can include 'Paid-up share capital (excluding preference shares...)' but should not include unpaid shares. The Authority therefore considers that the £59,971 of "called-up share capital (not paid)" referred to as an asset of IEL in its micro accounts, would not have counted towards a calculation of IEL's capital resources undertaken in accordance with IPRU-INV 13.15.3. If this amount were to be excluded from a calculation of IEL's capital resources, the Authority has calculated that IEL had a net deficit of £23,712 in terms of its assets as at 30 November 2021. In the Second s165 Letter the Authority asked specific questions about entries on its micro accounts to ascertain IEL's financial position (see paragraph 4.26) which IEL has failed to answer.
- 4.35 The Authority also identified apparent inconsistencies between IEL's regulatory returns submitted by the Director and the information submitted to Companies House. The Director was not able to provide a complete explanation of the discrepancies when asked by the Authority during the Telephone Call. IEL's failure to respond to the information requirements sent by the Authority in relation to these apparent discrepancies meant that the Authority has been unable to establish the most recent financial position for the Firm.

In addition to the above, the Authority has identified another apparent inconsistency in the most recent set of regulatory returns (for the reporting period from 1 December 2021 to 31 May 2022) submitted by IEL to the Authority on 14 July 2022. The regulatory return states that IEL had £17,456 'cash at bank and in

hand'. Copies of IEL's bank statements for this period show that IEL held significantly less than this figure in its bank accounts. The Authority is unaware whether IEL held significant levels of cash to make up this shortfall, but is concerned that the information provided in the regulatory returns was not accurate.

- 4.36 Furthermore, the Authority is unaware of the existence of any assets in IEL's name.
- 4.37 The failure by IEL to provide the Authority with the information it sought in relation to these matters, as required pursuant to the various information requirements, means that the Authority has not been able to address some of these material questions and concerns as to IEL's financial position.

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 comply with the Threshold Conditions

Appropriate Resources

- 5.2 The Authority has serious concerns about IEL's compliance with the Threshold Conditions. The Threshold Conditions are minimum requirements that firms need to meet in order to be authorised and to continue carrying on regulated activities. The Authority considers that IEL is failing, or is likely to fail, to satisfy the Appropriate Resource Threshold Condition because of the following:

- i) As at 3 February 2023, the FOS award of £70,000 payable to Mr B (plus 1.5% interest at per annum and a further £500) remains outstanding. There is also a Court Order for recovery of the FOS award was made on 20 January 2023 in the sum of £73,064.26. It is unclear how IEL proposes to meet its repayment obligations to Mr B. It is unclear how IEL proposes to meet its repayment obligations to Mr B.
- ii) As at 13 January 2023, the most recent bank account statements for IEL show that IEL has cash balances of £30.04 and £649.25.
- iii) The Authority has sought various financial information and documentation relating to the Firm's professional indemnity insurance from IEL to ascertain the current financial position of IEL and to help establish if the Firm has resources to pay the award and to satisfy this Threshold Condition. With the exception of the emails set out at paragraph 4.15 and 4.16 above, the Authority has not received any documentation from the Firm to enable it to assess this and take comfort that IEL will be able to pay the award.

- 5.3 As a result of the above, it appears that IEL does not have the appropriate resources in relation to the regulated activities that IEL carries on or seeks to carry on (sub-paragraph (1) of paragraph 2D of Schedule 6 to the Act).

Effective Supervision

- 5.4 Supervision considers that IEL is failing, or is likely to fail, to satisfy the Effective Supervision Threshold Condition because it is not capable of being effectively supervised as a result of the way its business is being organised.
- i) On 9 November 2022, the Authority sent IEL the First s165 Letter. This was sent by email to the email address on the Financial Services Register, which all subsequent emails were sent to and from where all responses from IEL were received from. The Authority initially gave IEL a deadline of 16 November 2022 to provide the information and documents but subsequently amended the deadline upon IEL's request. Within the First

s165 Letter the Authority explained the potential consequence of not responding. Except for paragraphs 4.15 and 4.16, the Authority has not received any of the materials sought pursuant to the First s165 Letter from IEL.

- ii) On 29 November 2022, the Authority had a telephone call with IEL to gather information with regards to some of the questions within the First s165 Letter (referred to in this document as the "Telephone Call"). The Director was unable to answer a number of the questions during the Telephone Call and said that they would speak to their accountant. Since the Telephone Call with IEL on 29 November 2022, IEL has failed to provide the materials sought pursuant to the First s165 Letter. Further, the Authority has since obtained information to suggest that some of the responses made by the Director during the Telephone Call may not to have been accurate.
- iii) On 29 November 2022, the Authority sent an email to IEL following the Telephone Call, explaining that the Authority required an urgent response to specific questions within the First s165 Letter and additional information regarding IEL's financial position. The deadline was extended to 30 November 2022. None of the materials sought, either in this email or through the First s165 Letter, have been provided to the Authority by IEL.
- iv) On 15 December 2022, the Authority sent IEL the Second s165 Letter, which sought additional financial information to that of the First s165 Letter. The Authority informed IEL of the consequences of failing to respond to the Second s165 Letter and set a deadline of 19 December 2022 to respond. None of the materials sought through the Second s165 Letter have been provided to the Authority by IEL.
- v) On 9 January 2023, the Authority sent IEL the Third s165 Letter to IEL, along with a covering letter and the documents listed at paragraph 4.28 ("the Documents"). The Documents were sent to IEL's email address and to its registered office address by special delivery. The Documents were delivered to IEL's registered address and signed for on 10 January 2023. The Director has subsequently confirmed receiving these documents. The Authority has not received a substantive response to the Third s165 Letter.

5.5 As a result of the above, it appears IEL is not capable of being effectively supervised as a result of the way IEL's business is being organised (sub-paragraph (1)(c) of paragraph 2C of Schedule 6 to the Act).

Suitability

5.6 Supervision considers that IEL is failing, or is likely to fail, to satisfy the Suitability Threshold Condition because IEL is not a fit and proper person having regard to all the circumstances because:

- i. it appears to have provided the Authority with inaccurate information with regards to its financial position and knowledge of the FOS complaints made against it;
- ii. the Firm has failed to be transparent during its communications with the Authority and has failed to comply with information requirements; and

- iii. IEL has failed to pay the FOS award in apparent contravention of DISP 3.7.12R.

5.7 As a result of the above issues, it appears to the Authority that IEL has not complied, and is not complying, with requirements imposed by the Authority in the exercise of its functions relating to the provision of information (sub-paragraph (d) of paragraph 2E of Schedule 6 to the Act); and it is not conducting its affairs in an appropriate manner, having regard in particular to the interests of consumers (sub paragraph (c) of paragraph 2E of Schedule 6 to the Act) and its business is not being, or will not be, managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner (sub paragraph (f) of Paragraph E of Schedule 6 of the Act).

Principle 11 – Relations with Regulators

5.8 IEL appears not to have dealt with the Authority in an open and cooperative way and the Authority is concerned that IEL may be in breach of Principle 11 by failing to:

- i. be transparent and compliant with requirements to provide the Authority with prompt and accurate information regarding its financial information including IEL's financial and management accounts, assets and information relating to its professional indemnity insurance;
- ii. respond to three information requirements issued under section 165 of the Act; and
- iii. provide accurate information about IEL's business model and its communication with the FOS.

5.9 The Authority has concluded, in light of the matters set out above, that it is necessary to exercise its own-initiative power under section 55L(3)(a) of the Act by imposing the Requirements to stop the Firm conducting regulated activities and prevent any dissipation of assets in order to protect the interests of consumers.

5.10 The Authority has also concluded that it is necessary to exercise its own-initiative power pursuant to sections 55J(1)(a), 55J(1)(c)(i) and 55J(2)(a)(ii) of the Act by varying the Firm's permissions to remove all its permissions to perform regulated activities.

5.11 The Authority considers that the Requirements and Variation are a proportionate and appropriate means to address the current and immediate risks presented by IEL and are desirable in order to advance the Authority's operational objective of consumer protection.

Timing and duration of the Requirements

5.12 It is necessary to impose the Requirements and Variation on an urgent basis given the seriousness of the risks and the need to protect consumers.

5.13 The Authority considers that it is necessary for the Requirements and Variation to remain in place unless and until varied or cancelled by the Authority (either on the application of the Firm or of the Authority's own volition).

6 PROCEDURAL MATTERS

Decision-maker

- 6.1 The decision which gave rise to the obligation to give this First Supervisory Notice was made by an Authority staff member under executive procedures according to DEPP 2.5.7G and DEPP 4.1.7G.
- 6.2 This First Supervisory Notice is given under section 55Y(4) and in accordance with section 55Y(5) of the Act.
- 6.3 The following statutory rights are important.

Representations

- 6.4 The Firm has the right to make written representations to the Authority (whether or not it refers this matter to the Tribunal) by 03 March 2023 or such later date as may be permitted by the Authority. Any notification or representations should be sent to the SPC Decision Making Secretariat (SPCDecisionMakingSecretariat@fca.org.uk).

The Tribunal

- 6.5 The Firm has the right to refer the matter to which this First Supervisory Notice relates to the Tribunal. The Tax and Chancery Chamber is part of the Tribunal which, amongst other things, hears references arising from decisions of the Authority. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Firm has 28 days from the date on which this First Supervisory Notice is given to it to refer the matter to the Tribunal.
- 6.6 A reference to the Tribunal can be made by way of a reference notice (Form FTC3) signed by or on behalf of the Firm and filed with a copy of this First Supervisory Notice. The Tribunal's contact details are: The Upper Tribunal, Tax and Chancery Chamber, 5th Floor, Rolls Building, Fetter Lane, London EC4A 1NL (telephone: 020 7612 9730; email: uttc@hmcts.gsi.gov.uk).
- 6.7 Further information on the Tribunal, including guidance and the relevant forms to complete, can be found on the HM Courts and Tribunal Service website: <http://www.justice.gov.uk/forms/hmcts/tax-and-chancery-upper-tribunal>
- 6.8 The Firm should note that a copy of the reference notice (Form FTC3) must also be sent to the Authority at the same time as a reference is filed with the Tribunal. A copy of the reference notice should be sent to the SPC Decision Making Secretariat (SPCDecisionMakingSecretariat@fca.org.uk).

Confidentiality and publicity

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

Authority contacts

- 6.11 Any questions regarding the executive procedures decision-making process should be directed to the SPC Decision Making Secretariat (SPCDecisionMakingSecretariat@fca.org.uk).

Director, SPC Consumer Investments

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.
2. Section 55J of the Act allows the Authority to vary 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 55J(1)(a)), or it is desirable to exercise the power in order to advance one or more of the Authority's operational objectives (section 55J(1)(c)(i)). This power is referred to as the Authority's own-initiative power.
3. Section 55L of the Act allows the Authority to impose a new requirement on an authorised person if it appears to the Authority that the authorised person is failing, or likely to fail to satisfy the Threshold Conditions (section 55L(2)(a)), or it is desirable to exercise the power in order to advance one or more of the Authority's operational objectives (section 55L(2)(c)).
4. 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)).
5. Section 55P of the Act allows a requirement to be imposed under section 55L of the Act prohibiting the disposal of, or other dealing with, any of an authorised person's assets (whether in the UK or elsewhere), or restricting such disposals or dealings.
6. Section 55Y(3) of the Act allows a requirement to take effect immediately (or on a specified date) if the Authority, having regard to the ground on which it is exercising its own-initiative power, reasonably considers that it is necessary for the requirement to take effect immediately (or on that date).
7. 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.”

The Threshold Conditions

8. 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 Part 4A Permission. They are set out in Part 1B of Schedule 6 to the Act.

Effective supervision threshold condition

9. The effective supervision threshold condition, at paragraph 2C of Part 1B of Schedule 6 of the Act, provides, in relation to a person (“A”) carrying on or seeking to carry on regulated activities which do not consist of or include a PRA-regulated activity, that:

“A must be capable of being effectively supervised by the [Authority] having regard to all the circumstances including-
.....

(c) the way in which A's business is organised; [...]”

Appropriate resources threshold condition

10. The appropriate resources threshold condition, at paragraph 2D of Part 1B of Schedule 6 of the Act, provides, in relation to a person (“A”) carrying on or seeking to carry on regulated activities which do not consist of or include a PRA-regulated activity, that:

“(1) The resources of A must be appropriate in relation to the regulated activities that A carries on or seeks to carry on.

(2) The matters which are relevant in determining whether A has appropriate resources include—

- (a) the nature and scale of the business carried on, or to be carried on, by A;
- (b) the risks to the continuity of the services provided by, or to be provided by, A;
- (c) A's membership of a group and any effect which that membership may have.”

Suitability threshold condition

The suitability threshold condition, at paragraph 2E of Part 1B of Schedule 6 to the Act, provides in relation to a person (“A”) carrying on or seeking to carry on regulated activities which do not consist of or include a PRA-regulated activity, 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 imposed by [the Authority] in the exercise of its functions, or requests made by [the Authority], relating to the provision of information to [the Authority] and, where A has so complied or is so complying, the manner of that compliance;

Handbook

11. The section of the Handbook entitled “Dispute Resolution: Complaints” (DISP) contains the rules governing the handling of complaints by authorised firms and the procedures of the Ombudsman Service.

12. DISP 1.4.4R provides that where a complaint against a firm is referred to the Ombudsman Service, the firm must cooperate fully with the Ombudsman Service and comply promptly with any settlements of awards made by it.
13. DISP 3.7.12R provides that a firm must comply with any award or direction made by the Ombudsman Service.
14. In this section of the Handbook entitled [Interim Prudential sourcebook for Investment Businesses](#) ("IPRU-INV") contains the rules governing the prudential requirements that apply to personal investments firms.
15. IPRU-INV 13.15.3 provides that when calculating a Firm's capital, it can include 'Paid-up share capital (excluding preference shares...)', but it does not include unpaid shares.

RELEVANT REGULATORY PROVISIONS

The Principles for Businesses

16. The Principles for Businesses (PRIN) are a general statement of the fundamental obligations of firms under the regulatory system. PRIN 1.1.2R provides that they derive their authority from the Authority's rule-making powers as set out in the Act and reflect the statutory objectives. The Principles are set out at PRIN 2.1.1.
17. Principle 11 (Relations with regulators) is of particular relevance. This provides that a firm must deal with its regulators in an open and cooperative way and must disclose to the Authority appropriately anything relating to the firm of which that regulator would reasonably expect notice.

The Enforcement Guide

18. The Authority's approach in relation to its enforcement powers is set out in Chapter 8 of the Enforcement Guide (EG), certain provisions of which are summarised below.
19. EG 8.1.1 reflects the provisions of section 55L of the Act by stating that the Authority may use its own-initiative power to impose requirements on an authorised person where, amongst other factors, the person is failing or is likely to fail to satisfy the threshold conditions for which the Authority is responsible (EG 8.1.1(1)), or it is desirable to exercise the power in order to advance one or more of its operational objectives (EG 8.1.1(3)).
20. 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)).
21. EG 8.2.3 states that in the course of its supervision and monitoring of a firm or as part of an enforcement action, the Authority may make it clear that it expects the firm to take certain steps to meet regulatory requirements. In the vast majority of cases the Authority will seek to agree with a firm those steps the firm must take to address the Authority's concerns. However, where the Authority considers it appropriate to do so, it will exercise its formal powers under section 55L of the Act to impose a requirement to ensure such requirements are met. This may include

where, amongst other factors, the Authority has serious concerns about a firm, or about the way its business is being or has been conducted (EG 8.2.3(1)), or is concerned that the consequences of a firm not taking the desired steps may be serious (EG 8.2.3(2)).

22. EG 8.3.1 states that the Authority may impose a requirement so that it takes effect immediately or on a specified date if it reasonably considers it necessary for the requirement to take effect immediately (or on the date specified), having regard to the ground on which it is exercising its own-initiative powers.
23. 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.
24. EG 8.3.3 states that it is not possible to provide an exhaustive list of the situations that will give rise to such serious concerns, but they are likely to include one or more of four listed characteristics, these include: 1) information indicating significant loss, risk of loss or other adverse effects for consumers, where action is necessary to protect their interests; 2) information indicating that a firm's conduct has put it at risk of being used for the purposes of financial crime, or of being otherwise involved in crime; 3) evidence that the firm has submitted to the Authority inaccurate or misleading information so that the Authority becomes seriously concerned about the firm's ability to meet its regulatory obligations; 4) circumstances suggesting a serious problem within a firm or with a firm's controllers that calls into question the firm's ability to continue to meet the threshold conditions.
25. 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:
 - a. (1) extent of any loss, or risk of loss, or other adverse effect on consumers. The more serious the loss or potential loss or other adverse effect, the more likely it is that the Authority's urgent exercise of own-initiative powers will be appropriate, to protect the consumers' interests.
 - b. (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.
 - c. (3) The nature and extent of any false or inaccurate information provided by the firm. Whether false or inaccurate information warrants the Authority's urgent exercise of its own-initiative powers will depend on matters such as:
 - i. (a) the impact of the information on the Authority's view of the firm's compliance with the regulatory requirements to which it is subject, the firm's suitability to conduct regulated activities, or the likelihood that the firm's business may be being used in connection with financial crime;
 - ii. (b) whether the information appears to have been provided in an attempt knowingly to mislead the Authority, rather than through inadvertence;

- iii. (c) whether the matters to which false or inaccurate information relates indicate there is a risk to customer assets or to the other interests of the firm's actual or potential customers.
 - d. (5) The financial resources of the firm. Serious concerns may arise where it appears the firm may be required to pay significant amounts of compensation to consumers. In those cases, the extent to which the firm has the financial resources to do so will affect the FCA's decision about whether exercise of the FCA's own-initiative powers is appropriate to preserve the firm's assets, in the interests of the consumers. The FCA will take account of any insurance cover held by the firm. It will also consider the likelihood of the firm's assets being dissipated without the FCA's intervention, and whether the exercise of the FCA's power to petition for the winding up of the firm is more appropriate than the use of its own-initiative powers.
 - e. (8) The firm's conduct. The Authority will take into account:
 - i. (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);
 - ii. (b) whether the firm brought the issue promptly to the Authority's attention;
 - iii. (c) the firm's past history, management ethos and compliance culture; and
 - iv. (d) steps that the firm has taken or is taking to address the issue.
26. 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.