
FIRST SUPERVISORY NOTICE

To: **Marvell Enterprises Limited**

Reference Number: **942172**

Address: **21 Farringdon Road
London
EC1M 3HA**

Date: **11 November 2021**

1 ACTION

- 1.1 For the reasons given in this First Supervisory Notice, and pursuant to sections 55J(1)(a) and (c) of the Act, the Authority has decided to vary with immediate effect the Part 4A permission granted to Marvell by removing the following regulated activities:
- a) Secondary credit broking; and
 - b) Agreeing to carry on a regulated activity.
- 1.2 The effect of the Variation is that Marvell no longer has permission to conduct any regulated activities.

2 REASONS FOR ACTION

Summary

- 2.1 The Authority has concluded, on the basis of the facts and matters described below, that it is appropriate to exercise its power under sections 55J(1)(a) and (c) of the

Act to vary Marvell's permission because the Firm is failing, or is likely to fail, to satisfy the Suitability Threshold Condition. The action is also desirable in order to advance the Authority's operational objective of securing an appropriate degree of protection for consumers (section 1C of the Act).

2.2 The Authority has identified serious concerns relating to Marvell; in particular that:

- a) The Firm appears to have been engaging in investment-related activities and thus to have been acting outside the scope of its Part 4A permissions. The Firm's business activities appear to be very different to those of a credit broker;
- b) In the course of its activities, the Firm appears to have been advising on and arranging investments. Further, its communications with consumers regarding investments contain numerous misleading statements which appear designed to give false comfort to investors about the level of protection their investments would receive;
- c) The Firm appears to have successfully persuaded some individuals to invest substantial sums with it;
- d) Materials produced by the Firm bear striking similarities to marketing material produced by Firm A, another firm with credit broking permissions to whom the Authority issued a First Supervisory Notice on 2 August 2021 due to concerns about similar misconduct;
- e) Information placed by the Firm on its website regarding its SMF function holder is inconsistent with material provided to the Authority regarding the same individual; and
- f) The Firm appears to have failed to provide the Authority with up to date contact details, as postal copies of Information Requirements are returned to sender and the Firm's phone line (as shown on the Authority's Register) does not seem to be connected. Further, the Firm's email responses to Information Requirements are inconsistent with the evidence of consumers.

2.3 The Authority considers that the Variation should take immediate effect because the matters set out in this First Supervisory Notice demonstrate that the Firm is not fit and proper. The Authority considers that the Firm is not conducting its affairs in an appropriate manner having regard to the interests of consumers, nor is it complying with requirements imposed by the Authority. The Firm also appears to be connected to another firm subject to a recent FSN due to similar misconduct.

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;

"FSCS" means the Financial Services Compensation Scheme;

"Firm A" means a firm with a Part 4A permission to conduct credit broking activity which was issued with an FSN on 2 August 2021;

"FSN" means First Supervisory Notice;

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

“Information Requirement” means an information requirement pursuant to section 165 of the Act;

“Marvell”/“the Firm”; means Marvell Enterprises Ltd;

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

“RDC” means the Regulatory Decisions Committee of the Authority (see further at paragraph 6.1 below);

“SMF function holder” means the individual who holds the SMF 29 senior management function at Marvell;

“Suitability Threshold Condition” means the threshold condition set out in paragraph 2E of Schedule 6 to the Act;

“Supervision” means the Authority’s Supervision Division;

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

“Variation” means the variation of Marvell’s Part 4A permission set out in paragraph 1.1 above.

4 FACTS AND MATTERS

Background

- 4.1 Marvell was incorporated on 2 July 2019. It was authorised on 16 January 2021 as a limited permission credit broker with secondary broking permission. Marvell is not permitted to hold client money.
- 4.2 Marvell’s website indicates that it is engaged in property development activity focusing on student and residential properties. Marvell has separately indicated to the Authority that it is seeking to provide “*industrial equipment*” to “*SME companies*” but also that it is not currently operating.
- 4.3 Marvell has one approved person who has held the SMF29 limited scope function since 17 January 2021. The SMF function holder is also a director and shareholder of the Firm.
- 4.4 On 2 August 2021, the Authority issued an FSN to Firm A, imposing requirements which restricted its ability to carry on regulated activities. The FSN was imposed because of materially similar misconduct. Notably, Firm A was authorised on 17 January 2021.

Failings and risks identified

Consumer reports to the Authority

- 4.5 The Authority has received reports and documentation from three consumers regarding Marvell’s activities. The consumers have together invested a total of £30,000.

- 4.6 It appears from the written communications sent to one of the consumers (from an email address with a domain name matching that of the Firm's website) that Marvell is offering high yield bonds (which appear to be investments in Marvell itself) and ISA products, whilst making misleading statements regarding the effect of Marvell being an authorised firm and the level of FSCS protection available in the event that the Firm or investments fail. These appear to be calculated to have the effect of offering reassurance to consumers in order to induce them to invest substantial sums. The written communications also suggest that the Firm is carrying on regulated investment activities for which it does not have permission.
- 4.7 Two of the consumers have also reported being offered other investment products by the Firm and being told that the Firm is carrying on other regulated activities, for which it does not have permission.

Consumer 1

- 4.8 Consumer 1 was contacted by Marvell earlier this year and invested in a particular product, receiving confirmation of the investment from the Firm.

Consumer 2

- 4.9 Consumer 2 invested with Marvell earlier this year. Consumer 2 has also received confirmation of the investment.

Consumer 3

- 4.10 Consumer 3 invested with Marvell earlier this year. They were told that they could receive a higher rate of return if they invested further funds.

The Firm's website

- 4.11 The Firm's website focuses on property development and contains a large amount of detail and purported legal warnings regarding investments, but nothing to suggest it is carrying on the regulated activities for which it does have permission.

Links with Firm A

- 4.12 The Firm's communications and website contain marketing text and images which are identical to those used by Firm A. This, together with the fact that the Firm and Firm A have similar dates of authorisation suggests the Firm may be connected to Firm A.

Register details and other concerns

- 4.13 In the course of investigating the above concerns, the Authority has sent Information Requirements by post to the Firm's registered address. One of these, sent by Recorded Delivery post, has been returned to the Authority marked "RTS" [return to sender] and "addressee gone away", suggesting the Firm is not present at that address. The phone number shown on the Authority's Register for the Firm does not connect (though the Firm has provided responses to enquiries sent via email). The Authority therefore has concerns that the Firm has not provided it with correct (or up to date) information as to its whereabouts and contact details.

- 4.14 The Authority also has concerns about significant differences in the purported CV

of the SMF function holder as reported to the Authority and that set out on the Firm's website. There are differences between the two regarding the SMF function holder's university, academic qualifications and previous employment. The Authority is therefore concerned that it appears the Firm has either provided it with misleading information, or has published misleading information on its website.

- 4.15 In responses to the Authority, the Firm has stated that it is not operational and – contrary to the material provided by consumers - does not offer bonds. The Authority has repeatedly requested that the Firm meet it to discuss these matters. The Firm, however, has not accepted any of these invitations. The Authority is therefore concerned that the Firm is not dealing with it in an open and cooperative manner, in breach of Principle 11 of the Authority's Principles for Businesses.

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

- 5.2 The Authority has serious concerns about Marvell'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. In particular, the Authority considers that Marvell is failing, or is likely to fail, to satisfy the Suitability Threshold Condition because:

- a) the Firm appears to have been making misleading statements to consumers to influence their investment decisions and which may expose them to potential financial losses;
- b) the Firm is carrying out activities beyond the scope of its Part 4A permissions, namely by providing investment services (and potentially others) which may pose significant risks to customers;
- c) the Firm appears to have links to Firm A which has recently been the subject of an FSN due to the Authority's concerns about very similar activity. This apparent link is evident from the use of materially similar marketing material and similar authorisation dates;
- d) the Firm does not appear to have provided the Authority with accurate information, including regarding its SMF function holder and current activities, or up to date contact details, as an item of post has been returned undelivered from the contact address notified by it to the Authority and the phone number provided by it to the Authority is not operational; and
- e) the Firm's responses to Information Requirements sent to it by the Authority are inconsistent with information provided by consumers.

- 5.3 As a result of these matters, it appears to the Authority that the Firm:

- a) is connected to another firm which was the subject of a recent FSN due to similar misconduct (sub-paragraph (a) of paragraph 2E of Schedule 6 to the Act);

- b) is not conducting its affairs in an appropriate manner having due regard to the interest of consumers (sub-paragraph (c) of paragraph 2E of Schedule 6 to the Act); and
- c) has not complied, and is not complying (appropriately or at all), 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 ((sub-paragraph (d) of paragraph 2E of Schedule 6 to the Act).

The Authority's operational objective of consumer protection

- 5.4 The Authority's operational objective of consumer protection requires the Authority to ensure an appropriate degree of protection for consumers (section 1C(1) of the Act). The Firm appears to have made misleading statements to consumers – in the course of acting outside its Part 4A permissions – which have exposed them to the risk of significant loss. In addition, the nature of the misleading statements appears to be calculated to take advantage of the “halo” effect of being authorised by the Authority. The fact that its contact details do not appear to be up to date poses a further risk to consumers.
- 5.5 On the basis of the facts and matters set out, it appears to the Authority that it is desirable to exercise the power under section 55J(1)(c) in order to advance the consumer protection objective.

Timing and duration of the Variation

- 5.6 The Authority considers it is necessary to impose the Variation on an urgent basis to take immediate effect given the seriousness of the risks and the need to protect consumers. The Authority has identified:
- a) information indicating significant loss, risk of loss or other adverse effects for consumers, where action is necessary to protect their interests (EG 8.3.3(1)); and
 - b) circumstances suggesting a serious problem with a firm or a firm's controllers that calls into question the firm's ability to meet the Threshold Conditions (EG 8.3.3(4)).
- 5.7 The Authority will consider the full circumstances of each case when it decides whether an urgent variation is appropriate. The Authority has identified the following relevant factors within the circumstances of this case:
- a) The extent of any loss, or risk of loss, or other adverse effect on consumers (EG 8.3.4(1));
 - b) The extent to which customer assets appear to be at risk (EG 8.3.4(2));
 - c) The seriousness of any suspected breach of the requirements of the legislation (EG 8.3.4(4)); and
 - d) The impact that use of these powers will have on the firm's business and on its customers (EG 8.3.4(9))
- 5.8 The Authority considers that it is necessary for the Variation to remain in place indefinitely.

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 Regulatory Decisions Committee. The RDC is a committee of the Authority which takes certain decisions on behalf of the Authority. The members of the RDC are separate to the Authority staff involved in conducting investigations and recommending action against firms and individuals. Further information about the RDC can be found on the Authority's website: <https://www.fca.org.uk/about/committees/regulatory-decisions-committee-rdc>.
- 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 Marvell has the right to make written and oral representations to the Authority (whether or not it refers this matter to the Tribunal). The deadline for notifying the Authority that Marvell wishes to make oral representations and for providing written representations is 29 November 2021 or such later date as may be permitted by the Authority. The address for doing so is:

Jack Williams
Decision Making Committees Secretariat
The Financial Conduct Authority
12 Endeavour Square
London
E20 1JN
Email: Decision-MakingCommitteesSecretariatInbox@fca.org.uk

- 6.5 The Authority must be informed in writing of any intention to make oral representations by 29 November 2021. If the Authority is not notified by this date, Marvell will not, other than in exceptional circumstances, be able to make oral representations.

The Tribunal

- 6.6 Marvell 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, Marvell has 28 days from the date on which this First Supervisory Notice is given to it to refer the matter to the Tribunal.
- 6.7 A reference to the Tribunal can be made by way of a reference notice (Form FTC3) signed by or on behalf of Marvell 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).
- 6.8 Further information on the Tribunal, including guidance and the relevant forms to complete, can be found on the HM Courts and Tribunal Service website: <http://www.justice.gov.uk/forms/hmcts/tax-and-chancery-upper-tribunal>

- 6.9 Marvell 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 David Watkins at the Financial Conduct Authority, 12 Endeavour Square, London, E20 1JN.

Confidentiality and publicity

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

Authority contacts

- 6.12 For more information concerning this matter generally, contact David Watkins, (david.watkins@fca.org.uk).
- 6.13 Any questions regarding the procedures of the RDC should be directed to the Decision Making Committees Secretariat by email: DMCScaseinbox@fca.org.uk.

Annex

RELEVANT STATUTORY PROVISIONS

1. The Authority's operational objectives established in section 1B of the Act include securing an appropriate degree of protection for consumers (section 1C).
2. Section 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 requirement power.
3. Section 55Y(3) of the Act allows a variation of permission imposed under the own-initiative requirement power to take effect immediately (or on a specified date) 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 requirement to take effect immediately (or on that date).
4. Section 391 of the Act provides:

"...

 - (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 was proposed to be taken), 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.

..."
5. Paragraph 2E of Schedule 6 to the Act provides:

"Suitability

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

...

 - (a) A's connection with any person;

...

 - (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;

..."

RELEVANT REGULATORY PROVISIONS

Principles for Businesses

6. Principle 11 provides: "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 Threshold Conditions

7. The section of the Handbook entitled 'Threshold Conditions' (COND) gives guidance on the Threshold Conditions. COND 1.2.3G provides that the Authority may exercise its own-initiative powers under section 55J of the Act if, among other things, a firm is failing to satisfy any of the Threshold Conditions or is likely to fail to do so.
8. COND 2.5.1AUK reflects the provisions of FSMA (Paragraph 2E to Schedule 6) to the effect that a firm must be fit and proper having regard to all the circumstances. These can include the need to ensure its affairs are conducted in an appropriate manner having regard to the needs of consumers (COND 2.5.1AUK(c)) and whether the firm has complied and is complying with the Authority's requirements (COND 2.5.1AUK(1)(d)).
9. COND 2.5.4G provides examples of the kind of general considerations to which the Authority may have regard when assessing whether a firm will satisfy, and continue to satisfy, the Suitability Threshold Condition. These include, but are not limited to, whether the firm conducts its business with integrity and in compliance with proper standards, has a competent and prudent management and can demonstrate that it conducts its affairs with the exercise of due skill, care and diligence.

The Enforcement Guide

10. The Authority's approach in relation to its own-initiative powers is set out in Chapter 8 of the Enforcement Guide (EG), certain provisions of which are summarised below.
11. EG 8.1.1 reflects the provisions of section 55L of the Act by stating that the Authority may use its own-initiative power to impose a variation on an authorised person where, amongst other factors, the person is failing or is likely to fail to satisfy the threshold conditions for which the Authority is responsible (EG 8.1.1(1)), or it is desirable to exercise the power in order to advance one or more of its operational objectives (EG 8.1.1(3)).
12. EG 8.2.1 states that when the Authority considers how it should deal with a concern about a firm, it will have regard to its statutory objectives and the range of regulatory tools that are available to it. It will also have regard to the principle that a restriction imposed on a firm should be proportionate to the objectives the Authority is seeking to achieve (EG 8.2.1(2)).
13. EG 8.2.3 states that in the course of its supervision and monitoring of a firm or as part of an enforcement action, the Authority may make it clear that it expects the firm to take certain steps to meet regulatory requirements. In the vast majority of

cases the Authority will seek to agree with a firm those steps the firm must take to address the Authority's concerns. However, where the Authority considers it appropriate to do so, it will exercise its formal powers under section 55J of the Act to impose a variation to ensure such requirements are met. This may include where, amongst other factors, the Authority has serious concerns about a firm, or about the way its business is being or has been conducted (EG 8.2.3(1)), or is concerned that the consequences of a firm not taking the desired steps may be serious (EG 8.2.3(2)).

14. EG 8.3.1 states that the Authority may impose a variation so that it takes effect immediately or on a specified date if it reasonably considers it necessary for the variation to take effect immediately (or on the date specified), having regard to the ground on which it is exercising its own-initiative powers.
15. EG 8.3.2 states that the Authority will consider exercising its own-initiative power as a matter of urgency where: 1) the information available to it indicates serious concerns about the firm or its business that need to be addressed immediately; and 2) circumstances indicate that it is appropriate to use statutory powers immediately to require and/or prohibit certain actions by the firm in order to ensure the firm addresses these concerns.
16. EG 8.3.3 states that it is not possible to provide an exhaustive list of the situations that will give rise to such serious concerns, but they are likely to include one or more of four listed characteristics, these include: 1) information indicating significant loss, risk of loss or other adverse effects for consumers, where action is necessary to protect their interests; 3) evidence that the firm has submitted to the Authority inaccurate or misleading information so that the Authority becomes seriously concerned about the firm's ability to meet its regulatory obligations; 4) circumstances suggesting a serious problem within a firm or with a firm's controllers that calls into question the firm's ability to continue to meet the threshold conditions.
17. EG 8.3.4 states that the Authority will consider the full circumstances of each case when it decides whether an imposition of a variation is appropriate and sets out a non-exhaustive list of factors the Authority may consider, these include: the extent of any loss, or risk of loss, or other adverse effect on consumers (EG 8.3.4(1)); the nature and extent of any false or inaccurate information provided by the firm (EG 8.3.4(3)); the seriousness of any suspected breach of the requirements of the legislation (EG 8.3.4(4)); and 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 (EG 8.3.4(9)).