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## FIRST SUPERVISORY NOTICE

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**To: Organic Investment Management Limited**

**Address: 10-11 Moor Street  
London  
W1D 5NF**

**FRN: 709833**

**Date: 4 December 2018**

### **ACTION**

1.1 For the reasons given in this Notice, and pursuant to section 55L of the Act, the Authority has decided to impose the requirements set out below on Organic.

#### **Cease regulated activities**

- 1) From 5pm on 7 December 2018, Organic (whether directly or through its agents) must not, without the prior written consent of the Authority, carry on the following regulated activities:
  - a) advising on investments (including pension transfer and pension opt outs);
  - b) advising on P2P agreements;
  - c) arranging (bringing about) deals in investments;
  - d) arranging safeguarding and administration of assets;
  - e) dealing in investments as agent;
  - f) making arrangements with a view to transactions in investments;
  - g) managing investments; and
  - h) agreeing to carry on any of the regulated activities listed in a) to g) above.

## **Notification requirements**

- 2) By 5pm on 12 December 2018, Organic must notify in writing all its Clients that it is not able to carry on any regulated activities, including managing investments, without the written consent of the Authority.
- 3) By 5pm on 12 December 2018, Organic must notify in writing all financial advisers which it knows or believes act as agents for its Clients that it is not able to carry on any regulated activities, including managing investments, without the written consent of the Authority.
- 4) By 5pm on 12 December 2018, Organic must notify in writing all platforms which it uses to manage or trade assets that it is not able to carry on any regulated activities, including managing investments, without the written consent of the Authority.
- 5) By 5pm on 12 December 2018, Organic must notify the custodians of all assets managed by Organic that it is not able to carry on any regulated activities, including managing investments, without the written consent of the Authority.
- 6) By 5pm on 12 December 2018, Organic must notify the Fund Manager that it is not able to carry on any regulated activities, including managing investments, without the written consent of the Authority.
- 7) As soon as practicable, and in advance of making the notifications referred to in paragraphs 2), 3), 4), 5) and 6) above (together "the Notifications"), Organic must agree the wording of the Notifications above with the Authority.
- 8) Once the Notifications have been made, Organic must provide to the Authority:
  - a) copies of the template notification sent to all Clients, financial advisers, platforms, custodians and the fund manager;
  - b) a list of all parties to whom Notifications have been sent; and
  - c) confirmation that, to the best of its knowledge, Organic has sent the Notifications to all relevant parties.
- 9) By 5pm on 12 December 2018, Organic must publish a notice on the front page of its website, in terms, font and size to be agreed with the Authority, stating that it is not able to carry on any regulated activities, including managing investments, without the written consent of the Authority and providing a link to the relevant website address of the entry in the Authority's register relating to Organic where the terms of these requirements will appear.

## **Secure records**

- 10) With immediate effect, Organic 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, and at a location, to be notified to the

Authority in writing no later than 5pm on 14 December 2018, such that they can be provided to the Authority, or to a person named by the Authority, promptly on its request.

### **Assets requirement**

- 11) Organic must not, without the prior written consent of the Authority, in any way dispose of, deal with or diminish the value of any of its assets other than in the ordinary and proper course of business. For the avoidance of doubt, the following would not be in the ordinary and proper course of business for these purposes:
- a) the making of any capital distribution;
  - b) the payment of unusual or significant amounts to its shareholders, employees, officers or directors or any persons connected thereto;
  - c) the making of any gift or any significant loan to any party; and
  - d) the entry into any financial reconstruction or reorganisation.

### **Miscellaneous**

- 12) For the avoidance of doubt:
- a) paragraph 11) above is an assets requirement within the meaning of section 55P(4)(a) of the Act; and
  - b) as of 5pm on 7 December 2018, the requirements in paragraphs 1) and 11) above replace and supersede those previously imposed on Organic and published on the Authority's register on 20 July 2017. Until 5pm on 7 December 2018, the requirements imposed on Organic on 20 July 2017 remain in force.

## **REASONS FOR ACTION**

### **Summary**

- 2.1 Organic is a regulated investment management firm. It manages investments of clients, principally those with SIPPS, using five model portfolios. It also manages two UCITS funds, domiciled in Ireland. Each of the Model Portfolios invests in the Funds.
- 2.2 Since December 2016, Organic has received numerous warnings from the Compliance Consultant's Report, from the Skilled Person and from the Authority that its governance and compliance oversight arrangements were inadequate and that the management of its DFM services risked causing consumer detriment. In particular, the exposure of the Model Portfolios to illiquid, potentially high-risk, assets was identified as a particular concern.
- 2.3 Despite providing assurances that it would address these problems, Organic has failed to do so in a timely fashion. It is now managed by a single senior executive manager, its compliance oversight resources are inadequate to oversee its business and it has failed to take necessary steps to review the suitability of its Model

Portfolios for the customers who have invested into them and to take any necessary steps to rebalance the allocation of assets.

- 2.4 On 14 November 2018, the Funds were suspended on the basis that certain assets within them could not be accurately valued. Because each of the Model Portfolios invests in the Funds, this impacts upon the Model Portfolios. Although the Funds remain suspended, the Authority has been informed by Organic that this suspension may be lifted shortly.
- 2.5 The Authority considers that Organic is not currently meeting the threshold condition which requires authorised firms to have appropriate resources in relation to the regulated activities which it carries on and that allowing it to continue to carry on regulated activities in these circumstances may be detrimental to consumers. In particular, the Authority considers that Organic's management of the Funds presents significant risks of consumer detriment in the event that the suspension of the Funds is lifted. The effect of customers redeeming their investments in the Funds would be to increase the exposure of those remaining customers to illiquid, and potentially high risk, assets. This serves to increase the risks to these customers of their investments failing to perform as anticipated and may lead to significant consumer detriment if these assets fail to make the anticipated returns or if they are unable to be sold readily.
- 2.6 Accordingly, the Authority considers it necessary to impose the Requirements on Organic's Part 4A Permission to prevent it from carrying on regulated activities until it is able to satisfy the Authority that it complies with the Threshold Conditions.

## **DEFINITIONS**

- 3.1 The definitions below are used in this Supervisory Notice.

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

"the Authority" means the Financial Conduct Authority;

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

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

"CF10" means the compliance oversight function, as defined in SUP 10A.7.8R of the Authority's Handbook;

"CF11" means the money laundering reporting function, as defined in SUP 10A.7.10R of the Authority's Handbook;

"Clients" means the natural persons or other clients named in Organic's records as the underlying investors for whom it manages investments and also includes any entity (such as trustees for SIPPs) holding, managing or administering assets on behalf of such investors;

"the Compliance Consultant's Report" means the report on Organic's regulatory risks produced by a third party consultant in December 2016;

"COND" means the part of the Authority's Handbook entitled "Threshold Conditions";

“DFM” means discretionary fund management;

“the Funds” means the Organic Bond Fund and the Organic Long/Short Alpha Fund, sub-funds of the Multi-Manager UCITS Platform Fund Plc, a fund domiciled in Ireland;

“the Fund Manager” means the authorised fund manager of the Funds;

“MiFID Org Regulation” means Commission Delegated Regulation (EU) 2017/565 of 25 April 2016, a directly applicable EU regulation regarding the organisational requirements and operating conditions for investment firms;

“the Model Portfolios” means the five model portfolios designed and managed by Organic;

“NED” means non-executive director;

“the Notifications” means as set out in paragraph 1.1 7);

“Organic” means Organic Investment Management Limited;

“Part 4A Permission” means the permission granted to Organic, pursuant to Part 4A of the Act, to carry on regulated activities;

“the Requirements” means the requirements imposed on Organic as a result of this First Supervisory Notice, as outlined in paragraph 1.1 above;

“the RPPD” means the Authority’s Handbook guidance entitled the Responsibilities of Providers and Distributors for the Fair Treatment of Customers – first published in July 2007;

“SIPPs” means self-invested personal pensions;

“the Skilled Person” means the skilled person, appointed pursuant to section 166 of the Act in April 2018 to review and assess Organic’s governance, controls, compliance oversight and DFM service;

“SYSC” means the part of the Authority’s Handbook entitled “Senior Management Arrangements, Systems and Controls”;

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

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

“UCITS” means undertakings for collective investment in transferable securities that are established in accordance with the UCITS Directive; and

“the UCITS Directive” means the EU Directive on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (2009/65/EC).

## FACTS AND MATTERS

### Background

- 4.1 Organic is a discretionary investment management firm which has been directly regulated by the Authority since 4 January 2016. It has a Part 4A Permission to carry out a range of regulated investment activities. Since becoming regulated, and until 23 August 2018, Organic was managed by two executive directors.
- 4.2 Organic's business involves managing clients' investments using five Model Portfolios, designed to provide exposure to varying levels of risk (described as 'Defensive', 'Moderate', 'Balanced', 'Progressive' and 'Aggressive') and two discretionary portfolios.
- 4.3 Investors in the Model Portfolios were introduced to Organic by independent financial advisers. The overwhelming majority of the investments managed by Organic are held in SIPPs. This means that they represent clients' pension savings. Organic has approximately £70 million of assets under management.
- 4.4 Organic also acts as investment manager for the Funds (two UCITS funds domiciled in Ireland, under an agreement with the Fund Manager which delegated management powers to Organic). In exercising its discretion to manage the Model Portfolios, Organic invested significant proportions of each of the Model Portfolios in the Funds.
- 4.5 As investment manager of the Funds, Organic invested significant proportions of the Funds in unrated or other financial instruments rated as lower than investment grade. This meant that investors in the Model Portfolios, regardless of their stated attitude to risk, were exposed to these instruments.
- 4.6 The Authority has held concerns for some years about the investment of pension assets into unregulated, non-mainstream financial investments. Such investments may be illiquid, their value may be difficult to ascertain and the prospect of achieving the promised returns may be uncertain. In April 2014, the Authority issued an alert which outlined the Authority's view that "*pension transfers or switches to SIPPS intended to hold non-mainstream propositions are unlikely to be suitable options for the majority of retail customers*".
- 4.7 Organic does not provide advice to clients as to the suitability of its products. However, since publication of the RPPD, the Authority has made clear that it considers that a product provider, such as Organic, has responsibilities to identify its target market, including for which customers its products may or may not be suitable, to stress test its products to ascertain how they are likely to perform in a range of market conditions, to have in place systems and controls to manage the risks which may be caused and to review products periodically to check whether they are continuing to meet the needs of the target audience.

### Control failures

- 4.8 In December 2016, Organic received the Compliance Consultant's Report. This identified significant weaknesses in Organic's governance processes, including concerns over whether the business of the firm was appropriately overseen by two independent minds, concerns over the identification and management of conflicts of interest and concerns over the firm's understanding of the risk ratings of the Model Portfolios. It also highlighted questions over the allocation of assets within the

Model Portfolios which were considered to create “a *potential risk of client detriment*”. 24 items were identified as of important and serious compliance concern, needing to be addressed immediately.

- 4.9 On 22 June 2017, the Authority met with Organic and on 30 June 2017 it visited Organic. By the time of the visit, Organic had failed to address the issues identified in the Compliance Consultant’s Report. The Authority identified serious concerns with Organic’s ability to comply with regulatory requirements, including the adequacy of its governance and compliance oversight arrangements, its management of conflicts of interest and its awareness and understanding of its responsibilities as a product provider, including the design, management and suitability of the Model Portfolios. In particular, it was noted that the Model Portfolio described as ‘Defensive’, invested significant proportions of the total funds under management in unrated or other potentially high risk investments. As a result, on 20 July 2017, Organic agreed to the imposition of requirements on its Part 4A Permission, including ceasing to manage investments in respect of new money. The Authority provided Organic with a detailed feedback letter, outlining its findings, on 26 October 2017.
- 4.10 After the Authority’s visit, Organic provided the Authority with a number of proposed actions to address the identified concerns, including the management of conflicts of interest in relation to its senior management, the appointment of further executive directors and NEDs and the reduction of the exposure of the Model Portfolios to assets which Organic accepted to be illiquid.
- 4.11 On 27 April 2018, the Authority issued Organic with a requirement to appoint a skilled person to review and assess the adequacy and effectiveness of its governance, control, compliance oversight and DFM service. The Skilled Person reported on 27 July 2018. Although it found that Organic had taken some steps to address the areas of concern identified by the Authority, it considered that the changes were either in their infancy, required further embedding work or needed to be re-prioritised. In particular, the Skilled Person considered that the board of directors needed strengthening, the compliance function was inadequately resourced, conflicts of interest were not appropriately identified or documented, due diligence processes needed improvements and the investment objectives of the Model Portfolios should be revisited. The Skilled Person recommended that Organic should design a process to assess the suitability of the Model Portfolios. The Skilled Person noted that there had not been significant changes to the composition or allocation of assets within the Model Portfolios.

#### **Governance and non-financial resources**

- 4.12 Despite its asserted intentions to appoint further directors to oversee its business, Organic has failed to appoint any further directors. On 23 August 2018, one of its two executive directors tendered his resignation as a director. This was formalised on 11 September 2018. Since then, Organic has operated with only one director and board member.
- 4.13 On 20 April 2018, Organic appointed an individual to carry out the CF10 (compliance oversight) and CF11 (money laundering reporting) controlled functions. While this was a positive development, both the Authority and Organic recognised at the time of the appointment that the individual lacked specific experience of the asset management sector and would benefit from development of knowledge of this sector.

- 4.14 In July 2018, the only other employee devoted to compliance at Organic resigned. No replacement has been appointed: instead, Organic has engaged external compliance consultants to provide support. This has impacted on the ability of the compliance officer to perform her functions and to carry out necessary remedial work.
- 4.15 The director who resigned was also the portfolio manager for the Model Portfolios and the investment manager for the Funds. Since his resignation, Organic has relied upon an assistant investment manager pending the appointment of a replacement.
- 4.16 Since July 2018, Organic has lost six of its staff including one assistant portfolio manager. It is now staffed by six people.

### **Composition of the Model Portfolios**

- 4.17 Following the Authority's visit, Organic accepted that the Model Portfolios' exposure to liquidity risk was of concern and outlined a plan to reduce the exposure of the Model Portfolios to illiquid assets. This was to be done by a combination of reducing the exposure of the Funds to illiquid assets and by reducing the proportion of the Model Portfolios invested in the Funds. Despite this, the proportions of some of the Model Portfolios, including those described as "Defensive" and "Moderate", invested in the Funds rose between July 2017 and November 2018. While the proportion of assets considered to be illiquid in the Funds fell slightly (by approximately 7.7% of the original total), overall the proportion of illiquid assets in the Model Portfolios rose.
- 4.18 Organic's failure to address the exposure of the Funds to illiquid assets presented increasing risks to the Clients. In October 2018, requests from Clients to redeem their holdings in the Model Portfolios rose sharply. Organic's methodology for redeeming the proportions of the Model Portfolios invested in the Funds was to use the cash reserves of the Funds, while liquidating the more liquid assets where necessary. This presented the risk that the assets in the Funds, units of which were held by the remaining Clients, consisted of proportionately higher illiquid assets, meaning that future requests for redemptions might be difficult or impossible to satisfy. The Clients who did not redeem their investments were increasingly exposed to the illiquid assets. This is colloquially known as 'first mover advantage'.
- 4.19 On 14 November 2018, the Fund Manager decided to suspend the issue, valuation, sale, purchase, redemption and conversion of shares in respect of the Funds on the basis that it did not consider that it could promptly or accurately ascertain the value of certain of the investments in the Funds. The Funds currently remain suspended, meaning that Clients are unable to redeem their investments in the Funds but Organic has informed the Authority that it expects the suspension to be lifted shortly.
- 4.20 The Authority has repeatedly asked Organic to address the risks it considers are presented to its Clients. Organic has proposed that it continue to manage the investments within the Model Portfolios and continue to act as investment manager for the Funds pending the transfer of its business to an identified third party.
- 4.21 The Authority does not consider that this is a feasible solution given Organic's repeated and ongoing failure to implement a strategy to manage the Model Portfolios appropriately, its lack of non-financial resources and the fact that the



identified third party currently lacks the necessary regulatory permissions to take on most of Organic's business.

## **Concerns**

- 4.22 Implementing a robust governance structure with sufficient and appropriate executive managers and NEDs is crucial to maintaining appropriate business controls. Organic has been alerted to significant deficiencies in its control systems on numerous occasions since December 2016 but has failed to take adequate steps to remediate these concerns.
- 4.23 In particular, Organic has failed to put in place adequate oversight of its business at board level and is currently operating with a single director. Despite repeated assurances of its intentions to bolster its governance at board level, Organic has failed to do so.
- 4.24 In addition, Organic's compliance oversight is inadequate to manage the business of the firm, particularly given the need for significant remediation action. This is demonstrated by its reliance on external compliance support which has detracted from the ability of the compliance officer to perform her necessary functions.
- 4.25 The Authority considers that Organic maintains insufficient expertise in managing its Model Portfolios. This is demonstrated by a failure to comply with its own assurances to review and rebalance the exposure of the Model Portfolios to assets considered to be illiquid and to assess the suitability of the Model Portfolios for its customers.
- 4.26 These failures have been exacerbated by the loss of staff at Organic and the risks of consumer detriment have been significantly increased by requests from Clients for redemption of their investments. Organic has failed to implement any effective strategy for managing the risks that this presents.
- 4.27 Although the risks of first mover advantage are currently alleviated by the suspension of the Funds, the Authority fears that if this suspension is lifted, there will be immediate risks of consumer detriment presented by Organic's methodology for completing redemptions and its failure to implement any effective strategy to mitigate the risks of first mover advantage.
- 4.28 Since Organic has informed the Authority that the suspension of the Funds may be lifted shortly, the Authority considers that urgent action is necessary to prevent these risks from crystallising and to protect investors in the Model Portfolios.

## **FAILINGS**

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

### **Failure to satisfy the threshold conditions**

- 5.2 From the facts and matters described above, the Authority has concluded that Organic is failing to satisfy the Threshold Conditions in that it appears not to have appropriate non-financial resources in relation to the regulated activities which it carries on. In particular:

- a. it currently has a single senior executive managing its affairs and is not meeting the requirement imposed by SYSC 4.2.2R;
- b. its governance arrangements are inadequate for the business it is conducting and it is not meeting the requirement imposed by SYSC 4.1.1R;
- c. it has insufficient compliance oversight resources to oversee its business and is not meeting the requirements imposed by SYSC 6.1.1R and by article 22(3) of the MiFID Org Regulation;
- d. it has insufficient expertise in investment management to manage the Model Portfolios appropriately and it is not meeting the requirement imposed by SYSC 4.1.2CR.

### **Risk to the Authority's operational objective of consumer protection**

- 5.3 The Authority's objective of consumer protection requires the Authority to ensure an appropriate degree of protection for consumers. In light of the facts and matters above, the Authority considers that there are ongoing risks presented to consumers from Organic's failure to manage its Clients' investments appropriately. In particular, the Authority considers that if Organic continues to act as investment manager of the Funds after the suspension of the Funds is lifted, this may lead to immediate consumer detriment as a result of continuing Client redemptions and the consequent risk of first mover advantage.
- 5.4 In the absence of any feasible strategy by Organic to address these risks, the Authority considers that preventing Organic from carrying on any regulated activities (without the prior written consent of the Authority) is the most effective way of mitigating such risks. The possibly imminent lifting of the suspension means that the Authority considers it necessary to impose the requirements on an urgent basis.
- 5.5 In addition, the Authority considers it necessary to ensure that Organic's Clients and associated parties are notified of the terms and effects of the Requirements, to enable them to make such alternative arrangements as they consider appropriate.
- 5.6 The assets restriction is a continuation of the requirement originally imposed on 20 July 2017. The Authority considers that a continuation of this requirement is justified in order to ensure, as far as possible, that Organic's corporate assets are retained for the purposes of satisfying any potential redress payments which may arise as a result of losses incurred by Clients.

### **PROCEDURAL MATTERS**

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

### **Decision maker**

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

## Representations

- 6.3 Organic has the right to make written and oral representations to the Authority (whether or not it refers this matter to the Tribunal).
- 6.4 Any written representations must be made by **20 December 2018** or such later date as may be permitted by the Authority. Written representations should be made to the Regulatory Decisions Committee and sent to:
- Jack Williams  
Decision-Making Committees Secretariat  
The Financial Conduct Authority  
12 Endeavour Square  
London  
E20 1JN
- 6.5 The Authority must be informed in writing of any intention to make oral representations by **20 December 2018**. If the Authority is not notified by this date, Organic will not, other than in exceptional circumstances, be able to make oral representations.

## The Tribunal

- 6.6 Organic has the right to refer the matter to which this First Supervisory Notice relates to the Tribunal. The Tax and Chancery Chamber is the 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, Organic 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 Organic and filed with a copy of this First Supervisory Notice. The Tribunal's contact details are: The Upper Tribunal, Tax and Chancery Chamber, Fifth Floor, Rolls Building, Fetter Lane, London, EC4A 1NL (telephone: 020 7612 9730; email: uttc@hmcts.gsi.gov.uk).
- 6.8 For further information on the Tribunal (including the power to vary time periods) Organic should refer to the HM Courts and Tribunal Service website which will provide guidance and the relevant form to complete. The relevant page on HM Courts and Tribunal Service website can be accessed via the following link:
- <https://www.gov.uk/courts-tribunals/upper-tribunal-tax-and-chancery-chamber>
- 6.9 Organic should note that a copy of the reference notice (Form FTC3) must also be sent to the Authority at the same time as filing a reference with the Tribunal. A copy of the reference notice should be sent to Anna Couzens at the Financial Conduct Authority, 12, Endeavour Square, London E20 1JN.

## Access to Evidence

- 6.10 Section 394 of the Act does not apply to this First Supervisory Notice.

## **Confidentiality and Publicity**

- 6.11 Organic 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 advice on its contents).
- 6.12 Organic should note that section 391 of the Act requires the Authority, when the First Supervisory Notice takes effect, to publish such information about the matter as it considers appropriate.

## **Authority contacts**

- 6.13 For more information concerning this matter generally, contact Anna Couzens, Enforcement and Market Oversight Division at the Authority (direct line: 020 066 1452 or email: [anna.couzens@fca.org.uk](mailto:anna.couzens@fca.org.uk)).
- 6.14 Any questions regarding the procedures of the Regulatory Decisions Committee should be directed to Jack Williams of the RDC Secretariat (direct line: 020 7066 1610 or email: [jack.williams@fca.org.uk](mailto:jack.williams@fca.org.uk)).

**Tim Parkes**  
**Chair, Regulatory Decisions Committee**

**On behalf of Peter Hinchliffe**  
**Deputy Chair, Regulatory Decisions Committee**

## **ANNEX A**

### **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). The integrity of the UK financial system includes its not being used for a purpose connected with financial crime.
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 the authorised person is failing, or is likely to fail, to satisfy the Threshold Conditions (section 55L(2)(a)) or it is desirable to exercise the power in order to advance one or more of the Authority's operational objectives (section 55L(2)(c)). This power is referred to as the Authority's own-initiative requirement power.
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. Pursuant to 55P(4)(a) of the Act, an assets requirement means a requirement prohibiting the disposal of, or other dealing with, any of the subject's assets (whether in the United Kingdom or elsewhere) or restricting such disposals or dealings. If the Authority gives notice of such a requirement to any institution with whom the subject has an account, the notice has the effects, for that institution, set out in section 55P(6) of the Act. Those effects are that—
  - (a) the institution does not act in breach of any contract with A if, having been instructed by the subject (or on the subject's behalf) to transfer any sum or otherwise make any payment out of the subject's account, it refuses to do so in the reasonably held belief that complying with the instruction would be incompatible with the requirement, and
  - (b) if the institution complies with such an instruction, it is liable to pay to the Authority an amount equal to the amount transferred from, or otherwise paid out of, the subject's account in contravention of the requirement.
5. Section 55Y of the Act allows a requirement 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 requirement power, reasonably considers that it is necessary for the variation or imposition of the requirement to take effect immediately (or on that date).
6. Section 391 of the Act provides that, when a supervisory notice takes effect, the Authority must publish such information about the matter to which the notice relates as it considers appropriate. However, the Authority may not publish information if, in its opinion, publication of the information would be unfair to the person with respect to whom the action was taken or proposed to be taken or prejudicial to the interests of consumers.
7. The Threshold Conditions represent the minimum standards which a firm is required to satisfy, and continue to satisfy, in order to be given and to retain a

permission to carry on regulated activities. They are set out in Part 1B of Schedule 6 to the Act. Paragraph 2D of Schedule 6 to the Act states 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; and

(c) A’s membership of a group and any effect which that membership may have.”

...

(4) The matters which are relevant in determining whether A has appropriate non-financial resources include-

(a) the skills and experience of those who manage A’s affairs;

(b) whether A’s non-financial resources are sufficient to enable A to comply with-

(i) requirements imposed or likely to be imposed on A by [the Authority] in the exercise of its functions, or

(ii) any other requirement in relation to whose contravention [the Authority] would be the appropriate regulator for the purposes of [disciplinary powers imposed under the Act].

8. For the purposes of Schedule 6 of the Act, “*non-financial resources*” of a person include any systems, controls, plans or policies that the person maintains, any information that the person holds and the human resources that the person has available (paragraph 1A(2) of Schedule 6 to the Act).

## **RELEVANT REGULATORY PROVISIONS**

9. The part of the Handbook entitled “Threshold Conditions” (COND) gives guidance on the threshold conditions. COND 1.2.3G provides that the Authority may exercise its own-initiative powers under section 55L of the Act if, among other things, a firm is failing to satisfy any of the Threshold Conditions.

10. COND 2.4.2G(2) provides that, in the context of the Threshold Condition in paragraph 2D of Schedule 6 to the Act, the Authority will interpret the term ‘appropriate’ as meaning sufficient in terms of quantity, quality and availability and ‘resources’ as including all financial resources, non-financial resources and means of managing its resources; for example, capital, provisions against liabilities, holdings of or access to cash and other liquid assets, human resources and effective means by which to manage risks.

11. COND 2.4.2G(3) provides that the Authority will consider whether the firm is ready, willing and organised to comply with the high level systems and control requirements in SYSC and other systems and control requirements when assessing if it has appropriate non-financial resources.
12. COND 2.4.4G(2) provides that relevant matters to which the Authority may have regard when assessing whether a firm will satisfy, and continue to satisfy, this threshold condition include whether there are any indications that the firm will not be able to meet its debts as they fall due, whether the firm has taken reasonable steps to identify and measure any risks of regulatory concern that it may encounter in conducting its business and has installed appropriate systems and controls and appointed appropriate human resources to measure them prudently at all times and whether the resources of the firm are commensurate with the likely risks its will face.
13. By SYSC 4.1.1R, a common platform firm such as Organic must have robust governance arrangements, which include a clear organisational structure with well defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks it is or might be exposed to, and internal control mechanisms, including sound administrative and accounting procedures and effective control and safeguarding arrangements for information processing systems.
14. By SYSC 4.1.2CR, a management company such as Organic must have, and employ effectively, the resources and procedures that are necessary for the proper performance of its business activities.
15. By SYSC 4.2.1R, the senior personnel of a common platform firm must be of sufficiently good reputation and sufficiently experienced as to ensure the sound and prudent management of the firm.
16. By SYSC 4.2.2R, a common platform firm must ensure that its management is undertaken by at least two persons meeting the requirements laid down in SYSC 4.2.1R. SYSC 4.2.3G provides that, in the case of a body corporate, these should either be executive directors or persons granted executive powers by, and reporting immediately to, the governing body.
17. SYSC 4.2.4G provides that at least two independent minds should be applied to the formulation and implementation of the policies of a common platform firm. Each should play a part in the decision-making process on all significant decisions. Both should demonstrate the qualities and application to influence strategy, day-to-day policy and its implementation.
18. SYSC 4.3A.3R provides that a common platform firm must ensure that the members of the management body of the firm:
  - (1) are of sufficiently good reputation;
  - (2) possess sufficient knowledge, skills and experience to perform their duties;
  - (3) possess adequate collective knowledge, skills and experience to understand the firm's activities, including the main risks;
  - (4) reflect an adequately broad range of experiences;
  - (5) commit sufficient time to perform their functions in the firm; and

- (6) act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of senior management where necessary and to effectively oversee and monitor management decision-making.
19. By SYSC 6.1.1R, a firm must establish, implement and maintain adequate policies and procedures sufficient to ensure compliance of the firm including its managers, employees and appointed representatives with its obligations under the regulatory system and for countering the risk that the firm might be used to further financial crime.
20. By article 21 of the MiFID Org Regulation, an investment firm must comply with the following organisational requirements:
- (a) establish, implement and maintain decision-making procedures and an organisational structure which clearly and in documented manner specifies reporting lines and allocates functions and responsibilities;
  - (b) ensure that their relevant persons are aware of the procedures which must be followed for the proper discharge of their responsibilities;
  - (c) establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the investment firm;
  - (d) employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them;
  - (e) establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the investment firm;
  - (f) maintain adequate and orderly records of their business and internal organisation;
  - (g) ensure that the performance of multiple functions by their relevant persons does not and is not likely to prevent those persons from discharging any particular function soundly, honestly, and professionally.
21. By article 22(2) of the MiFID Org Regulation, an investment firm is required to establish and maintain a permanent and effective compliance function which operates independently. By article 22(3), the compliance function must have the necessary authority, resources, expertise and access to all relevant information, a compliance officer must be appointed and be responsible for the compliance function and for any reporting as to compliance in respect of certain provisions and the relevant persons involved in the compliance function must not be involved in the performance of the services or activities they monitor.
22. By article 23 of the MiFID Org Regulation, an investment firm must take the following actions relating to risk management:
- (a) establish, implement and maintain adequate risk management policies and procedures which identify the risks relating to the firm's activities, processes and systems, and where appropriate, set the level of risk tolerated by the firm;



(b) adopt effective arrangements, processes and mechanisms to manage the risks relating to the firm's activities, processes and systems, in light of that level of risk tolerance;

(c) monitor the following:

(i) the adequacy and effectiveness of the investment firm's risk management policies and procedures;

(ii) the level of compliance by the investment firm and its relevant persons with the arrangements, processes and mechanisms adopted in accordance with point (b);

(iii) the adequacy and effectiveness of measures taken to address any deficiencies in those policies, procedures, arrangements, processes and mechanisms, including failures by the relevant persons to comply with such arrangements, processes and mechanisms or follow such policies and procedures.

23. 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.

24. 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.

25. 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) 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.

26. EG 8.2.6 gives examples of the circumstances in which the Authority will consider varying a firm's Part 4A permission because it has serious concerns about a firm, or about the way its business is being or has been conducted. These include:

“(1) in relation to the grounds for exercising the power under... section 55L(2)(a) of the Act, the firm appears to be failing, or appears likely to fail, to satisfy the threshold conditions relating to one or more, or all, of its regulated activities, because for instance:

[...]

(b) the firm appears not to be a fit and proper person to carry on a regulated activity because:

[...]

(iii) it has breached requirements imposed on it by or under the Act (including the Principles and the rules), for example in respect of its

disclosure or notification requirements, and the breaches are material in number or in individual seriousness;

[...]"

27. 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.
28. 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 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.
29. EG 8.3.3 provides some examples of likely characteristics of situations which may give rise to such serious concerns. These include circumstances suggesting a serious problem within a firm or with a firm's controllers that calls into question the firm's ability to meet the threshold conditions.