
FIRST SUPERVISORY NOTICE

To: **Pello Capital Limited**

Reference Number: **449720**

Address: **10 Lower Thames Street
London
EC3R 6AF**

Date: **15 November 2022**

1 ACTION

- 1.1 For the reasons given in this First Supervisory Notice, and pursuant to sections 55L(2) and (3)(a) of the Financial Services and Markets Act 2000, the Financial Conduct Authority has decided to impose the following requirements set out below on Pello with immediate effect.

Requirement 1: Restriction on activities

- 1) Pello must not, without the prior written consent of the Authority, carry on any regulated activities for which it has a Part 4A permission (other than to facilitate the transfer of clients to other appropriate authorised firms) until it:
 - a) Satisfies the Authority that it has adequate financial and non-financial resources; and

- b) Satisfies the Authority through the use of an independent third party approved by the Authority that it has implemented and embedded all the recommendations made in the skilled person's report dated 29 July 2022.

Requirement 2: Assets restriction

- 2) Save as set out in sub-paragraphs (3) and (4), Pello 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 its own assets.
- 3) Pello 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 £5,000 (or £10,000 in the case of legal expenses).
- 4) For the avoidance of doubt, for the purposes of sub-paragraph (3) above, the following would be in the ordinary and proper course of business:
 - a) Any and all professional fees incurred or payments made on account of the same, including but not limited to legal expenses;
 - b) Any amounts due to be paid to creditors for sums incurred prior to the imposition of the Requirements, including but not limited to suppliers' fees and sums owing to HMRC;
 - c) Any income or sums collected and received by Pello on behalf of any third parties and which are to be paid to such third parties; or
 - d) Any and all salaries of Pello staff, including to its Directors, Non-Executive Directors, contractors or any other employees, where such salaries have been agreed prior to the imposition of the Requirements.
- 5) For the avoidance of doubt, for the purposes of sub-paragraph (3) above, the following would not be in the ordinary and proper course of business:
 - a) The making of any distribution to Pello's shareholders whether by way of capital distribution or dividends;
 - b) The payment of unusual or significant amounts to Pello's shareholders, Directors, officers, employees or any connected persons;
 - c) The making of any gift or loan by Pello to any party; or
 - d) The entry into any financial reconstruction, sale of any part of Pello (whether share or asset based) or reorganisation.
- 6) Sub-paragraphs (2) and (3) are assets requirements within the meaning of section 55P(4)(a) of the Act.

Requirement 3: Retention and notifications

- 7) Pello must secure all books and records and preserve all information and systems in relation to regulated activities carried on by it, 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 22 November 2022, such that they (or, so as not to

hinder Pello's performance of its business activities, true copies of them) can be provided to the Authority, or to a person named by the Authority, promptly on its request.

- 8) By close of business on 17 November 2022, Pello 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.
- 9) By close of business on 21 November 2022, Pello must notify in writing:
 - a) All its clients;
 - b) All firms that it knows or believe act as agent for its clients;
 - c) All platforms which it uses to manage or trade assets;
 - d) All exchanges of which it is a member; and
 - e) The custodians of all assets managed by Pello.
- 10) Once the notifications referred to in sub-paragraph (9) have been made, on [date within 24 hours] Pello must provide to the Authority:
 - a) Copies of the template notifications sent to all recipients referred to in sub-paragraph (9).
 - b) A list of all parties to whom notifications have been sent pursuant to sub-paragraph (9).
 - c) Confirmation that, to the best of its knowledge, Pello has sent notifications pursuant to sub-paragraph (9) to all relevant parties.
- 11) A SMF of Pello must send to the Authority by email by 12 noon every Friday (or the following business day should the Friday fall on a Bank Holiday), until such time as it is notified otherwise in writing by the Authority, written confirmation that Pello is in compliance with these Requirements.

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

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 section 55L(2) and (3) of the Act to impose the Requirements on Pello because it is failing, or is likely to fail, to satisfy the Appropriate Resources and Effective Supervision Threshold Conditions and to advance the Authority's operational objectives of securing an appropriate degree of protection for consumers (section 1C(1) of the Act) and protecting and enhancing the integrity of the UK financial system (section 1D(1) of the Act).
- 2.2 The Authority has identified serious concerns relating to Pello in that it appears not to be complying with:
 - 1) Principle 3 (Management and control) by failing to demonstrate that it has

adequate and appropriate systems and controls to effectively manage risks with its business and to comply with regulatory requirements. Specifically:

- a) A section 166 review identified material and wide-ranging deficiencies with Pello's governance arrangements and risk management controls. This led to a significant number of recommendations to be addressed as high and medium priority. Pello has failed to demonstrate significant progress relating to the section 166 remedial work. It is currently engaging specialist support and seeking a recapitalisation to complete the section 166 remedial work. The deficiencies give rise to the risk that Pello may be facilitating poor market conduct and/or money laundering and other financial crime. In particular, Pello's controls are not robust enough to identify high-risk clients, adequately monitor their activities and prevent its business being used to potentially facilitate market abuse and investment fraud.
 - b) Pello does not have permission to hold client money and assets. Its Model B arrangement with its current custodian is due to end shortly but Pello has yet to find an appropriate alternative provider. This gives rise to concerns as Pello does not have the relevant in-house expertise and resources to comply with CASS obligations when its current arrangement ends.
- 2) Principle 4 (Financial prudence) by failing to maintain adequate financial resources since Pello is not currently meeting its liabilities as they fall due in that:
- a) [REDACTED]
 - b) Pello has failed to pay invoices totalling £165,600 for the skilled person's work on the section 166 review which have been outstanding since July and August 2022.
- 3) Principle 11 (Relations with regulators) by failing to be open and transparent in its engagement with the Authority. Specifically:
- a) Pello appears to have provided misleading information about the extent of its governance arrangements and risk management controls in support of its representations about its capital adequacy to lift previously imposed restrictions on its business. The section 166 review found that these processes were mainly non-existent or under-developed. Consequently, the Authority cannot rely on the information in Pello's ICAAP and ICARA to review the adequacy of its capital position and financial resources until the completion of the section 166 remedial work.
 - b) Pello has failed to disclose or provide accurate and complete responses to the Authority's request for information to better understand:
 - A purported client review exercise as part of the section 166 remedial work. Based on the information Pello has shared, the Authority remains unclear about the purpose and nature of the client review exercise.
 - The nature of its proposed alternative Model B provider. Pello has misrepresented that a potential outsourcing firm could provide a

Model B arrangement individually or together with another party.

- Its financial resources and recapitalisation proposals. Pello appears to have provided inconsistent information to the Authority and [REDACTED] on the amount of sale proceeds and expected receipt arising from a proposed transaction.

2.3 The Authority considers that Pello is failing, or is likely to fail, to satisfy the Appropriate Resources Threshold Condition (paragraph 2D of Schedule 6 to the Act) for the reasons given at paragraph 2.2(1) and 2.2(2) above, and to satisfy the Effective Supervision Threshold Condition (paragraph 2C of Schedule 6 to the Act) for the reasons given at paragraph 2.2(3) above.

2.4 The Authority considers that imposition of the Requirements should take immediate effect advance the Authority's consumer protection and integrity objectives.

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;

"CASS" means rules in the Authority's Client Assets sourcebook;

"CDD" means customer due diligence;

"CMP" means compliance monitoring plan;

"DEPP" means the Decision Procedure and Penalties Manual in Authority's online handbook of rules and guidance (as in force from time to time);

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

"ICAAP" means Internal Capital Adequacy Assessment Process;

"ICARA" means Internal Capital Adequacy and Risk Assessment;

"KYC" means know your customer;

[REDACTED]

"Model B" means an outsourcing firm with permission to control and hold client money and assets who takes on the responsibility for complying with CASS obligations from a firm;

"Pello" means Pello Capital Limited;

"Principles" means the Authority's Principles for Businesses which are general statements of the fundamental obligations of firms under the regulatory system;

"Requirements" means the terms set out in section 1.1 above;

"RAS" means risk management statement;

“RMF” means risk management framework;

“Section 166” means a skilled person review and report required pursuant to section 166 of the Act;

“SMCR” means the Senior Management and Certification Regime;

“SMF” means senior management function;

“Threshold Conditions” are the minimum requirements that firms need to meet in order to be authorised and to continue carrying on regulated activities as set out in Schedule 6 to the Act; and

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

4 FACTS AND MATTERS

Background

- 4.1 Pello was authorised on 5 February 2007 as an IFPRU 50K Limited Licence Firm with permission to conduct a range of investment related regulated activities including advising on, arranging, dealing in (as principal and agent) and managing investments. Pello may also control but not hold client money and assets.
- 4.2 The Financial Services Register records that Pello has 10 certified individuals, of which two are also SMF holders.

Failings and risks identified

Section 166 review

- 4.3 On 17 February 2021, the Authority required Pello to commission a section 166 review following initial assessment work which identified issues with Pello’s:
 - 1) Governance and oversight framework, including its senior management’s effectiveness in their oversight of regulated activities;
 - 2) Approach to risk management and controls;
 - 3) Identification, management and mitigation of conflicts of interest; and
 - 4) Due diligence, onboarding and monitoring arrangements in respect of retail and corporate clients.
- 4.4 The section 166 review covered Pello’s practices between the period 1 January 2020 and 17 February 2021. The purpose of the section 166 review was to:
 - 1) Independently assess and provide a view on the effectiveness of Pello’s practices; and
 - 2) Make recommendations for improvements relating to any concerns, gaps and weaknesses.

Section 166 report

- 4.5 The section 166 report was delivered on 29 July 2022. This made a total of 70 recommendations relating to a number of areas where enhancements are required

as a priority:

Area of review	Recommendations	Severity ratings
Governance and oversight	23	16 High, 7 Medium, 0 Low
Risk management and controls	21	15 High, 6 Medium, 0 Low
Managing conflicts of interest	10	5 High, 5 Medium, 0 Low
Monitoring of clients	16	15 High, 1 Medium, 0 Low

4.6 In terms of severity, 51 recommendations were classified as “High”, 19 recommendations were classified as “Medium” and zero recommendations were classified as “Low”. The ratings were defined in the section 166 report as follows:

- 1) High - A weakness where there is significant risk of loss, fraud, impropriety, regulatory breach (including an inability to demonstrate that a TC [Threshold Condition] is being met), continuity failure, or failure to achieve organisational objectives. The impact on the Firm of the risk materialising could be very significant. Such risk could lead to an adverse impact on the business. Remedial action must be taken urgently.
- 2) Medium - A weakness where there is a risk of loss, fraud, impropriety, regulatory breach or failure to achieve organisational objectives or operate to a Firm’s policies. The risk on the area of activity and/or the Firm of the risk materialising could be significant. Remedial action should be prioritised.
- 3) Low – A minor weakness in internal control or non-compliance that could potentially result in the Firm being exposed to a risk of loss, fraud, impropriety, not meeting regulatory expectations or operation outside of the risk appetite. Remedial action required.

4.7 The section 166 review considered Pello’s key governance documentation, including its organisational and committee structures, Compliance Function, CMP and SMCR Policy. The section 166 report made 23 recommendations in respect of the following failings relating to Pello’s governance and oversight framework:

- 1) Pello’s Board and committee structures and overarching governance framework are not sufficiently or consistently documented. Pello’s governance framework has not yet been fully implemented or embedded in practice. There are also inconsistencies in the recording and staff understanding of roles, responsibilities and reporting lines.
- 2) There is a lack of independent challenge at Board level as Pello’s executive directors are heavily involved in the daily management of Pello, and there is an absence of independent non-executive directors.
- 3) It is unclear how decisions are and should be made as Pello’s Board and key committees do not have formal terms of reference, creating the risk of key decisions being made outside of formal governance.

- 4) Pello's management information is significantly under-developed, comprising primarily financial information within spreadsheets but with no qualitative analysis or commentary. There are also no formally documented management information packs for Pello's committees.
 - 5) Pello does not have a defined Risk Function or specifically allocated risk resources. There is a lack of clarity around who is responsible for risk at Pello and for maintaining the RMF and Risk Register.
 - 6) Pello's Compliance Function does not have formal skills matrices or tailored and ongoing training to ensure staff are equipped for their roles. Compliance resources are stretched and Pello's CMP requires significant enhancement as deficiencies were found on compliance reviews. The deficiencies are compounded because Pello does not have an Internal Audit Function but only engages external consultants to provide assurance on an exceptional basis.
 - 7) Pello does not have accurate and current Statements of Responsibility for its SMF holders, training on SMCR requires enhancing and fitness and propriety assessments have not been completed for all relevant individuals.
- 4.8 The section 166 review considered Pello's key risk management documentation, including its RMF, RAS, Risk Register and Breach Register. The section 166 report made 21 recommendations in respect of the following failings relating to Pello's risk management and controls:
- 1) Pello's RMF is not clearly documented as some framework documents are incomplete, inconsistent and contradictory. Pello's RMF and RAS do not cover all risk areas. Risks are mainly assessed from a capital adequacy perspective rather than providing a robust overview of Pello's risk profile. They are not scored, rated or ranked. There is currently no management information in respect of the RMF so Pello's most significant risks and the effectiveness of its controls are unclear.
 - 2) Pello's Risk Register is not a "live" document and only covers risks at a high-level. There are no documented risk or control owners either.
 - 3) Pello's policies and procedures are out of date, duplicative and contradictory in places. In several instances, Pello's policies and procedures were generic and had not been sufficiently tailored to its business, creating a risk that staff may not be following correct processes or understand what is current practice.
- 4.9 The section 166 review considered Pello's key conflicts of interest documentation, including its Conflicts Policy, Conflicts Register and conflicts training materials. The section 166 report made 10 recommendations in respect of the following failings relating to Pello's identification, management and mitigation of conflicts:
- 1) A number of enhancements are needed in respect to when and how disclosures should be made. Pello does not have a consolidated Conflicts Register and the registers it maintains are not regularly updated with detailed plans on the mitigants or monitoring measures to manage the specific conflict identified. Elements of the Conflicts Policy are also not currently practiced, for example, Pello has not formally assigned conflicts owners at business level and the Conflicts of Interest Committee has not yet formally met.
 - 2) Conflicts training does not form part of Pello's induction training. While

conflicts training is completed on an ongoing basis, it is generic and not tailored to Pello's risks, controls or processes.

- 3) Pello's Compliance Function conducts some monitoring of conflicts but this is not reflected in the CMP and there is no guidance on how the checks should be completed to ensure rigour and consistency. The Compliance Function is also responsible for maintaining the conflicts policies, procedures and registers but a number of the documents are not fully complete, accurate or current.

4.10 The section 166 review considered Pello's key onboarding documentation, including its Anti-Money Laundering and Financial Crime Policy, Anti-Bribery and Anti-Corruption Policy, Sanctions Policy, Inactive and Dormant Account Policy, as well as its procedures relating to KYC and transaction monitoring. The section 166 review also sampled 35 client files to review Pello's customer risk assessment and CDD measures. The section 166 report made 16 recommendations in respect of the following failings relating to Pello's CDD, onboarding and monitoring of clients:

- 1) There are material CDD failures, such as gaps in the completeness and accuracy of information provided by clients, and a lack of independent checking of client identification details and documentation.
- 2) Pello has failed to carry out its KYC and financial crime obligations, including identifying, addressing and reporting concerns. It has fundamentally misunderstood the application of "risk based" to mean that those who transact most frequently are to be reviewed whilst those who transact less frequently (i.e. clients outside of its "Top 100" client list by transactional activity) do not require updating or monitoring.
- 3) Pello does not appear to carry out any additional analysis as to the nature of its clients, placing sole reliance on third party information providers or significant reliance on brokers "knowing" their clients rather than gathering independent evidence to understand its clients. Media and high-risk indicators were not identified and referenced by Pello on the relevant client files which calls into question its financial crime knowledge and experience.
- 4) CDD documentation shows a failure to identify and screen all ultimate beneficial owners and beneficial controllers, and there is a lack of evidence to suggest that Pello understands and analyses the structures of legal entity clients (e.g. to identify any potential "red flags" such as whether structures are unnecessarily complex or opaque). Risk decisions appear to be based on commercial factors rather than financial crime threats.
- 5) It was unclear from the available client data how Pello monitors trading that does not fit with the clients' history and knowledge, such as their background differing from that which would be expected on the basis of their business activities, or transaction patterns showing a sudden change.

Pello's response to the section 166 report

4.11 Pello agreed with 67 of the 70 recommendations. Pello did not accept the findings relating to its RMF and RAS, arguing these items had been submitted with its ICAAP and accepted by the Authority further to previous regulatory action (see the Authority's previous own-initiative action section below). Nevertheless, Pello stated it would revisit the RMF and RAS under its ICARA. While the section 166 report acknowledged in some instances that Pello has already begun to take steps to remedy the issues identified, it estimated that Pello will need a substantial period

of 12 to 18 months or more to fully address, implement and embed the changes required across its business.

- 4.12 On 23 September 2022, Pello informed the Authority it had sought external support from the skilled person to complete the section 166 remedial work. It stated it had worked with the skilled person to produce a work schedule with an indicative timeline of three months for the action plan to be fully embedded. Pello included the following attachments with its letter:
- 1) A recommendations table. Of the 70 recommendations, this indicated 23 recommendations had been completed, 13 recommendations were in progress, 8 recommendations were dependent on a new client relationship management system and no update was recorded against 26 recommendations.
 - 2) A support proposal. This set out the skilled person's proposed approach for supporting Pello in addressing the recommendations.
- 4.13 Pello clarified in a further letter on 14 October 2022 that it had completed a significant amount of work since the section 166 report concluded. It explained the skilled person was due to assess the level of remedial work undertaken prior to the action plan commencing but this had been delayed. Although the skilled person gave a timeline of three months to make the changes, Pello suggested it would remediate all high-risk recommendations before requesting a review by the Authority or an independent third party. It envisaged this period may be within six months. Pello reiterated in another letter on 7 November 2022 that the three month timeline was proposed by the skilled person but it felt a six month period to complete the remedial work was more reasonable.
- 4.14 The projected timeframe of three to six months is significantly shorter than the 12 to 18 months estimated in the section 166 report for implementing and embedding the recommendations. Pello has not proactively shared any details, such as on the specific steps and tasks for action, dates for delivery or the accountable individuals, to demonstrate the projected timeline is realistic. While the recommendations table appears to indicate some actions may have been taken, the table contains single worded descriptors of the progress made with no detailed commentary on the relevant changes, how they were implemented, when they became operational and who oversaw the process. Pello has also not proactively provided any material in support of the apparent changes it claims to have made for the Authority to assess the extent and stage of its remedial work. However, the Authority notes the support proposal contains a four month programme timeline that refers to a three month design phase followed by an open ended implementation phase. It appears Pello will likely need to take at least four months to address the deficiencies identified by the section 166 review before it even starts to embed the changes. It currently remains unclear to the Authority over what time period and whether Pello can successfully implement and embed the necessary changes.

Progress of client review exercise

- 4.15 Pello has referred to completing a significant amount of remedial work since the section 166 report. The only action Pello has proactively supplied material about is its client review exercise.
- 4.16 Pello emailed the Authority on 23 September 2022 stating it was undertaking a risk review to significantly reduce the risk profile of its business. Pello indicated it had closed 210 accounts since July 2022 in addition to 1,072 accounts it had notified for closure that day. Pello explained the risks considered were based on activity,

jurisdiction, complexity of structure, source of funding and other factors. On the same day, Pello wrote to the Authority reiterating the steps it had taken to reduce client numbers and attaching a list of accounts notified for closure. Pello also stated it would be closing all complex structures and high-risk clients as part of the review.

- 4.17 In a letter of 14 October 2022, Pello informed the Authority that its client review exercise had highlighted clients it did not want to move to a new custodian. Pello explained the exercise was based on several factors. It stated one factor considered was the commercial and oversight risk of clients who have no activity but require cost to maintain and management time to oversee.
- 4.18 In a follow up letter on 27 October 2022, Pello updated the Authority on the progress of its client review exercise and provided a list of accounts it intended to close and retain. Pello stated that it had exited 101 clients and taken the decision not to transfer 1,025 clients as these were in the process of being closed and their assets transferred, sold or certificated. Pello indicated that 932 of the accounts identified for closure were inactive (zero commission in the past 12 months). Pello also confirmed it had 1,826 clients and, with further account closures, was looking to transfer 902 clients.
- 4.19 Based on the information Pello has provided to date on its client review exercise, the Authority remains unclear whether Pello is exiting any high-risk clients with active accounts and which accounts are simply being closed because they are inactive. However, Pello's letter of 27 October 2022 appears to indicate that more than half of its clients are either inactive or had long since stopped using its services so Pello appears not to have closed many active accounts or exited active clients.

Pello's Model B arrangements

- 4.20 Pello may control but not hold client money and assets. Instead, it has an Outsourcing Agreement in place with Outsourcer A for a range of stockbroking and administration services. Under the Outsourcing Agreement, Outsourcer A provides Pello with a Model B arrangement which assumes responsibility for complying with CASS obligations, as well as settlement and custody services.

Termination of current Model B arrangement

- 4.21 On 23 August 2022, Outsourcer A wrote to Pello to give notice of termination of the Outsourcing Agreement and to arrange a meeting to discuss the process for its exit. In line with the contracted notice period under the Outsourcing Agreement, Pello's current Model B arrangement and other services with Outsourcer A will end on 23 November 2022.
- 4.22 From 23 November 2022, under the terms of the Outsourcing Agreement, Outsourcer A will continue to provide a Model B arrangement and other services to Pello's existing clients until they are transferred back to Pello or another custodian as to allow for an orderly handover. However, given that Pello does not have permission to hold client money and assets, it needs to put in a place a new custodian with a Model B arrangement to service any new business with new clients.
- 4.23 The section 166 report noted that Pello has been considering replacing Outsourcer A with another custodian. It cautioned that any move away from a Model B arrangement would mean Pello taking on more responsibility and oversight in respect of CASS requirements. The section 166 report remarked that this would be a risk given the current stretch on Pello's compliance resources and the issues identified by the section 166 review relating to its deficient governance arrangements and risk management controls.

Proposed alternative Model B provider

- 4.24 Pello informed the Authority by email on 4 October 2022 that it is seeking to put in place an alternative Model B arrangement with Outsourcer B. The Authority wrote to Pello on 7 October 2022 setting out its concerns with the proposal. The Authority highlighted that Outsourcer B does not offer a Model B arrangement and is not an authorised firm.
- 4.25 In response on 14 October 2022, Pello explained Outsourcer B acts as an administrator to Model B services provided by Outsourcer C. It stated Outsourcer B is currently in discussions with the Authority to ensure its arrangement with Outsourcer C qualifies as Model B and will be offering such services to Pello once approved. Pello indicated until then it was unsure whether its contractual agreement would be with Outsourcer B or Outsourcer C, or both. In a follow up letter on 27 October 2022, Pello stated it had been informed that Outsourcer B has communicated with the Authority to confirm its arrangement with Outsourcer C is regulatory compliant. Pello remarked it was confident a migration with Outsourcer B would take place in a sufficient timescale.
- 4.26 Pello's disclosures contrast with the information that Outsourcer B has provided to the Authority. During a call and in an email on 1 November 2022, Outsourcer B stated it does not offer Model B services and has explained this to Pello. It confirmed it will not be changing its current model and all potential clients have been informed their business model would need to align with its model. Outsourcer B indicated that while it works closely with third parties, it does not know whether those third parties provide Model B services. Outsourcer B also stated no timescales were discussed with Pello for completion of the proposal and no clients would transfer over from Pello as they would be onboarded as new clients before the provision of any services if the proposal proceeds.
- 4.27 Based on the information from Outsourcer B, the Authority notes that:
- 1) Outsourcer B is not a suitable alternative custodian as it does not offer a Model B arrangement or provide for the transfer of clients with open trading positions; and
 - 2) Pello appears to have misrepresented to the Authority that Outsourcer B is willing and able to provide a Model B arrangement individually or together with a third party.
- 4.28 Further, in Pello's letter of 27 October 2022, it informed the Authority that it has been considering two other potential outsourcing firms should Outsourcer B be unable to facilitate a transfer of its clients. Pello indicated on 7 November 2022 that it is also engaging with Outsourcer D, a further potential outsourcer, to consider a Model B arrangement who appears willing to accept its clients and within an acceptable timeframe. Given that Pello is still exploring its options, the Authority remains unclear how Pello will be able to transact business on behalf of new clients or where its existing clients would transfer from 23 November 2022 once its Model B arrangement with Outsourcer A ends.

Pello's financial resources

The Authority's previous own-initiative action

- 4.29 On 4 August 2021, the Authority used its own initiative power to impose restrictions on Pello's activities and its assets because it was failing, or was likely to fail, to

satisfy the Appropriate Resources and Effective Supervision Threshold Conditions. The underlying reasons included Pello failing to demonstrate that it had sufficient financial resources, as well as failing repeatedly to provide adequate responses to enable the Authority to complete its capital adequacy assessment.

- 4.30 Pello submitted written representations on 10 September 2021 on the steps taken to address the Authority's concerns relating to its ICAAP. It stated that:
- 1) Pello had engaged a consultant to review aspects of its capital adequacy and financial resources, and to make consequential amendments to its ICAAP.
 - 2) Pello had sought advice and guidance from the consultant on its ICAAP which had been taken on board and it now provided a greater level of detail on salient matters.
 - 3) The consultant did not perform a review of the underlying source numbers; its review was focussed on the validation of the methodology applied. The consultant also did not conduct an audit on Pello or its controls.
- 4.31 Pello provided further written representations on 22 October 2021 relating to its ICAAP action plan. It stated that it had addressed all material issues, made further progress and was seeking to complete all outstanding action points. Pello argued that while points of improvement may require further work, they do not necessitate the continued imposition of restrictions. The Authority rescinded the restrictions on 9 December 2021 on the grounds Pello had provided sufficient evidence to demonstrate it had made significant and adequate progress in meeting the concerns.
- 4.32 Pello's representations about its capital adequacy were considered on the basis it had put in place effective systems and controls to manage risks to its business. Pello gave the impression its ICAAP work supported by the consultant had been conducted on the basis that its governance arrangements and risk management controls were in place and embedded, although the consultant did not test the underlying processes.
- 4.33 The section 166 report indicates that many of the assumptions made in Pello's ICAAP around its governance, RMF and transaction monitoring (see section 166 report section above) for managing market and operating risks are not sound given that key aspects of its processes are under-developed, do not appear to operate in practice or do not exist at all. The Authority wrote to Pello and set out its concerns on 16 September 2022. The Authority indicated it could not rely on the information in Pello's ICAAP to assess the adequacy of its capital position and financial resources.

Current capital position

- 4.34 During a call on 20 September 2022, Pello indicated it was considering a restructure because it had to incur significant capital expenditure during 2021 due to the impact of the Authority's previous restrictions on its business, the section 166 review and now the associated remedial work. It also stated that it would provide an update on its ICARA.
- 4.35 Pello subsequently wrote to the Authority on 23 September 2022, reiterating it was exploring several funding options to recapitalise, to strengthen its balance sheet and capital adequacy. It stated that without external funding, Pello would be unable to complete the section 166 remedial work. Pello also explained its ICARA was currently in draft form with no financial information as any modelling depended on

the outcome of the recapitalisation. Pello included with its letter copies of the draft ICARA and associated risk of harm spreadsheet. The information provided was not informative. Both documents contained mostly placeholder text and had no supporting data to enable a meaningful assessment of Pello’s capital adequacy.

- 4.36 On 7 October 2022, the Authority wrote to Pello reminding it that it had not completed its ICARA yet. The Authority also highlighted that many of the assumptions behind Pello’s capital adequacy assessment relating to its governance arrangements and risk management controls could not be relied upon until the completion of the section 166 remedial work. Pello responded on 14 October 2022, informing the Authority that it does not currently have a capital deficit but it would very shortly be in breach of its capital requirements should it be unable to raise further funding.
- 4.37 On 3 November 2022, the Authority wrote to Pello to request copies of its current balance sheet, current and forecast profit and loss statement, current and forecast cashflow statement and the latest version of its ICARA. Pello responded on 7 November 2022 but failed to provide a forecast of its profit and loss, a current and forecast cashflow statement or the latest version of its ICARA as required, providing only copies of its:
 - 1) Balance sheet for the period ended 31 October 2022. This records net assets at the period end of £267,969. However, the assets include cash at bank of only £1,927 and long-term loans made to others totalling £1,337,895. In terms of significant liabilities, Pello also owes deferred corporation tax of £275,618.
 - 2) Profit and loss statement for the period ended 31 October 2022. This shows that Pello made a loss at period end of £157,304 and total year-to-date losses of £596,677.
- 4.38 Pello also explained in the response that it did not provide its ICARA because this remains in draft form pending a recapitalisation of the business. Pello reiterated it would likely breach capital adequacy and minimum liquidity requirements without the recapitalisation and become insolvent.

Outstanding liabilities

- 4.39 Pello appears to have failed to meet certain liabilities when due throughout 2022.
- 4.40 [REDACTED]
- 4.41 Further, Pello has failed to reimburse the Authority for the cost of the section 166 review. Pello has failed to settle three invoices; one for £63,000 due in July 2022 and two others for £54,000 and £48,600 respectively due in August 2022. Pello currently owes a total of £165,600. Pello made various commitments to the Authority between July and October 2022 to pay the outstanding invoices but they remain outstanding.
- 4.42 Despite informing the Authority on 14 October 2022 that it does not yet have a capital deficit, Pello failed to disclose any financial difficulties in meeting its current liabilities.

Pello's recapitalisation

- 4.43 During a call with the Authority on 20 September 2022, Pello outlined its recapitalisation plan. It indicated it was exploring two potential options. Pello explained the first option entailed a sale of the business to a large publicly listed company and the other involved issuing a convertible loan note with the option of a reverse takeover to Funder A, a listed special purpose acquisition company.
- 4.44 On 23 September 2022, Pello informed the Authority that it had entered into Heads of Terms with Funder A to invest an initial £1m of which £700,000 would be provided as cash, without which it would not be possible to fund the section 166 remedial work. The Heads of Terms clarified that Pello would issue a convertible loan note and equity to Funder A in exchange for £1m to be satisfied by a mixture of cash and shares. In particular, the Heads of Terms set out that:
- 1) Funder A would subscribe for £700,000 of convertible loan notes in Pello with the option to convert them into new shares in Pello upon approval of a change in control being granted by the Authority.
 - 2) Pello will issue new shares to Funder A as consideration for Funder A shares.
 - 3) Funder A will acquire the remaining shares of Pello up to 100% of its issued share capital upon approval by the Authority to be the controller of Pello.
- 4.45 During a call on 26 September 2022, Pello reiterated it was pursuing a recapitalisation option with Funder A. Pello stated that the convertible loan note would likely trigger a change in control at some point. It also indicated that Funder A was willing to inject capital even though the Authority may not approve the change in control.
- 4.46 Pello updated the Authority on 4 October 2022, stating that it expected shortly to conclude the convertible loan note with Funder A which would add significant cash reserves to its balance sheet in excess of its capital requirements..
- 4.47 The Authority wrote to Pello on 7 October 2022 setting out its concerns with the proposed recapitalisation. The Authority stated it appeared shareholders at Funder A would in effect be funding Pello's attempts to rectify material breaches of regulatory requirements and their investment returns would depend on Pello meeting the Threshold Conditions, which it is currently not. The Authority highlighted that this could be a speculative high-risk investment for Funder A's investors and questioned what disclosures had been made to Funder A and its shareholders about the nature and extent of regulatory concerns.
- 4.48 Pello replied on 14 October 2022 stating that it had made full disclosures to Funder A about the regulatory concerns. Pello informed the Authority it had decided to sell some technology software for an initial £300,000 with a further £300,000 in consultancy fees to be received over the next six months as an alternative to the convertible loan note with Funder A. It explained this would provide more immediate capital injection to fund the section 166 remedial work. Pello indicated its intention remained that Funder A would apply for a change of control and reverse takeover of Pello on completion of the section 166 remedial work. Pello also stated that Funder B, an Australian financial services company, had enquired about acquiring its entire issued share capital. Pello indicated it was open to considering this offer should the takeover by Funder A fail and it could not meet its financial obligations.

4.49 [REDACTED]

[REDACTED] The Authority also noted that even if Pello received £300,000 initially from the sale of technology software this would not be sufficient to settle its current liabilities, as well as the next phase of the section 166 remedial work estimated by the skilled person to cost £180,016.

4.50 Pello responded on 7 November 2022, stating the proposed transaction with Funder A was not successful due to regulatory pressure. It indicated it was now engaging with Funder B to consider a full takeover which should provide it with the funds to meet all its liabilities, complete the section 166 remedial work and transfer to a new custodian. Pello explained that without this liquidity it would be unable to meet its minimum capital adequacy requirements and become insolvent.

4.51 On the same day, the Authority attended a meeting with Pello and Funder B to discuss the proposed takeover. During the discussions, Pello confirmed it had disclosed the regulatory concerns to Funder B but it was unclear what due diligence Funder B had undertaken into Pello's liabilities. The Authority explained its concerns with Pello were not limited to its current capital position but covered a number of issues, including the section 166 remedial work which Funder B should also consider. Funder B stated that it needs to review additional information to better understand the impact of any regulatory action on Pello's ability to conduct business and to assess the implications on the recapitalisation and any change in control before proceeding. Currently the Authority remains unclear whether the proposed takeover of Pello by Funder B will materialise.

5 CONCLUSION

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

Analysis of failings and risks

Regulatory requirements

5.2 Pello is potentially failing to comply with Principle 3 (Management and control) because:

- 1) The failings identified by the section 166 review are wide-ranging and serious. Pello appears to have made limited progress and/or failed to demonstrate it has made significant progress relating to the remedial work to date. It is currently engaging specialist support and seeking a recapitalisation to complete the section 166 remedial work. Until the deficiencies are fully remediated, there remains an ongoing risk that Pello may be facilitating poor market conduct and/or money laundering and other financial crime. In particular, Pello's controls are not robust enough to identify high-risk clients, adequately monitor their activities and prevent its business from being used to potentially facilitate market abuse and investment fraud.

- 2) Pello's Model B arrangement with Outsourcer A is due to end shortly but it has yet to find an appropriate alternative custodian. Exiting from its current arrangement with Outsourcer A gives rise to concerns as Pello does not have the relevant in-house expertise and resources to comply with CASS obligations.
- 5.3 Pello is potentially failing to comply with Principle 4 (Financial prudence) as it is not meeting its liabilities as they fall due:
- 1) [REDACTED]
 - 2) Pello has also failed to pay three invoices totalling £165,000 for work on the section 166 review which have been outstanding since July and August 2022.
- 5.4 Pello is potentially failing to comply with Principle 11 (Relations with regulators) because:
- 1) Pello appears to have provided misleading information about the extent of its governance arrangements and risk management controls in support of its representations about its capital adequacy to lift previously imposed restrictions on its business. The section 166 review found that these processes were mainly non-existent or under-developed. Consequently, the Authority cannot rely on the information in Pello's ICAAP and ICARA to assess the adequacy of its capital position and financial resources until the completion of the section 166 remedial work.
 - 2) Pello has failed to disclose or provide accurate and complete responses to the Authority's requests for information to better understand:
 - a) A purported client review exercise as part of the section 166 remedial work. Based on the information Pello has provided to date, the Authority remains unclear whether Pello is exiting any high-risk clients with active accounts and which accounts are simply being closed because they are inactive.
 - b) The nature of its proposed alternative Model B provider. Pello misrepresented to the Authority that Outsourcer B could provide a Model B arrangement individually or together with a third party.
 - c) Its financial resources and recapitalisation proposals. Pello appears to have provided inconsistent information to the Authority and [REDACTED] on the amount of sale proceeds and expected receipt arising from a proposed transaction.

Failure to satisfy the Threshold Conditions

- 5.5 The Authority considers that Pello is failing, or is likely to fail, to satisfy the Appropriate Resources Threshold Condition. In terms of Pello's non-financial resources, it is currently failing to demonstrate that it has adequate systems and controls given the deficiencies identified by the section 166 review. Pello's comments in response to the recommendations of the section 166 report comprise a high-level summary of proposals in the form of brief notes with no specific steps outlined, projected timescales or accountable individuals for delivery of the work. It remains unclear whether Pello understands the seriousness of its failings and the extent of remedial work that will be required. Given the scale and nature of the failings, it is unlikely that Pello can effectively oversee and implement the required

changes within the optimistic and estimated timeframe of three to six months since it has failed to demonstrate sufficient progress on the section 166 remedial work to date. A significant amount of ongoing third party and supervisory oversight may be required before Pello is able to demonstrate adequate changes have been introduced and embedded, and good outcomes are being achieved. Further, Pello's Model B arrangement with its current custodian ends on 23 November 2022. Without a suitable alternative custodian in place, the Authority remains unclear how Pello will be able to transact new business on behalf of new clients or where its existing clients would transfer once the arrangement ends.

- 5.6 In terms of Pello's financial resources, it is currently failing to meet its liabilities as they fall due with [REDACTED] non-payment of invoices relating to the section 166 review. Pello has also indicated that without a recapitalisation it would shortly breach its capital adequacy and minimum liquidity requirements and become insolvent. While Pello is still exploring funding options, its proposals for recapitalising have not materialised and, in any event, the amount of capital injection proposed to date are unlikely to settle Pello's currently known liabilities and fund the section 166 remedial work.
- 5.7 The Authority considers that Pello is failing, or is likely to fail, to satisfy the Effective Supervision Threshold Condition based on its an ongoing pattern of poor engagement with the Authority. Pello's repeated failure to provide accurate and complete responses to information requests means that, overall, the Authority has serious concerns over its ability to supervise Pello effectively in a way which helps to deliver the Authority's operational objectives. Further, due to Pello's poor responses and lack of openness, the Authority is unable to effectively assess and mitigate risks posed by Pello to retail consumers who engage in high-risk investments, or the integrity of the market in which Pello participates as a corporate broker. It is likely that any information from Pello about its financial resources and activities would need to be verified by an independent third party.
- 5.8 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 Pello is failing, or is likely to fail, to satisfy those minimum requirements.

The Authority's operational objectives of consumer protection and integrity

- 5.9 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).
- 5.10 The Authority's operational objective of integrity is protecting and enhancing the integrity of the UK financial system (section 1D(1) of the Act).
- 5.11 The Authority has concluded, in light of the facts and matters set out, that it is appropriate to exercise its own-initiative power under section 55L(2) and (3) of the Act by imposing the Requirements on Pello.
- 5.12 The Authority considers that the Requirements are a proportionate means to address the current and immediate risks, and are desirable in order to advance the Authority's operational objectives of consumer protection and integrity.

Timing and duration of the Requirements

- 5.13 It is necessary to impose the Requirements on an immediate basis given the seriousness of the risks and the need to protect consumers in accordance with EG

8.3.3 which provides the Authority may impose a requirement so that it takes effect immediately as Pello has not taken substantive steps to address the Authority's fundamental concerns such that:

- 1) There is 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)).
- 2) There are 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 (EG 8.3.3(4)).

5.14 The Authority considers that it is necessary for the Requirements to remain in place until such time as the Authority is satisfied they can be lifted.

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 2.3.7G 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 Pello has the right to make written representations to the Authority (whether or not it refers this matter to the Tribunal). Pello may also request to make oral representations but the Authority will only consider this in exceptional circumstances according to DEPP 2.3.1AG. The deadline for providing written representations and notifying the Authority that Pello wishes to make oral representations is 29 November 2022 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 Pello 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, Pello has 28 days from the date on which this First Supervisory Notice is given to it by 13 December 2022 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 Pello 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>

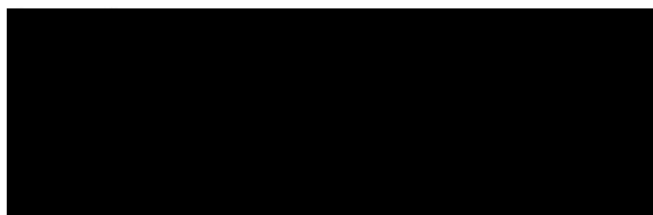
- 6.8 Pello should note that a copy of the reference notice (Form FTC3) must also be sent to the Authority at the same time as a reference is filed with the Tribunal. A copy of the reference notice should be sent to the SPC Decision Making Secretariat (SPCDecisionMakingSecretariat@fca.org.uk).

Confidentiality and publicity

- 6.9 Pello should note that this First Supervisory Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining legal advice on its contents).
- 6.10 Pello 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).



**Decision made under Executive Procedures
Director of 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 (section 1C).
2. 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)). This power is referred to as the Authority's own initiative requirement power.
3. Section 55N of the Act allows a requirement to be imposed under section 55L of the Act so as to require the person concerned to take specified action (section 55N(1)(a)), or to refrain from taking specified action (section 55N(1)(b)). Section 55N(2) provides that a requirement may extend to activities which are not regulated activities.
4. Section 55Y(3) 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 power, reasonably considers that it is necessary for the requirement to take effect immediately (or on that date). Section 55Y(4) of the Act provides that if the Authority proposes to vary a Part 4A permission, or to impose or vary a requirement, or varies a Part 4A permission or varies a requirement, with immediate effect, it must give the authorised person written notice. Section 55Y(5) of the Act states that the notice must: (a) give details of the variation of the permission or the requirement or its variation; (b) state the Authority's reasons for the variation of permission or the imposition or variation of the requirement; (c) inform the authorised person that it may make representations to the regulator within such period as may be specified in the notice; (d) inform the authorised person of when the variation of the permission or the imposition or variation of the requirement takes effect; and (e) inform the authorised person of its right to refer the matter to the Tribunal.
5. 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."

6. 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.

RELEVANT REGULATORY PROVISIONS

The Principles for Businesses

7. 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 2.2.1.
8. Principle 3 (Management and control) requires that a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
9. Principle 4 (Financial prudence) requires that a firm must maintain adequate financial resources.
10. Principle 11 (Relations with regulator) requires that a firm must deal with its regulators in an open and cooperative way, and disclose the Authority appropriately anything relating to the firm of which that regulator would reasonable expect notice.

The Threshold Conditions

11. 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 either section 55J or section 55L of the Act if, among other things, a firm is failing to satisfy any of the Threshold Conditions or is likely to do so.
12. COND 2.3.1AUK reflects the provisions of the Act (Paragraph 2C of Schedule 6) to the effect that a firm must be capable of being supervised by the Authority having regard to all the circumstances. These include: the nature (including the complexity) of the regulated activities the firm carries on or seeks to carry on (COND 2.3.1AUK(1)(a)); and the way in which the firm's business is organised (COND 2.3.1AUK(1)(c)).
13. COND 2.3.3G(1) provides examples of the kind of general considerations the Authority may have regard when assessing whether a firm will satisfy, and continue to satisfy, the Effective Supervision Threshold Condition. These include, but are not limited to, whether it is likely that the Authority will receive adequate information from the firm to enable it to determine whether the firm is complying with the requirements and standards under the regulatory system for which the Authority is responsible and to identify and assess the impact on its statutory objectives; this will include whether the firm is ready, willing and organised to comply with Principle 11 (Relations with regulators) and supervisory rules on the provision of information to the Authority.
14. COND 2.4.1AUK reflects the provisions of the Act (Paragraph 2D of Schedule 6) to the effect that the resources of a firm must be appropriate in relation to the regulated activities that the firm carries on or seeks to carry on.
15. COND 2.4.2G(2) provides that 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 resources; for example, capital, provisions against liabilities, holdings of or access to cash and other liquid assets, human resource and effective means by which to manage risks.

16. COND 2.4.4G(2) provides examples of the relevant matters the Authority may have regard when assessing whether a firm will satisfy, and continue to satisfy, the Appropriate Resources Threshold Condition. These include, but are not limited to: whether there are any indications that the firm will not be able to meet its debts as they fall due (COND 2.4.4G(2)(b)); 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 to measure them prudently at all times (COND 2.4.4G(2)(c)); and whether the resources of the firm are commensurate with the likely risks it will face (COND 2.4.4G(2)(f)).

The Enforcement Guide

17. 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.
18. 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)).
19. 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)).
20. 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)).
21. 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.
22. 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.

23. EG 8.3.3 states that it is not possible to provide an exhaustive list of the situations that will give rise to such serious concerns, but they are likely to include one or more of four listed characteristics, these include: 1) information indicating significant loss, risk of loss or other adverse effects for consumers, where action is necessary to protect their interests; 2) information indicating that a firm's conduct has put it at risk of being used for the purposes of financial crime, or of being otherwise involved in crime; 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.
24. EG 8.3.4 states that the Authority will consider the full circumstances of each case when it decides whether an imposition of a requirement is appropriate and sets out a non-exhaustive list of factors the Authority may consider, these include the extent of any loss, or risk of loss, or other adverse effect on consumers (EG 8.3.4(1)).
25. 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.