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## **FIRST SUPERVISORY NOTICE**

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**To:** **Samsky Pay Limited**

**Reference Number:** **928035**

**Address:** **79 Green Street, London, E7 8JF, United Kingdom**

**Date:** **29 June 2023**

### **1 ACTION**

1.1 For the reasons given in this First Supervisory Notice, and pursuant to regulations 12(1) and 15 of the Payment Services Regulations 2017 ("the PSR"), the Financial Conduct Authority ("the Authority") has decided to vary the registration granted to Samsky Pay Limited ("the Firm") pursuant to Part 2 of the PSR by:

- a) removing the following payment service the Firm provides:
  - 1) Money remittance; and
- b) Imposing the following requirements ("the Requirements") on the Firm with immediate effect:
  - 1) By 5pm on 3 July 2023, the Firm must remove, or where this is not practicable, use its best endeavours to secure the removal of, any advertising and financial promotions it currently has live, in whatever form they may take. This includes but should not be limited to its website and mobile phone app, videos on YouTube, online press articles, posts across all social media platforms (including but not limited to Facebook, Twitter, Tik-Tok and Instagram).
  - 2) The Firm must not issue or publish any advertising or financial promotions in relation to payment services, money service business,

regulated activities or electronic money. This includes, but it not limited to advertising or publication on the website, YouTube and social media channels.

- 3) The Firm must secure and preserve all records and/or information (physical or electronic) relating to all activities carried on by it, including but not limited to regulated activities. These must be retained in a form and at a location within the United Kingdom, to be notified to the Authority in writing by 5pm on 3 July 2023, such that they (or, so as not to hinder the Firm'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.

#### Asset Requirements

- 4) Save as set out in Requirement (5), the Firm must not, without the prior written consent of the Authority, take any action which has, or may have, the effect of disposing of, withdrawing, transferring, dealing with or diminishing the value of any assets it holds or receives, for itself or on behalf of another (whether in the United Kingdom or elsewhere).
- 5) The Firm may continue dealing with or disposing of any of its own assets in the ordinary and proper course of business provided that the sum or value of such dealings or disposals, whether as a single transaction or a combination of related transactions, does not exceed £1,000 (or £3,000 in the case of legal expenses).
- 6) For the avoidance of doubt, for the purposes of Requirement (5) above, the following would be in the ordinary and proper course of business:
  - a. Any and all fees incurred or paid in exchange for professional advisory services;
  - b. Any amounts due to be paid to legitimate 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 the Firm on behalf of any third parties and which are to be paid to such third parties;
  - d. Any and all salaries of the Firm's staff, including to its directors, contractors or any other employees, where such salaries have been agreed prior to the imposition of the Requirements.
- 7) For the avoidance of doubt, for the purposes of Requirement (5) above, the following would not be in the ordinary and proper course of business:
  - a. The making of any distribution to the Firm's shareholders whether by way of capital distribution or dividends;
  - b. Subject to Requirement (6) above, any payment to the Firm's shareholders, directors, officers, employees, and/or any connected entities or persons;
  - c. The making of any gift or loan by the Firm to any party; or

d. The entry into any financial reconstruction, sale of any part of the Firm (whether share or asset based) or reorganisation.

8) The Firm must provide written confirmation to the Authority that it is in compliance with these Requirements by 5pm on 3 July 2023, together with a list of all advertising and financial promotions removed.

1.2 The effect of the removal of the payment service in accordance with paragraph 1.1(a) is that the Firm cannot provide any payment services.

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

## **2 REASONS FOR ACTION**

### **Summary**

2.1 The Authority has concluded, on the basis of the facts and matters described below, that it is necessary to vary the Firm's registration by removing the payment services that it provides and imposing the Requirements because it is desirable in order to protect the interests of consumers pursuant to regulation 12(1)(d) of the PSR and it appears the Firm appears to have provided a particular payment service or payment services other than in accordance with its registration pursuant to regulation 12(1)(b).

2.2 The Authority has identified serious concerns that:

(1) The Firm is registered as a payment services firm under the PSR to provide money remittance only; it is not authorised under Part 4A of the Act and it does not hold any permissions to conduct regulated activities. The Authority considers that documents provided by certain consumers of the Firm, and the Firm's account and transactional information suggest that the Firm has conducted unregulated investment activities with certain customers.

(2) The Firm is offering payment and other financial services for which it is not authorised. The Authority considers that the contents of the Firm's website, various YouTube videos purporting to be from the Firm, and various social media posts (all of which remain live) suggest that the Firm may be offering payment accounts and e-money services while not having the relevant permissions to do so.

2.3 As a result, on the basis of the facts and matters described below, the Authority considers variation of the Firm's authorisation by imposition of the Requirements should take immediate effect because the matters set out in this First Supervisory Notice raise serious concerns about the Firm's suitability and demonstrate that the Firm is putting payment service users' funds at risk.

2.4 This action is taken to advance the Authority's consumer protection objective.

## **3 DEFINITIONS**

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

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

“Authority” means the Financial Conduct Authority;

“the Director” means the Firm’s director;

“the Firm” means Samsky Pay Limited;

“PSR” means the Payment Services Regulations 2017;

“Financial Services Register” means the public record maintained by the Authority as required by, inter alia, regulation 4 of the PSR;

“FOS” means the Financial Ombudsman Service;

“FSCS” means the Financial Services Compensation Scheme;

“FSN” means First Supervisory Notice;

“relevant funds” has the meaning given to it by Regulation 23 of the PSR;

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

“Small PI” means Small Payment Institution;

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

“the Website” means the Firm’s website at samskypay.com.

## **4 FACTS AND MATTERS**

### **Background**

- 4.1 The Firm was incorporated on 5 November 2018 as Samsky Travel Limited. It changed its name to Samsky Pay Limited on 17 May 2022.
- 4.2 The Firm is a Small PI. It was registered by the Authority on 19 October 2020 and then again on 1 December 2020 to provide payment services as an agent on behalf of two other financial services firms. On 14 June 2021, the Firm was registered under its own permission. The sole payment service it is registered to provide is money remittance. The Firm is not an authorised firm and holds no permissions under Part 4A of the Act. The Authority has not received an application from the Firm for authorisation.

### 4.3 Complaints

- 4.4 Since September 2022, the Authority has received 9 contacts from customers complaining or expressing concern about the Firm. These complaints have persisted through 2023.
- 4.5 Two consumers say that they were invited by the Director to invest with the Firm and that they subsequently signed investment agreements with the Firm. These consumers say that funds which they have deposited with the Firm have not been returned on request under the terms of their agreement with the Firm. As a result, these two consumers have sustained significant financial losses which exceed £70,000. Both consumers have referred to the use of misleading advertising which they recall referred to the level of protection those would receive from the Firm,

including owing to the fact that the Firm was authorised by the Authority.

- 4.6 Seven consumers also stated that they made payments to the Firm to transfer money overseas, but allege that these payments did not reach their intended recipient.

#### **Unregulated investment activities with consumers**

- 4.7 An example of the Firm's treatment of its customers is Customer A, who the Director invited to invest with the Firm. Customer A signed two investment agreement with the Firm and invested £40,300 between June and August 2022. Customer A stated that they were promised a 5% monthly payment of interest. Customer A informed the Authority that when they tried to withdraw the funds invested with the Firm, the Director told them the Firm would not pay them back because the Firm did not have the money.
- 4.8 It appears that Customer A did not receive advice before investing with the Firm, and they do not appear to know where their investments are held or what they have invested in. Customer A alleges that the only documentation that they were given was an investment agreement from the Firm. Neither agreement gives any further information about the nature of their investments. The Authority has reviewed the Firm's account information to verify the consumer reports. The transaction analysis corroborates the reports and the funds which Customer A invested with the Firm are no longer held in the Firm's bank account.

#### **The Firm acting outside of its permission**

- 4.9 Based on the regulatory permission the Firm holds (as set out in paragraph 4.2) the Firm is able to transfer funds from or to its customers, enabling them to make or receive payments, but it not currently authorised to provide payment accounts, e-money or digital banking services to its customers. The Authority has identified descriptions of the Firm's product and service offering on the Website and social media posts that appear not to align with the regulatory permission that the Firm holds.
- 4.10 In May 2023, the Authority identified the following descriptions of the Firm's services and announcements of new offerings on the Website:
- *"Experience Seamless Digital Banking with Samsky Pay"*
  - *"Open a current account to receive money in UK"*
  - *"Super apps – Digital banking and multi-currency ... With Samky Pay digital banking services, cross-border payment you can send money internationally to your love ones business partner and lot more, you can receive money, wages, and lot of other benefit as well as set up direct debits ... You can check your account balance and statements, manage your transactions ... Experience online banking from the comfort of your home or office easily, with Samsky Pay Digital Banking Mobile app! [sic]"*
  - *"Quick, easy hassle-free payments: Receive money in the UK easily and conveniently. Make transfer payments from your current account – whenever, wherever! You can also set up and manage your Direct Debits. Along with*

*receiving your salary or benefits into your Samsky Pay current account, simply share your account details with your employer or business partner."*

- *"Samsky Pay Ltd is authorised and regulated by the Financial Conduct Authority (FCA) Registration No.928035".*

4.11 The Authority has identified a YouTube account called "Samsky Pay" containing 33 videos which promote the Firm. The Authority has reviewed six of the videos. The videos contain the following claims:

- The Firm is authorised and regulated by the Authority meaning transactions with the Firm are protected and secure;
- The Firm is a bank;
- Customers of the Firm will be provided with an individual current account into which they can deposit funds and receive wages;
- Customers can use their account to set up direct debits.

4.12 The Authority has also conducted a review of the Firm's social media (Twitter, Facebook and Instagram), which contained the following descriptions of its services:

- The Firm is authorised and regulated by the Authority;
- The Firm offers "digital banking" services and invites customers to "Bank with us";
- The Firm offers UK residents a current account service: *"Samsky Pay is now offering a digital bank account which you can use to receive your wages, benefits as well as set up direct debits. ... Open your personal current account today & manage your money, all in one app".*

4.13 As described above, the Firm has permission to carry out the payment services listed at paragraph 1(f) of Part 1 of Schedule 1 of the PSRs (money remittance). "Money remittance", under Regulation 2 of the PSRs, "means a service for the transmission of money ... without any payment accounts being created ...". The Firm does not hold the permissions to carry out payment account services described at paragraphs 1(a)-(c) of Part of Schedule 1 to the PSRs. This means the Firm can currently transfer funds from or to its customers, enabling them to make or receive payments, but it is not currently authorised to provide payment accounts.

4.14 Under Regulation 2 of the PSRs, "payment account" means "an account held in the name of one or more payment service users which is used for the execution of payment transactions".

4.15 The Authority has serious concerns that it is acting outside of those permissions given the descriptions of the Firm's services in its financial promotions.

## **5 FAILINGS AND RISKS IDENTIFIED**

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

- 5.2 In view of the issues identified at paragraphs 5.3 to 5.7 below, the Authority considers the Requirements are appropriate to manage the risk posed by the Firm. The Authority considers that these requirements should be imposed immediately.

**The Firm acting outside its permission: Regulation 12(1)(b) of the PSR**

- 5.3 As summarised at paragraphs 4.1 to 4.15 above, the Authority has very serious concerns that the Firm has been providing its customers with payment accounts, despite not currently having the appropriate permissions to provide payment accounts. The Firm also appears to be advertising e-money and digital banking services despite not having the appropriate permissions to provide these services. Therefore, the Authority considers it is necessary to vary the Firm's authorisation by way of imposing the Requirements, pursuant to Regulation 12(1)(b) of the PSR.

**Consumer protection – Carrying on unregulated investment activity: Regulation 14(1)(d) of the PSR**

- 5.4 The Authority has serious concerns that the Firm may expose consumers to the risk of significant harm.
- 5.5 The Firm is registered as a payment services firm to provide money remittance only; it is not authorised under the Act and does not hold any permissions to conduct regulated activities under Part 4A of the Act. The Authority is concerned that the Firm may have made misleading statements to consumers, and provided regulated investment services without required permissions. Firms require permission given by the Authority under Part 4A of the Act to carry on certain regulated activities. In its dealings with the customers identified above, the Authority is concerned that the Firm appears to have provided investment products or services, entering into written investment agreements and received deposits of funds invested pursuant to those agreements. Managing investments, arranging deals in investments, dealing in investments as principal or agent, and advising on investments are all regulated activities for which a firm must be authorised to carry on in the UK.
- 5.6 The Website and a YouTube video appear to state or otherwise indicate that the Firm is authorised by the Authority and has the relevant permissions, where it does not.
- 5.7 Where consumers invest through an authorised firm with the appropriate permissions, consumers should receive a degree of consumer protection. A consumer dealing with an authorised firm can make a complaint through the Financial Ombudsman Service ("FOS") and, if the firm fails, the consumer can make a claim for compensation from the Financial Services Compensation Scheme ("FSCS").
- 5.8 The Authority has concluded, in light of the matters set out above, that it is necessary to exercise its own initiative power to vary the Firm's registration because the Firm appears to be carrying on unregulated investment activities, providing a payment service or payment services other than in accordance with its registered permission and a variation is desirable in order to protect the interests of consumers. The Authority has concluded that it is necessary to vary the Firm's registration by:

- a) removing its money remittance payment service; and

b) by imposing the Requirements.

5.9 The Authority has concluded that it is necessary to impose the Requirements which stop the Firm conducting unregulated investment activities and prevent any dissipation of relevant funds until such time as the Authority is satisfied that there is no risk to the relevant funds.

5.10 The Authority considers that variation of the Firm's registration by removing its payment service and imposing the Requirements are a proportionate and appropriate means to address the current and immediate risks, and are desirable to protect the interests of consumers in accordance with the Authority's duties under regulation 12(1)(d) of the PSR.

### **Timing and duration of the Requirements**

5.11 It is necessary to impose the Requirements given the seriousness of the risks and the need to protect consumers' funds.

5.12 The Authority considers that it is necessary for the Requirements to remain in place indefinitely.

## **6 PROCEDURAL MATTERS**

### **Decision maker**

6.1 The decision which gave rise to the obligation to give this First Supervisory Notice was made by an Authority staff member under executive procedures according to DEPP 2.5.7G, DEPP 2.5.7B and DEPP 2.5.8G.

6.2 This First Supervisory Notice is given to the Firm under regulation 12(6) of the PSR and in accordance with regulation 12(7) of the PSR.

6.3 The following statutory rights are important.

### **Representations**

6.4 The Firm has the right to make written representations to the Authority (whether or not it refers this matter to the Tribunal). The Firm may also request to make oral representations but the Authority will only consider this in exceptional circumstances according to DEPP 2.3.1AG. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Firm has 28 days from the date on which this FSN is given to refer the matter to the Tribunal. Any notification or representations should be sent to the SPC Decision Making Secretariat ([SPCDecisionMakingSecretariat@fca.org.uk](mailto:SPCDecisionMakingSecretariat@fca.org.uk)).

### **The Tribunal**

6.5 The Firm has the right to refer the matter to which this First Supervisory Notice relates to the Tribunal. The Tax and Chancery Chamber is 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*, the Firm has 28 days from the date on which this First Supervisory Notice is given to it to refer the matter to the Tribunal.

6.6 A reference to the Tribunal can be made by way of a reference notice (Form FTC3) signed by or on behalf of the Firm and filed with a copy of this First Supervisory



Notice. The Tribunal's contact details are: Upper Tribunal (Tax and Chancery Chamber), 5<sup>th</sup> Floor, Rolls Building, Fetter Lane, London EC4A 1NL (telephone: 020 7612 9700; email: [uttc@justice.gov.uk](mailto:uttc@justice.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: <https://www.gov.uk/government/collections/upper-tribunal-tax-and-chancery-chamber->
- 6.8 The Firm should note that a copy of the reference notice (Form FTC3) must also be sent to the Authority at the same time as a reference is filed with the Tribunal. A copy of the reference notice should be sent to [Supervision Manager] (insert email address) and the SPC Decision Making Secretariat ([SPCDecisionMakingSecretariat@fca.org.uk](mailto:SPCDecisionMakingSecretariat@fca.org.uk)).

### **Confidentiality and publicity**

- 6.9 The Firm 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 The Firm should note that section 391(5) of the Act, as applied by paragraph 10 of Schedule 6 of the PSR, requires the Authority, when this First Supervisory Notice takes effect (and this First Supervisory Notice takes immediate effect), to publish such information about the matter to which the notice relates as it considers appropriate.

### **Authority contacts**

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

## **Decision made under Executive Procedures Director, Payments & Digital Assets**

## Annex

### RELEVANT STATUTORY PROVISIONS

1. By sections 1B to 1H of the Act, the Authority has operational objectives which include securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.
2. Part 1 of Schedule 1 to the PSR:  
*"Subject to Part 2, the following, when carried out as a regular occupation or business activity, are payment services—*  
[...]  
*(c) the execution of payment transactions, including transfers of funds on a payment account with the user's payment service provider or with another payment service provider—*  
*(i) execution of direct debits, including one-off direct debits; [...]*  
*(f) money remittance;"*
3. Regulation 2 of the PSRs provides that:
  - *'Money remittance' means a service for the transmission of money ... without any payment accounts being created ..."*  
*'Payment account' means an account held in the name of one or more payment service users which is used for the execution of payment transactions".*
4. Regulation 7(1) of the PSR provides that the Authority may include in the authorisation of an authorised payment institution such requirements as it considers appropriate. Regulation 7(2) of the PSR provides that a requirement may, in particular, be imposed so as to require the person concerned to: 1) take a specified action, or 2) to refrain from taking a specified action.
5. Regulation 8 of the PSR provides that the Authority may, on the application of an authorised payment institution, vary that person's authorisation provided that the Authority is satisfied that the conditions set out in regulations 6(4) to (9) and regulation 22(1) are being or likely to be met. Regulation 8(b) permits the Authority to remove a payment service from those for which it has granted authorisation. Regulation 8(c) of the PSR provides that the Authority may, on the application of an authorised payment institution, vary that person's authorisation by, among other things, imposing a requirement such as may, under regulation 7 of the PSR, be included in an authorisation.
6. Regulation 12(1) of the PSR provides that the Authority may vary the authorisation of an authorised payment institution in any of the ways mentioned in regulation 8 if it appears to the Authority that:  
[...]  
*(b) the person has provided a particular payment service or payment services other than in accordance with the authorisation granted to it.*  
[...]  
*(d) The variation is desirable in order to protect the interests of consumers."*
7. Regulation 12(2) of the PSR provides that a variation takes effect immediately if the notice given under paragraph (6) states that this is the case, or on such date as may be specified. Regulation 12(3) of the PSR provides that a variation may be expressed to take effect immediately or on a specified date only if the Authority, having regard

to the ground on which it is exercising the power under paragraph (1), reasonably considers that it is necessary for the variation to take effect immediately or, as the case may be, on that date.

8. Regulation 12(6) of the PSR provides that, where the Authority proposes to vary a person's authorisation, it must give the person notice.
9. Regulation 15 of the PSR provides that regulations 7 to 12 apply to registration of a small payment institution as they apply to authorisation as a payment institution as if:

"[...]

*(a) references to authorisation were references to registration;*

*(c) in regulation 8 [...]*—

*(i) for "an authorised payment institution" there were substituted "small payment institution"*

10. Regulation 21 of the PSR provides: *"If an authorised payment institution, a small payment institution or a registered account information service provider carries on a payment service in the United Kingdom, or purports to do so, other than in accordance with an authorisation or registration granted to it by the FCA, it is to be taken to have contravened a requirement imposed on it under these Regulations."*
11. Regulation 33 of the PSR provides that: *"Any payment account held by an authorised payment institution or a small payment institution must be used only in relation to payment transactions",* where a 'payment transaction' is defined in regulation 2 as *"an act, initiated by the payer or payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and payee."*
12. Section 391 of the Act, as applied in modified form by paragraph 10 of Schedule 6 to the PSR, provides that:

"[...]

- (5) When a supervisory notice takes effect, the Authority must publish such information about the matter to which the notice relates as it considers appropriate.
- (6) The Authority may not publish information under this section if, in its opinion, publication of the information would be: a) unfair to the person with respect to whom the action was taken (or was proposed to be taken), b) prejudicial to the interests of consumers, or c) detrimental to the stability of the UK financial system
- (7) Information is to be published under this section in such manner as the Authority considers appropriate."

## **RELEVANT HANDBOOK PROVISIONS**

13. The Authority's approach in relation to its own-initiative powers is set out in the Enforcement Guide ("EG"), certain provisions of which are summarised below.
14. EG 19.20 outlines the Authority's policy in respect of the use of its powers under the PSR. EG 19.20.5 provides that the PSR, for the most part, mirror the Authority's investigative, sanctioning and regulatory powers under the Act and that the Authority has decided to adopt procedures and policies in relation to the use of those powers akin to those it has under the Act.

15. The Authority considers that the powers under regulation 12(1) of the PSR are similar to those under sections 55J and 55L of the Act and that the provisions of EG 8 “Variation and cancellation of permission and imposition of requirements on the Authority’s own-initiative and intervention against incoming firms” are applicable.

#### Imposing requirements on the Authority’s own initiative

16. EG 8.2.1 states 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: 1) 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 2) the principle that a restriction imposed on a firm should be proportionate to the objectives the Authority is seeking to achieve.
17. EG 8.2.3 states that in the course of its supervision and monitoring of a firm or as part of an enforcement action, the Authority may make it clear that it expects the firm to take certain steps to meet regulatory requirements. In the vast majority of cases the Authority will seek to agree with a firm those steps the firm must take to address the Authority’s concerns. However, where the Authority considers it appropriate to do so, it will exercise its formal powers under section 55J or 55L of the Act where the Authority considers it appropriate 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 or is concerned that the consequences of a firm not taking the desired steps may be serious.

#### Use of the own-initiative powers in urgent cases

18. 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.
19. EG 8.3.2 states that the Authority will consider exercising its own-initiative power 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.
20. 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 some of the following characteristics: 1) information indicating significant loss, risk of loss or other adverse effects for consumers, where action is necessary to protect their interests; and 2) 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.
21. 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:

EG 8.3.4 (1) the extent of any consumer loss or risk of consumer loss or other adverse effect on consumers. The more serious the loss or potential loss or other adverse effect, the more likely it is that the FCA’s exercise of own-initiative powers will be appropriate, to protect the consumers’ interest.

EG 8.3.4 (2) the extent to which customer assets appear to be at risk. Exercise of the Authority's own-initiative power may be appropriate where the information available to the Authority suggests that customer assets held by, or to the order of, the firm may be at risk.

EG 8.3.4 (3) the nature of the false or inaccurate information provided by the firm. Whether false or inaccurate information warrants the Authority's exercise of its own-initiative powers will depend on matters such as:

- (a) the impact of the information on the FCA's view of the firm's compliance with the regulatory requirements to which it is subject, the firm's suitability to conduct regulated activities, or the likelihood that the firm's business may be being used in connection with financial crime
- (b) whether the information appears to have been provided in an attempt knowingly to mislead the FCA, rather than through inadvertence; and
- (c) whether the matters to which false or inaccurate information relates indicate there is a risk to customer assets or to the other interests of the firm's actual or potential customers.

22. EG 8.4.4 states that examples of requirements that the Authority may consider imposing when exercising its own-initiative power are: 1) a requirement not to take on new business; 2) a requirement not to hold or control client money; and 3) a requirement that prohibits the disposal of, or other dealing with, any of the firm's assets or restrict those disposals or dealings.

#### PERG

23. PERG 15.1, Q5. "[A] payment institution cannot hold funds for a payment service user unless accompanied by a payment order for onward transfer (whether to be executed immediately or on a future date). Funds cannot be held indefinitely. They should not be held for longer than is necessary for operational and technical reasons"
24. PERG 15.1 Q.22. By virtue of the definition of "money remittance" in regulation 2, "[t]he service of money remittance cannot therefore involve the creation of payment accounts..."