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## **FIRST SUPERVISORY NOTICE**

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**To:** **Strowz Ltd**

**Reference Number:** **792373**

**Address:** **3 Waterhouse Square  
138-142 Holborn  
London  
EC1N 2SW**

**Date:** **2 April 2025**

### **1 ACTION**

- 1.1 For the reasons given in this First Supervisory Notice, and pursuant to section 55L(3)(a) of the Financial Services and Markets Act 2000 ("the Act"), the Financial Conduct Authority ("the Authority") has decided to impose the following requirements ("the Requirements") on Strowz Ltd ("the Firm") with immediate effect.

#### Restriction on Activities

1. The Firm must immediately cease carrying on all regulated activities for which it has a Part 4A permission, other than where it has the express written consent of the Authority.
2. The Firm must not accept any further client money (from the Firm's clients or any other third party) into any of the Firm's bank accounts. Should the Firm receive further client money from its own clients following the imposition of the Requirements: (i) the Firm must notify the Authority of this by email within 48 hours of receipt of such money; and (ii) the Firm

must take all reasonable steps to return such money as soon as is reasonably practicable.

3. The Firm must not move or facilitate the movement of client assets, client money or clients, including onboarding, off-boarding or transfer(s), without the prior written consent of the Authority.
4. The Firm must notify the Authority about any additional bank account(s) it intends to open.
5. The Firm must, by 4:00pm on 4 April 2025, disclose to the Authority all bank account held or previously held in the Firm's name or in the Firm's previous name.

#### Assets requirement

6. Save as set out in paragraphs 7 and 8 below, the Firm must not, without the prior written consent of the Authority, in any way dispose of, withdraw, transfer, deal with or diminish the value of any of its own assets, and any funds it holds for, or to the order of customers or investors (whether in the United Kingdom or elsewhere), whether held by the Firm as at the date of the imposition of the Requirements or acquired thereafter.
7. 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).
8. For the avoidance of doubt, for the purposes of paragraph 7 above, the following would be in the ordinary and proper course of business:
  - a) Any fees incurred or paid in exchange for professional advisory services provided to the Firm.
  - b) Any 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.
9. For the avoidance of doubt, for the purposes of sub-paragraph 7 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 paragraph 8(b) above, any payment to the Firm's shareholders, directors, officers, employees, any connected entities or persons.
  - c) The making of any gift or loan by the Firm to any party, or the entry into any financial reconstruction, sale of any part of the Firm (whether share or asset based) or reorganisation.
10. Paragraphs 6 to 9 constitute an assets requirement within the meaning of section 55P(4)(a) of the Act.

### Retention and notification requirements

11. The Firm must secure all books and records and preserve all information, including both physical material and that held via online/cloud-based systems to which the Firm has access.
  12. These books, records and information must be retained in a form and at a location within the UK to be notified to the Authority within 24 hours of the receipt of this notice. The records must be retained in a form and at a location such that they can be provided to the Authority, or to a person named by the Authority, promptly upon its request.
  13. The Firm must publish in a prominent place on all websites and social media accounts in its name (or that it operates) notices setting out the terms and effects of these Requirements, with the content of the notice(s) to be agreed in advance with the Authority.
  14. A Senior Management Function holder of the Firm must provide written confirmation to the Authority by email by 2:00pm each Friday, until such time as it is notified in writing by the Authority that it may cease to do so, that it is in compliance with these Requirements.
- 1.2 These Requirements shall take immediate effect and remain in force unless and until varied or cancelled by the Authority (either on the application of the Firm or of the Authority's own volition).

## **2 REASONS FOR ACTION**

### **Summary**

- 2.1 The Authority has concluded, on the basis of the facts and matters described below that, in respect of the Firm, it is necessary to exercise its power under section 55L(3)(a) of the Act to impose the Requirements on the Firm because the Firm is failing, or is likely to fail, to satisfy the Suitability Threshold Condition (Paragraph 2E of Schedule 6 of the Act) and the Effective Supervision Threshold Condition (Paragraph 2C of Schedule 6 of the Act).

### *Suitability*

- 2.2 On 20 March 2025, members of the Authority's Supervision Division attended the Firm's offices and conducted a visit (the "Visit"). During the Visit, the Authority identified a number of serious concerns in relation to the Firm. On 21 March 2025, the Authority wrote to the Firm to set out these concerns, which included material concerns regarding the Firm's financial crime systems and controls and client money controls (the "21 March Letter"). At the same time, the Authority invited the Firm to enter into requirements restricting the Firm's ability to conduct regulated activities and limiting the Firm's ability to use its assets or deal with or dispose of assets it may hold on behalf of clients.
- 2.3 From 20 March 2025 to 26 March 2025, following the Visit, the Firm made significant payments out of the Bank A Operational Account to an unregulated entity.
- 2.4 On 26 March 2025, following the Visit, the Firm made a series of payments from the Bank A Client Account to the Bank A Operational Account, each at £99,999 and totalling £999,991. The Firm then made a payment of just over £900,000, described

as an “urgent transfer”, to an account of a third-party entity which appears to be connected to individuals linked to Company A.

- 2.5 The Authority has also identified from an analysis of the Firm’s bank accounts very significant sums that have been paid from the Bank A Client Account to third parties, including Company A.
- 2.6 During the Visit, the Firm informed members of the Authority’s Supervision Division that individuals connected with Company A had access to the Bank A Client Account. Further, during the Visit, the Firm provided information to members of the Authority’s Supervision Division which raised very serious concern that the Firm did not have adequate systems to prevent the comingling of client money held by the Firm and the Firm’s own funds, as well as client money purportedly held by clients of Company A.
- 2.7 The Authority has serious concerns that the Firm is failing to satisfy the Suitability Threshold Condition because it is not a fit and proper person as (a) its affairs are not being conducted in an appropriate manner having regard in particular to the interest of consumers, and (b) its business is not being, or will not be, managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner.

#### *Effective Supervision*

- 2.8 During the Visit, when asked to provide information on all bank accounts the Firm held in its name, it failed to disclose details of with the Bank C Account.
- 2.9 The Firm has, despite being engaged in correspondence with the Authority since 21 March 2025, also failed to disclose material information, including the transactions referred to at paragraphs 2.3 to 2.5. The Firm is required, pursuant to Principle 11 of the Principles, to deal with the Authority in an open and cooperative way and to disclose to the Authority appropriately anything relating to the Firm of which the Authority would reasonably expect notice.
- 2.10 The Authority therefore has serious concerns that it will not receive adequate information from the Firm, and those persons with whom the Firm has close links, to enable it to determine whether the Firm is complying with the requirements and standards under the regulatory system. The Authority therefore considers the Firm is failing, or likely to fail, to satisfy the Effective Supervision Threshold Condition.

#### *The Authority’s operational objective of consumer protection*

- 2.11 The Authority’s operational objectives include the objective requiring the Authority to ensure an appropriate degree of protection for consumers (Section 1C of the Act). For the reasons set out in this Notice, it appears to the Authority that it is desirable to exercise the power under section 55L(3)(a) of the Act in order to advance the Authority’s consumer protection objective.

### **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 Application” means the change in control application submitted in relation to the Firm and as described at paragraph 4.4 of this Notice;

"the Authority" means the Financial Conduct Authority;

"the Bank A Client Account" means the client account with Bank A in the Firm's name;

"the Bank A Operational Account" means the operational account with Bank A in the Firm's name;

"Bank B Account" means the account with Bank B in the Firm's name;

"Bank C Account" means the account held or previously held with Bank C in the Firm's name;

"Company A" means the company that has received money from the Firm (among other things), including as described in paragraph 4.6 of this Notice;

"Effective Supervision Threshold Condition" means the condition set out in Paragraph 2C of Schedule 6 of the Act and COND 2.3

"the Firm" means Strowz Ltd;

"FSN" means a First Supervisory Notice;

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

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

"Platform A" means the investment platform which the Firm informed the Authority it had arranged for its clients to invest on;

"Principles for Businesses" means the Authority's rules as contained in PRIN 2.1.1R or the Handbook;

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

"Suitability Threshold Condition" means the condition set out in Paragraph 2E of Schedule 6 of the Act and COND 2.5;

"Tribunal" means the Upper Tribunal (Tax and Chancery Chamber); and

"the Visit" means the unannounced visit by members of the Authority's Supervision Division to the Firm's office premises on 20 March 2025.

## **4 FACTS AND MATTERS**

### **Background**

- 4.1 The Firm was incorporated on 28 December 2016. The Firm provides an advisory and discretionary portfolio investment management service through an application. The Firm operates the website domain names <https://strowz.com/> and <https://marketsflow.com/>.
- 4.2 The Firm was authorised by the Authority on 28 September 2018. The Firm has permission to undertake the following regulated activities:

- 1) Advising on Investments (ex Pension Transfers/Opt Outs);
- 2) Arranging (bringing about) deals in investments;
- 3) Arranging safeguarding and administration of assets;
- 4) Dealing in investments as agent;
- 5) Making arrangements with a view to transactions in investments;
- 6) Managing investments; and
- 7) Agreeing to carry on a regulated activity.

4.3 The Firm has permission to hold and control client money. The holding of client money is not in and of itself a regulated activity, but a firm that holds client money is subject to various rules imposed set out in the Client Asset Sourcebook ("CASS"), which is part of the Authority's Handbook of rules and guidance.

### **Engagement with the Firm**

- 4.4 On or shortly before 12 March 2025, the Authority was notified of a change in control application relating to the Firm, which was submitted pursuant to section 178 of the Act (the "Application"). The Application related to the proposed acquisition by Company A, an unregulated entity, of shares in the Firm.
- 4.5 Shortly after 12 March 2025, the Authority identified that the Firm appeared not to have submitted certain regulatory returns on time and did not appear to have submitted a client assets audit report during 2022, 2023 and 2024, as it was required to do within four months of the end of the relevant reporting period, pursuant to SUP 3.10.7R of the Handbook.
- 4.6 On 20 March 2025, members of the Authority's Supervision Division attended the Firm's offices and conducted the Visit. During the course of the Visit, information was provided by the Firm to members of the Authority's Supervision Division:
- 1) In response to a request to provide details of bank accounts held in the Firm's name, the Firm stated that it held bank accounts with Bank A (including the Bank A Client Account) and had applied for an account with Bank B but that this account was not yet operational.
  - 2) The Firm stated that an individual understood to be employed in a senior role at Company A was a signatory to the Bank A Client Account.
  - 3) The Firm stated that it had recently started to accept payments from individuals it understood to be clients of Company A into the Bank A Client Account, despite that being an account intended to hold client money of the Firm's clients. The Firm explained this arrangement as being, in its view, satisfactory on the basis that Company A was a shareholder in the Firm. The Application had not at this point been approved by the Authority and has since been withdrawn by Company A.
- 4.7 The members of the Authority's Supervision Division informed the Firm during the course of the Visit that they had very serious concerns relating to these matters and informed the Firm that, in light of these, the Authority would be considering requesting the Firm enter into voluntary requirements. The Authority also informed the Firm that it should not, in the meantime, take any steps to move monies from the Firm's accounts (including client money).
- 4.8 Due to the issues identified at the Visit by members of the Authority's Supervision Division, on 21 March 2025, the Authority wrote to the Firm (the "21 March Letter"). The 21 March Letter set out concerns relating to (among other things):

- 1) the Firm's apparent failure to submit regulatory returns and produce client asset audit reports;
- 2) the information provided by the Firm during the Visit which indicated the Firm undertakes no due diligence on third parties that receive money directly from the Firm but where the Firm has no other relationship with those third parties (as clients or otherwise);
- 3) the information that Company A had, for reasons which were entirely unclear, access to the Bank A Client Account; and
- 4) the Firm's apparent failure to adhere to fundamental rules relating to the segregation and safeguarding of the Firm's client assets.

4.9 At the same time as sending the 21 March Letter, the Authority invited the Firm to apply for the imposition of requirements on the Firm's Part 4A permission (the "21 March Draft VREQ"). The Authority explained in the 21 March Letter that, in view of the severity of the concerns it had identified during the Visit, it would be appropriate for the Firm to apply for the imposition of the 21 March Draft VREQ to mitigate the risks, particularly the risks to client money. The 21 March Draft VREQ contained requirements that the Firm cease conducting regulated activities and agree not to deal with or dispose of its assets, and any client assets, absent the prior written consent of the Authority.

4.10 On 26 March 2025, in response to the 21 March Letter, the Firm (via its solicitors) sent its substantive response and referred to certain remedial steps the Firm had taken or would take to address the concerns of the 21 March Letter. The Firm explained, however, that it was not prepared to agree to the 21 March Draft VREQ.

4.11 On 27 March 2025, the Authority responded to the Firm's letter of 26 March (the "27 March Email"). The 27 March email stated, among other things, that the Authority remained seriously concerned that the risks identified remain unaddressed, and emphasised that the request for the Firm to apply for the 21 March Draft VREQ was now more urgent on the basis that the Firm's letter of 26 March had indicated that the Firm did not consider its current regulated business was sustainable and did not have senior managers with appropriate regulatory experience. Among other things, the 27 March Email also stated:

*"In addition, we reiterate what we conveyed to your client last week during our visit, which is that we expect the firm to secure and preserve all client money rather than immediately returning money to clients in haste including those funds pertaining to [Company A] and other third parties which should not be moved at this stage. Given our serious concerns around the state of the firm's CASS controls, doing so may result in consumer detriment, and no money should be transferred into or out of the firm's control."*

4.12 On 28 March 2025, the Firm (via its solicitors) wrote to the Authority to note that it was now "willing to apply for the imposition of" a voluntary requirement. On 29 March 2025, the Firm provided a revised draft set of voluntary requirements which it indicated it would be prepared to agree to. This included a suggested exception to the restriction on regulated activities to permit the "return of assets to regulated clients" which were clients that "predate the involvement of Company A by many months" and whose assets were held at Platform A. The Firm explained that it considered this appropriate as it was "firmly of the view that allowing this exception will be in the clear interests of those customers" and would "avoid unnecessary worry on the part of those customers."

4.13 On 29 March 2025, the Firm informed the Authority that it had an account with Bank B which was operational ("the Bank B Account").

- 4.14 On 30 March 2025, the Authority requested further information from the Firm to assist consideration of the revised voluntary requirements proposed by the Firm, including information relating to client money or assets held with Platform A.
- 4.15 The Authority received information from Platform A on 31 March 2025, which states that it does not hold investments in the names of any known clients of the Firm but, instead, holds investments on behalf of the Firm itself. The Authority has concerns that the Firm may not therefore be complying with CASS 6.2.3R by failing to have registered the assets with Platform A correctly.
- 4.16 On 1 April 2025, the Firm's legal advisers responded to queries from the Authority sent on 30 March 2025, stating that the Firm was ready to apply for the 21 March Draft VREQ but only if the requirements were varied to allow for return of assets to regulated clients predating the involvement of Company A.
- 4.17 Also on 1 April 2025, the Firm confirmed to Supervision on a teleconference with the Firm that the only accounts open in its name were the Bank A Client Account, the Bank A Operational Account, and the bank account with Bank B which was disclosed on 29 March 2025. The Firm indicated that there were no client monies held with Bank A. The Firm indicated that there had been no third-party payments made from the Bank A Client Account or the Bank B Account since the date of the Visit.

#### **Discovery of further Firm bank accounts**

- 4.18 Following the Visit, the Authority has discovered that the Firm has held a bank account with Bank C ("the Bank C Account"). Despite having been specifically asked to provide details of all bank accounts during the Visit on 20 March 2025, a request which was repeated in a telephone call on 1 April 2025, the Firm failed to disclose the existence of the Bank C Account. The Authority considers that there is no reasonable excuse for the Firm having failed to inform the Authority of the existence of this account and considers that the Firm may have knowingly withheld this information.

#### **Bank statement analysis**

- 4.19 Shortly after the Visit, the Authority obtained bank statements from the banks that it understood the Firm held accounts with, including Bank A. The Authority has since undertaken an analysis of certain of the Firm's bank accounts.
- 4.20 The Bank A Client Account appears to have been received a total of £4,203,379.71 from named payees in the period from 10 October 2024 to 26 March 2025. In that same period, payments totalling £510,296.59 have been paid from the Bank A Client Account to individuals that appear to be the Firm's clients.
- 4.21 The Authority has identified significant payments out from the Bank A Client Account to accounts that do not appear to be accounts of clients of the Firm. This includes:
- 1) £1,550,000 paid to accounts linked to Company A and its parent between 13 February 2025 and 14 March 2025;
  - 2) £48,000 to an unregulated;
  - 3) £55,000 to an individual account.
- 4.22 In total, the Authority has identified payments totalling £2,218,446 being paid out of the Bank A Client Account, including those referred to at paragraph 4.21, where the recipients do not appear to be clients of the Firm and where there is no reasonable explanation as to why the Firm was making payments from the Bank A Client Account to those recipients.



- 4.23 In the period 7 October 2024 to 11 March 2025, a total of £1,907,568.13 was transferred between the Bank A Client Account and the Bank A Operational Account. The Authority has identified payments totalling £2,792,711 made from the Bank A Operational Account to accounts in the name of third parties, including entities and individuals understood to be linked to Company A. As of 27 March 2025, the Bank A Operational Account had a balance of £164,647.40.
- 4.24 Having identified the existence of the Firm's account with Bank C, the Authority has identified that it may also have been an account used to receive client money (generally received in Euros). Between 10 January 2025 and 28 February 2025, the account in the Firm's name with Bank C received €405,211. Between 17 January 2025 and 20 February 2025, the Authority has identified payments totalling £262,681.79 being paid from the account with Bank C to various unregulated entities, including accounts understood to be connected to Company A.

### **Transactions following the Authority's Visit**

- 4.25 The bank statements for the Bank A Client Account and the Bank A Operational Account reveal that:
- 1) Between 20 March 2025 and 26 March 2025, following the Visit, the Firm made significant payments out of the Bank A Operational Account to an unregulated entity.
  - 2) On 26 March 2025, following the Visit, the Firm made a series of payments from the Bank A Client Account to the Bank A Operational Account, each at £99,999 and totalling £999,991. The size of the individual transactions strongly suggests, in the Authority's view, that the Firm deliberately set the transaction value at a level just below £100,000, in order to circumvent any restrictions that may have existed at Bank A in relation to the Bank A Client Account. On 26 March 2025, the Firm then made a payment of just over £900,000, described as an "urgent transfer", to an account of a third-party which appears to be connected to individuals linked to Company A.
- 4.26 As at 20 March 2025, being the date of the Visit, the Bank A Client Account balance was £1,008,931.47. As at 28 March 2025, the Bank A Client Account balance was nil.
- 4.27 The transactions described at paragraph 4.25 occurred despite the Authority having expressly communicated that the Firm should not move client money, given the severity of the client money control concerns, and (in relation to the transactions from 21 March 2025) despite having also received the 21 March Letter and been made aware of the extent and nature of the Authority's concerns. There is no reasonable excuse for those transactions to have occurred. The Authority considers it highly likely that they were undertaken in deliberate disregard for the Authority's requests to the contrary and to dissipate assets held in the Bank A Client Account.

## **5 CONCLUSION**

### Threshold Conditions

- 5.1 The Authority has serious concerns about the Firm's ability to meet the Threshold Conditions. The Threshold Conditions are minimum requirements that firms need to meet in order to be authorised and to continue carrying on regulated activities. In particular, the Authority considers that the Firm is failing, or is likely to fail, to

satisfy the Suitability Threshold Condition and the Effective Supervision Threshold Condition because it appears that the Firm's may have:

- 1) Handled client money without having adequate systems and controls to prevent client money from being comingled with the Firm's own funds and to prevent third-parties from potentially accessing client money held by the Firm on behalf of its clients;
- 2) Dissipated client money from the Bank A Client Account following engagement with the Authority and which had put the Firm on notice as to the Authority's serious concerns as regards the Firm's regulatory compliance;
- 3) Deliberately failed to disclose information to the Authority in relation to bank accounts in the Firm's name and transactions that took place following the Visit which were highly material to the Firm's ability to satisfy the Threshold Conditions.

#### The Authority's operational objective of consumer protection

- 5.2 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). For the reasons set out above, the Authority is concerned that the Firm represents a serious ongoing risk to consumers.
- 5.3 On the basis of the facts and matters set out, it appears to the Authority that it is desirable to impose these requirements in order to advance the consumer protection objective contained in Section 1C of the Act.
- 5.4 The Authority has concluded, in light of the matters set out above, that it is necessary to exercise its own-initiative power under section 55L(3)(a) of the Act by imposing the Requirements to prevent the Firm from carrying out any regulated activity, and to restrict the Firm's ability to deal with or dispose of its assets, with immediate effect in order to protect the interests of consumers.
- 5.5 The Authority considers that the Requirements are a proportionate and appropriate means to address the current and immediate risks, and are desirable in order to advance the Authority's operational objective of consumer protection.

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

- 5.6 It is necessary to impose the Requirements on an urgent basis given the seriousness of the risks and the need to protect consumers.
- 5.7 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 2.3.7G 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 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. The deadline for providing written representations and notifying the Authority that the Firm wishes to make oral representations is 14 days from the date of the FSN or such later date as may be permitted by the Authority. Any notification or representations should be sent to [rob.shaw@fca.org.uk](mailto:rob.shaw@fca.org.uk) and 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 part of the Tribunal which, amongst other things, hears references arising from decisions of the Authority. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Firm has 28 days from the date on which this First Supervisory Notice is given to it to refer the matter to the Tribunal.

6.6 A reference to the Tribunal can be made by way of a reference notice (Form FTC3) signed by or on behalf of the Firm and filed with a copy of this First Supervisory Notice. The Tribunal's contact details are: The Upper Tribunal, Tax and Chancery Chamber, 5<sup>th</sup> Floor, Rolls Building, Fetter Lane, London EC4A 1NL (telephone: 020 7612 9730; email: [uttc@hmcts.gsi.gov.uk](mailto:uttc@hmcts.gsi.gov.uk)).

6.7 Further information on the Tribunal, including guidance and the relevant forms to complete, can be found on the HM Courts and Tribunal Service website: <http://www.justice.gov.uk/forms/hmcts/tax-and-chancery-upper-tribunal>

6.8 The Firm should note that a copy of the reference notice (Form FTC3) must also be sent to the Authority at the same time as a reference is filed with the Tribunal. A copy of the reference notice should be sent to [rob.shaw@fca.org.uk](mailto:rob.shaw@fca.org.uk) 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 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 For more information concerning this matter generally, contact Rob Shaw of the Authority ([Rob.Shaw@fca.org.uk](mailto:Rob.Shaw@fca.org.uk))

6.12 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)).

**Director, Supervision, Policy and Competition – 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, and protecting and enhancing the integrity of the UK financial system.
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)).
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)).
4. Section 55Y(3) of the Act allows a requirement to take effect immediately (or on a specified date) if the Authority, having regard to the ground on which it is exercising its own-initiative power, reasonably considers that it is necessary for the requirement to take effect immediately (or on that date).
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."

### **RELEVANT REGULATORY PROVISIONS**

#### **The Threshold Conditions**

6. 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 55L or section 55J of the Act if, among other things, a firm is failing to satisfy any of the Threshold Conditions or is likely to do so.
7. COND 2.5.1AUK reflects the provisions of the Act (Paragraph 2E to Schedule 6) to the effect that a firm must be fit and proper having regard to all the circumstances. These can include the nature of the firm's connection with any person (COND 2.5.1AUK(1)(a) and the need to ensure its affairs are conducted in an appropriate manner having regard to the needs of consumers (COND 2.5.1AUK(c)) and whether the firm has complied and is complying with the Authority's requirements (COND 2.5.1AUK(1)(d)).

8. COND 2.5.4G provides examples of the kind of general considerations to which the Authority may have regard when assessing whether a firm will satisfy, and continue to satisfy, the Suitability Threshold Condition. These include, but are not limited to, whether the firm conducts its business with integrity and in compliance with proper standards, has a competent and prudent management and can demonstrate that it conducts its affairs with the exercise of due skill, care and diligence.

### The Enforcement Guide

9. 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.
10. 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)).
11. 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)).
12. EG 8.2.3 states that in the course of its the Authority 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)).
13. 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.
14. 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.
15. EG 8.3.3 states that it is not possible to provide an exhaustive list of the situations that will give rise to such serious concerns, but they are likely to include one or more of four listed characteristics, these include: 1) information indicating significant loss, risk of loss or other adverse effects for consumers, where action is necessary to protect their interests; (3) evidence that the firm has submitted to the Authority inaccurate or misleading information so that the Authority becomes seriously concerned about the firm's ability to meet its regulatory obligations; 4)

circumstances suggesting a serious problem within a firm or with a firm's controllers that calls into question the firm's ability to continue to meet the threshold conditions.

16. 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 loss, or risk of loss, or other adverse effect on *consumers*. The more serious the loss or potential loss or other adverse effect, the more likely it is that the *FCA's* exercise of *own-initiative powers* will be appropriate, to protect the consumers' interests.

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

EG 8.3.4 (3) The nature and extent of any false or inaccurate information provided by the firm. Whether false or inaccurate information warrants the *FCA'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;

(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.

EG 8.3.4 (4) The seriousness of any suspected breach of the requirements of the legislation or the *rules* and the steps that need to be taken to correct that breach.

17. 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.