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## **FIRST SUPERVISORY NOTICE**

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To: **HD Administrators LLP**

Of: **Westgate House  
3 The Triangle  
Enterprise Way  
Nottingham  
Nottinghamshire  
NG2 1AE**

FSA Reference  
Number: **465359**

Date: **22 March 2012**

### **1. ACTION**

1.1. For the reasons listed below and pursuant to section 45 of the Financial Services and Markets Act 2000 (the “Act”), the FSA has decided to vary with immediate effect, the permission granted to HD Administrators LLP (“HDA”) pursuant to Part IV of the Act (“HDA’s Part IV permission”) by:

- (1) imposing a requirement that, HDA may not carry on any of the regulated activities in HDA’s Part IV permission;
- (2) imposing a requirement, pursuant to section 43 and 48 of the Act, prohibiting HDA from releasing, disposing of or otherwise dealing with any of its assets so long as the requirement is in force; and
- (3) imposing a requirement on HDA’s Part IV permission that pursuant to section 43(2) and section 43(4) of the Act HDA shall, through its officers and staff (whether acting on behalf of HDA or on behalf of any other entity), procure that assets held in accounts of HDA’s wholly owned subsidiary, HD Trustees

Limited, comprising pension scheme fund assets (“HD Scheme Funds”) at any institution may not, so long as the requirement is in force, be released.

## **2. REASONS FOR ACTION**

2.1. The FSA has serious concerns, on the basis of the facts and matters described below, that HDA may be failing to meet Threshold Conditions 4 (Adequate resources) and 5 (Suitability) for the following reasons:

(1) it lacks a competent and prudent management as its two approved persons, Kathryn Clark (“Mrs Clark”) and Michelle King (“Ms King”), do not appear to be fit and proper:

(a) Mrs Clark was arrested by Nottinghamshire Police on 2 March 2012 on suspicion of fraud by false representation and money laundering in relation to Arck LLP (“Arck”), an unauthorised firm at which she is one of two managing members. [REDACTED]

[REDACTED] Mrs Clark appears to have received, circulated or been involved in the provision of forged bank statements purporting to relate to the Arck General Client account at Yorkshire Bank to Arck investors;

(b) In addition, in the course of executing search warrants on 2 March 2012 Nottinghamshire Police discovered at Mrs Clark’s property:

(i) *prima facie* physical evidence which the FSA considers is likely to give rise to allegations of attempted falsification of a Yorkshire Bank bank statement; and

(ii) *prima facie* physical evidence which the FSA considers is likely to give rise to allegations of attempted falsification of signatures of third parties on Arck-related documentation

(c) Mrs Clark has not informed investors of her executive role at Arck (and the significant financial benefit she received from it). The FSA considers that Mrs Clark’s roles in Arck LLP and HDA to give rise to a

conflict of interest. These circumstances call into question Mrs Clark's fitness and propriety (honesty, integrity and reputation) in accordance with FIT 2.1;

- (d) Ms King informed the FSA on 2 March 2012 that she was unaware that she was approved to perform a controlled function at HDA; she could not adequately explain how a small self invested personal pension ("SIPP") operated and did not understand her regulatory responsibilities. She said she acted purely as an administrator. These circumstances call into question her fitness and propriety (competence and capability) in accordance with FIT 2.2;

- (2) its connections to Arck, through Mrs Clark. Arck is currently in provisional liquidation as a result of a successful civil action by investors. In bringing injunctive proceedings, investors in Arck (some of whom invested through HDA and the HD personal pension scheme) allege the firm has misappropriated their funds and then misrepresented the financial position of the firm through the provision of forged bank statements via Mrs Clark and the second managing member of Arck, Mr Clay. Both Mrs Clark and Mr Clay are also directors of HD Trustees Limited, the pension scheme trustees, with access to the bank accounts of the pension scheme and the pension scheme trustee and the pension scheme members' assets; and
- (3) Mrs Clark, on behalf of HDA, failed adequately and regularly to calculate the value of assets held within the HD personal pension scheme. This may have resulted in significant overpayments being made to customers with the consequence that such customers may incur subsequent unauthorised payment or tax charges when taking their pension benefits in breach of tax and/or pension legislation.

2.2. The FSA also believes that HDA has breached Principle 10 (Client's Assets) of the FSA's Principles for Businesses, CASS 7.6R and 7.8.1R and Section 20 of the Act as it is holding client money in bank accounts in the name of HDA without having the appropriate trust letters in place, without carrying the appropriate internal and

external client money reconciliations and holding client money outwith its Part IV permission.

- 2.3. The FSA has serious concerns which suggest that HDA is failing, and will continue to fail, to satisfy the threshold conditions set out in Schedule 6 to the Act (the “Threshold Conditions”) in that the FSA is not satisfied that HDA is a fit and proper person having regard to all the circumstances (Threshold Conditions 4 – Adequate resources and Threshold Conditions 5 – Suitability).
- 2.4. The FSA also considers that these facts and matters demonstrate that there is a risk to consumers if HDA is allowed to continue to operate. Whilst at present HDA is closed to new business, funds and assets of the HD personal pension scheme are at risk of dissipation arising from Mrs Clark’s apparent lack of honesty, integrity and reputation, her ongoing operation of the scheme and her and Mr Clay’s control over the bank accounts of the pension scheme and the related pension scheme trustee.
- 2.5. Presently, a large number of Arck investors, both directly and through pension arrangements would be unaware that Arck is in liquidation and that their investment may have been lost. On 20 March 2012, articles appeared in the financial press concerning the failure of Arck, the police investigations into Mrs Clark and Mr Clay and their connection to HDA and the HD personal pension scheme. The FSA considers that once customers and their financial advisers become aware of these matters, many will instruct HDA to liquidate their clients’ investments and either repay the money to the investor and/or transfer to another pension scheme. The FSA considers that it is necessary to take the action referred to in paragraph 1.1 above to safeguard members’ and investors’ assets.

#### **FACTS AND MATTERS RELIED ON**

- 2.6. HDA was authorised by the FSA in 26 April 2007 to establish, operate and wind up personal pension schemes and is the operator and the administrator of the HD personal pension scheme (the “pension scheme”). Mrs Clark and Ms King are approved to perform the controlled function of partner (CF4). Mrs Clark is also approved to perform the controlled functions of Compliance Oversight (CF10) and Money Laundering Reporting (CF11).

- 2.7. The pension scheme is used as an investment savings vehicle that provides benefits on retirement for the member. The member directs the investment accounts and those accounts are operated jointly by the member or pension scheme trustee and can make investments within those allowed by Her Majesty's Revenue and Customs ("HMRC") regulations.
- 2.8. As at the date of this notice, the FSA understands that the pension scheme has 422 members.
- 2.9. Arck promoted a number of unregulated investments. Arck is not an authorised firm. It is owned and controlled by Mrs Clark and Mr Clay. Both Mrs Clark and Mr Clay are connected to HDA. Mrs Clark is an approved person at HDA and is approved to perform the controlled functions of partner (CF4), compliance oversight (CF10) and money laundering reporting (CF11). Mr Clay is a director of the pension scheme trustee company (along with Mrs Clark and Ms King), which is 100% owned by HDA. He is not an approved person.
- 2.10. Arck is subject to a civil claim by investors who allege they have lost in excess of £20 million. Approximately £1.3million was invested in Arck through the HDA pension scheme, with a further £4.5million being invested through HDA but not through a pension arrangement. The FSA also understands that investments have been placed with Arck through other pension arrangements.
- 2.11. In response to enquiries made of Arck by investors as to the funds it held, Mr Clay sent an email dated 29 July 2011 to Mr MM (an IFA acting on behalf of investors) attaching a bank statement purportedly showing the balance of the Arck General Client account at Yorkshire Bank to be £12,269,425 as at 1 July 2011. In fact, at this date, the real balance was £25.87. Mrs Clark is shown in the email chain having forwarded the attached bank statement to Mr Clay a few minutes beforehand.
- 2.12. A further email was sent by Mr Clay to Mr PM (another IFA acting on behalf of investors) on 7 November 2011 attaching a further bank statement which had again been forwarded to him by Mrs Clark a short time beforehand. This statement purportedly showed the balance in Arck's General Client account at Yorkshire Bank

to be £13,750,000 as at 30 September 2011. In fact, at this date, the account held a balance of £25.90.

- 2.13. Arck is now under investigation by Nottinghamshire Police who are also investigating [REDACTED] Mrs Clark. Search warrants were executed by Nottinghamshire Police on 2 March 2012, in the course of which they siezed documents and information from three different premises. [REDACTED] Mrs Clark were arrested on suspicion of fraud by false representation and money laundering and were later released on police bail pending further investigations.
- 2.14. Both individuals have been asked to comment in police interviews on the bank statement dated 1 July 2011 referred to above. Mrs Clark refused to comment [REDACTED]  
[REDACTED]  
[REDACTED].
- 2.15. During the search of Mrs Clark's home, the police discovered discovered *prima facie* physical evidence that the FSA considers is likely to give rise to allegations of attempted falsification of a Yorkshire Bank bank statement and falsification of a signature of a third party in relation to Arck documentation.
- 2.16. Ms King was not arrested and told the FSA on 2 March 2012 that she was not aware that she held any controlled functions at HDA, she did not know that she was partner in HDA, did not understand how a SIPP operated and did not understand the regulatory responsibilities that such controlled functions carried.
- 2.17. In an urgent meeting with Mrs Clark on 15 March 2012, Mrs Clark was asked by the FSA to explain how she managed the potential conflict of interest between her position as a partner in the pension scheme administrator, a trustee of the pension scheme and managing member of Arck. Her explanation demonstrated that she had not considered whether any potential conflicts of interest arose and that her role was not made clear to investors. She has received in excess of £360,000 from Arck since 2006.
- 2.18. Mrs Clark also confirmed on 15 March 2012, that although she was aware of the ongoing financial position of the Arck investments, she had continued to value the

Arck investment within each member's pension scheme fund as at the original investment amount, rather than its true current value. This failure to value the members' pension fund investments appropriately meant that any benefit payment calculations would be inaccurate. Any subsequent retirement benefits to the member from his pension scheme funds would be in excess of those allowed under HMRC pension and/or tax legislation, leading to unauthorised payments which could subject the members to an authorised payment charge and additional tax charges on the member.

- 2.19. The FSA is further concerned about HDA's handling of client money. HDA has permission to hold client money but this permission is confined to holding and controlling client money and assets in respect of the personal pension scheme(s) that the firm operate. However, HDA was holding client money in several HDA accounts in respect of an investment vehicle called Joyston. This money came directly from investors and from other pension schemes. Holding money for other pension schemes and directly from investors was outside its Part IV permission in relation to holding client money and is therefore a breach of Section 20 of the Act.
- 2.20. In addition, HDA failed to carry the appropriate internal and external client money reconciliations in accordance with CASS 7.6R and CASS 7 Annex 1G and also failed to have in place the necessary trust acknowledgment letters in place in breach of CASS 7.8.1R.
- 2.21. The FSA is particularly concerned regarding the current position given that:
- (1) there is a risk of dissipation of customer and pension scheme members' assets which are under the control of HDA and Mrs Clark and the other pension scheme trustees;
  - (2) there is a risk that HDA is unable adequately to operate the pension scheme given the inadequacy of the resources currently in place;
  - (3) HDA client money procedures appear to be deficient insofar as the procedures did not cover the requirements set out in CASS such as calculations, reconciliations or notification requirements. HDA not conducted a tax reclaim account reconciliation in a timely manner or conducted daily client money

reconciliations (both of which are required by FSA rules - CASS 4.3.89 and CASS 4.3.87 respectively);

- (4) the FSA's serious concerns about Mrs Clark's honesty and integrity and Ms King's competence and capability are such that the FSA is unable to satisfy itself that the pension scheme is being or can be operated in compliance with regulatory requirements or that customers interests will be protected if we do not act to cease all regulated activities with immediate effect; and
- (5) both Mrs Clark and Mr Clay have access to HDA's and the pension scheme's bank accounts, effectively allowing HDA's assets and HD pension scheme assets belonging to HDA's customers but held by other entities) to be transferred from the accounts with immediate effect without oversight from a reputable third party who could prevent the dissipation of funds.

### **3. FAILINGS**

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

3.2. From the facts and matters described above the FSA, having regard to its regulatory objectives, has reached the following conclusions:

- (1) HDA appears to be failing, and likely to continue to fail, to satisfy Threshold Conditions 4 and 5 as it lacks fit and proper persons and a competent and prudent management and there are no other approved persons to assume responsibility;
- (2) the risk of loss or other adverse effect on consumers by HDA's senior management remaining in situ, causes the FSA to have very serious concerns about HDA such that the exercise of the FSA's own-initiative power to vary HDA's Part IV permission with immediate effect is an appropriate and reasonable response to those concerns;
- (3) HDA appears to be operating in breach of Principle 10 of the FSA's Principles for Businesses and is failing to adequately protect client money;



- (4) it is desirable to exercise the FSA's own initiative power to vary and add a requirement to HDA's Part IV permission and to impose an assets requirement with immediate effect to meet its regulatory objectives and the objective of the protection of consumers; and
- (5) in support of the FSA's consumer protection objective, the exercise of the FSA's own-initiative power to vary and add a requirement to the Firm's Part IV Permission and to impose an assets requirement with immediate effect is an appropriate response to these concerns.

#### **4. PROCEDURAL MATTERS**

##### **Decision Maker**

- 4.1. The decision which gave rise to the obligation to give this First Supervisory Notice was made by the Acting Chairman of the Regulatory Decisions Committee.
- 4.2. This First Supervisory Notice is given to HDA under section 53(4) and in accordance with section 53(5) of the Act, and is being served on HDA at its place of business as last notified to the FSA. The following statutory rights are important.

##### **The Tribunal**

- 4.3. HDA has the right to refer the matter to which this First Supervisory Notice relates to the Upper Tribunal (the "Tribunal"). The Tax and Chancery Chamber is the part of the Tribunal which, amongst other things, hears references arising from decisions of the FSA. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, HDA has 28 days from the date on which this First Supervisory Notice is given to HDA to refer the matter to the Tribunal.
- 4.4. A reference to the Tribunal can be made by way of a reference notice (Form FTC3) signed by HDA and filed with a copy of this First Supervisory Notice. The Tribunal's contact details are:  
  
The Upper Tribunal, Tax and Chancery Chamber, 45 Bedford Square, London WC1B 3DN (telephone: 020 7612 9700; email: [financeandtaxappeals@tribunals.gsi.gov.uk](mailto:financeandtaxappeals@tribunals.gsi.gov.uk)).

- 4.5. Further details are contained in “Making a Reference to the UPPER TRIBUNAL (Tax and Chancery Chamber)” which is available from the Tribunal website:

<http://www.tribunals.gov.uk/financeandtax/FormsGuidance.htm>

- 4.6. HDA should note that a copy of the reference notice (Form FTC3) must also be sent to the FSA at the same time as filing a reference with the Tribunal. A copy of the reference notice should be sent to Rachel West at the FSA, 25 The North Colonnade, Canary Wharf, London E14 5HS.

### **Representations**

- 4.7. HDA has the right to make written and oral representations to the FSA (whether or not it refers this matter to the Tribunal). If HDA wishes to make written representations it must do so by 26 April 2012 or such later date as may be permitted by the FSA. Written representations should be made to the Regulatory Decisions Committee and sent to Philip Bellars, Regulatory Decisions Committee Professional Support Services. The Regulatory Decisions Committee Professional Support Services' address is: 25 The North Colonnade, Canary Wharf, London E14 5HS. If HDA wishes to make oral representations, it should inform the FSA of its intention to do so by 3 April 2012. If HDA does not notify the FSA by 3 April 2012 it will not, other than in exceptional circumstances, be able to make oral representations.

### **Publicity**

- 4.8. HDA should note that section 391(5) of the Act requires the FSA when the First Supervisory Notice takes effect (and this First Supervisory Notice takes immediate effect), to publish such information about the matter as it considers appropriate.

### **FSA contacts**

- 4.9. For more information concerning this matter generally, HDA should contact Simone Ferreira at the FSA (direct line: 020 7066 3016).

- 4.10. If HDA has any questions regarding the procedures of the Regulatory Decisions Committee, it should contact Philip Bellars (direct line: 020 7066 2894).

**Andrew Long**  
**Acting Chairman, Regulatory Decisions Committee**

**ANNEX TO THE FIRST SUPERVISORY NOTICE ISSUED BY THE FINANCIAL SERVICES AUTHORITY TO HD ADMINISTRATORS LLP ON 22 MARCH 2012**

**1. Relevant statutory provisions**

- 1.1. The FSA's regulatory objectives established in section 2(2) of the Act include the protection of consumers and the preservation of market confidence.
- 1.2. The FSA is authorised by section 45 of the Act to exercise the following powers:
  - (1) to vary an authorised person's permission where it appears to the FSA that such person is failing to satisfy the Threshold Conditions;
  - (2) to vary an authorised person's permission where it is desirable to do so to meet any of its regulatory objectives; and
  - (3) to include any provision in the permission as varied that could be included if a fresh permission were being given in response to an application under section 40 of the Act, including the imposition pursuant to section 43 of the Act of such requirements as the FSA considers appropriate.
- 1.3. By section 43(2) a requirement may be included in an authorised person's Part IV permission so as to require the person concerned to take a specified action or refrain from taking a specified action. By section 43(4) such a requirement may be imposed by reference to the authorised person's relationship with his group, or other members of his group.
- 1.4. By section 48(1)(b) of the Act, the FSA can vary an authorised person's Part IV permission so as to alter an assets requirement imposed on him or impose such a requirement on him.
- 1.5. Section 48(3) states that an "Assets requirement" means a requirement under section 43 of the Act:
  - (1) prohibiting the disposal of, or other dealing with, any of a party's assets (whether in the United Kingdom or elsewhere) or restricting such disposals or dealings; or

- (2) that all or any of a party's assets, or all or any assets belonging to consumers but held a party or to his order, must be transferred to and held by a trustee approved by the Authority.
- 1.6. Section 53(3) of the Act allows such a variation to take effect immediately if the FSA reasonably considers that it is necessary for the variation to take effect immediately.
- 1.7. Paragraph 5 of Schedule 6 to the Act sets out Threshold Condition 5 which states that:
  - “The person concerned must satisfy the Authority that he is a fit and proper person having regard to all the circumstances, including-
  - [...]
  - (c) the need to ensure that his affairs are conducted soundly and prudently.”

## **2. Relevant Handbook provisions**

- 2.1. In exercising its power to vary a Part IV permission, the FSA must have regard to relevant provisions in the FSA Handbook of Rules and Guidance (the "Handbook"). The main provisions relevant to the action specified above are set out below.

### **Client Asset Handbook**

- 2.2. CASS 7.8.1R states that
  - (1) When a firm opens a client bank account, the firm must give or have given written notice to the bank requesting the bank to acknowledge to it in writing that:
    - (a) all money standing to the credit of the account is held by the firm as trustee (or if relevant, as agent) and that the bank is not entitled to combine the account with any other account or to exercise any right of set-off or counterclaim against money in that account in respect of any sum owed to it on any other account of the firm; and
    - (b) the title of the account sufficiently distinguishes that account from any account containing money that belongs to the firm, and is in the form requested by the firm.

## **Threshold Conditions**

- 2.3. Guidance on the Threshold Conditions is set out in the part of the Handbook entitled Threshold Conditions (“COND”).
- 2.4. COND 2.4 – Threshold Condition 4: Adequate Resources (paragraph 4, Schedule 6 to the Act)
- 2.5. COND 2.4.1UK reproduces the relevant statutory provision that the person concerned must satisfy the FSA that his resources are adequate in relation to the regulated activities that he seeks to carry on or carries on.
- 2.6. COND 2.4.2(G) states that the FSA will interpret the term adequate as meaning sufficient in terms of quantity, quality and availability and resources as including all financial resources, non financial resources, for example, human resources and effective means by which to manage risks.
- 2.7. COND 2.4.3 (G) states that when assessing this threshold condition, the FSA may have regard to any person appearing to it to be, or likely to be in a relevant relationship with the firm, for example the firm’s controllers, its directors or partners and other persons that might exert influence on the firm which might pose a risk to the firm’s satisfaction of the threshold conditions and would therefore be in a relevant relationship with the firm
- 2.8. COND 2.5 – Threshold Condition 5: Suitability (paragraph 5, Schedule 6 to the Act)
- 2.9. COND 2.5.1UK reproduces the relevant statutory provision that the person concerned must satisfy the FSA that he is a fit and proper person having regard to all the circumstances, including amongst other things, the need to ensure that his affairs are conducted soundly and prudently.
- 2.10. COND 2.5.4G(2)(a) states that the FSA, when forming its opinion as to whether an authorised person is conducting his affairs soundly and prudently, will have regard to relevant matters, including whether he conducts his business with integrity and in compliance with proper standards, has or will have a competent and prudent

management and can demonstrate that it conducts, or will conduct, its affairs with the exercise of due skill, care and diligence.

- 2.11. COND 2.5.4G(3) states that the FSA will only take into account relevant matters which are significant in the context of the suitability of the authorised person.
- 2.12. COND 2.5.6G states that the FSA, when forming its opinion as to whether an authorised person is conducting his business with integrity and in compliance with proper standards, will have regard to relevant matters, including whether:
  - (1) the person concerned has contravened, amongst other things, the requirements of the regulatory system, which include the Threshold Conditions, the Principles and other rules (COND 2.5.6G(4)).

#### **Fit and Proper Test for Approved Persons (“FIT”)**

- 2.13. The FSA has issued specific guidance on the fitness and propriety of individuals in FIT. The purpose of FIT is to outline the main criteria for assessing the fitness and propriety of a candidate for a controlled function and FIT is also relevant in assessing the continuing fitness and propriety of approved persons.
- 2.14. FIT identifies three criteria as being the most important considerations, namely:
  - (1) FIT 2.1 (honesty, integrity and reputation): This includes an individual’s openness and honesty in dealing with customers, market participants and regulators and willingness to comply with requirements placed on him by or under the Act as well as other legal and professional obligations and ethical standards;
  - (2) FIT 2.2 (competence and capability): This includes an assessment of the individual’s skills in carrying out the controlled function that he is performing; and
  - (3) FIT 2.3 (financial soundness): This includes an assessment of the individual’s financial soundness.

- 2.15. FIT 2.1.1(G) provides that in determining a person's honesty, integrity and reputation, the FSA will have regard to all matters including, but not limited to, whether the person has been subject to proceedings of a disciplinary or criminal nature or has been notified of any potential proceedings or of any investigation which might lead to those proceedings (FIT 2.1.3(G))
- 2.16. FIT 2.2.1G(2) provides that in determining a person's competence and capability, the FSA will have regard to all relevant matters including, but not limited to, whether the person has demonstrated by experience and training that the person is able, or will be able if approved, to perform the controlled function.

### **3. Other relevant regulatory provisions**

- 3.1. The FSA's policy in relation to its enforcement powers is set out in the Enforcement Guide (EG), certain provisions of which are summarised below.
- 3.2. EG 8.1(1) reflects the provisions of section 45 of the Act that the FSA may use its own-initiative power to vary or cancel the permission of an authorised firm where a firm is failing or is likely to fail to satisfy the Threshold Conditions.

### **4. Varying a firm's Part IV permission on the FSA's own-initiative**

- 4.1. EG 8.1B provides that the FSA will have regard to its regulatory 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.
- 4.2. EG 8.3 provides that the FSA will exercise its formal powers under section 45 of the Act, where the FSA considers it is appropriate to ensure a firm meets its regulatory requirements. EG 8.3(1) specifies that the FSA may consider it appropriate to exercise its powers where it has serious concerns about a firm or the way its business is being or has been conducted.
- 4.3. EG 8.5(2) specifies that the FSA will consider exercising its own-initiative power under section 45(1)(c) of the Act where it appears that the interests of consumers are at risk because the firm appears to have breached any of Principles 6 to 10 of the



FSA's Principles to such an extent that it is desirable that limitations, restrictions, or prohibitions are placed on the firm's regulated activity.

## **5. Use of the own-initiative power in urgent cases**

5.1. EG 8.6 states that the FSA may impose a variation of permission so that it takes effect immediately or on a specified date if it reasonably considers it necessary for the variation to take effect immediately (or on the date specified), having regard to the ground on which it is exercising its own-initiative power.

5.2. Paragraph 8.7 of EG indicates that the FSA 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

5.3. EG 8.8 provides a list of situations which will give rise to such serious concerns. Specifically, EG 8.8(1) includes where information indicates significant loss, risk of loss or other adverse effects for consumers, where action is necessary to protect their interests.

5.4. EG 8.9 states that the FSA will consider the full circumstances of each case when it decides whether an urgent variation of Part IV permission is appropriate and provides a list of factors which it may consider, including:

- (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 FSA's urgent exercise of own-initiative powers will be appropriate, to protect consumers' interests (EG 8.9(1))
- (2) the extent to which customers assets appear to be at risk. Urgent exercise of the FSA's own-initiative power may be appropriate where the information

available to the FSA suggests that customer assets held by, or to the order of, the firm, may be at risk ((EG 8.9(2))).