
FIRST SUPERVISORY NOTICE

To: **IBP Markets Limited**

Reference Number: **520929**

Address: **14 – 16 Dowgate Hill, London EC4R 2SU**

Date: **15 September 2023**

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 IBP Markets Limited (“the Firm”) with immediate effect.

Restriction on activities

- (1) The Firm must not, save as expressly permitted in paragraphs 2 to 5 below, without the prior written consent of the Authority, carry on any regulated activities for which it has a Part 4A permission.
- (2) The Firm may continue to execute and transmit (as relevant) instructions from an existing client to liquidate any existing position held by the client, or held on their behalf. Any sums payable to an existing client as a result of any instruction described in this paragraph shall not be transmitted or released to the Firm or any Connected Persons.
- (3) The Firm may continue to liquidate any existing position it holds on its own account. Any sums payable to the Firm as a result of any transaction described in this paragraph shall not be transmitted or released to the Firm or any Connected Persons.
- (4) The Firm may continue to hold client money and safeguard and administer custody assets held at the date of these Requirements, or which the Firm has accepted or segregated in accordance with paragraph 5 below.

- (5) Paragraph 1 does not apply to the receipt of new client money or custody assets from, or on behalf of, existing clients by the Firm because of or in relation to the following:
 - (a) Receipt of dividends or coupons.
 - (b) Rights issues.
 - (c) Corporate actions including maturing bonds.
 - (d) Settlement of trades instructed but not settled as at the date of these Requirements.
 - (e) The execution of an instruction from an existing client, as described in paragraph 2.
- (6) Save as set out in paragraph 5, the Firm must not accept any new client money, custody assets or funds subject to Title Transfer Collateral Arrangements ("TTCA") whether from existing or new clients in any of its business areas. For the avoidance of doubt, this includes funds held under 'Model A' or 'Model B' arrangements.
- (7) The Firm must not, without the prior written consent of the Authority, recommence any regulated activities.

Assets requirement

- (8) Save as set out in sub-paragraph (5)(d) and (5)(e), paragraph 9 and paragraph 10 the Firm must not take any action which has, or may have, the effect of disposing of, withdrawing, transferring, dealing with or diminishing the value of any of its own assets, or assets held for or on behalf of others, including client money or custody assets.
- (9) The Firm may continue dealing with or disposing of any of its own assets (whether in the UK or elsewhere) in the ordinary and proper course of business. For the avoidance of doubt, the following would not be in the ordinary and proper course of business for these purposes:
 - (a) The disposal, transfer, or sale in whole or in part of the Firm's assets, including its client base.
 - (b) The making of any distribution to shareholders whether by way of capital distribution, dividends, or any other payments.
 - (c) Any payment exceeding £2,000, whether as a single transaction or a combination of related transactions, to Connected Persons made without the Authority's express consent.
 - (d) The making of any gift or loan by the Firm to any party.
 - (e) The entry into any financial reconstruction or reorganisation
- (10) The Firm may also spend, from its own assets, a reasonable amount on reasonable legal expenses.

- (11) For the avoidance of doubt any payment exceeding £2,000 whether as a single transaction or a combination of related transactions, to Connected Persons must not be made without the Authority's express consent.
- (12) The Firm must segregate £720,000 in cash in an account(s) at an authorised UK bank or credit institution(s) that is held in the Firm's own name and is controlled solely by the Firm (the "Segregated Amount"). Such sums being used for the sole purpose of funding the wind down of the business if there is a requirement to do so. The Firm must continue to hold no less than £720,000 in this way and for this purpose, unless otherwise expressly agreed by the Authority.
- (13) The Segregated Amount referred to in paragraph 12 must not be subject to the rights or interest of any other person (for example any form of security, lien, netting arrangement, right of set-off or preferred creditor arrangement), save where such rights arise due to the terms and conditions routinely applied to such accounts by the relevant credit institution.
- (14) Paragraphs 8 and 12 are assets requirements within the meaning of section 55P(4)(a) of the Act.

Retention and notification requirements

- (15) The Firm must secure all books and records and preserve all information and systems in relation to regulated activities carried on by it, and must retain these in a firm and at a location within the UK, to be notified to the Authority in writing within 7 days of the date the Requirements come in to force, 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.
- (16) By close of business on the day that is 7 days after the Requirements come into force, the Firm must notify in writing:
 - (a) all its clients; and
 - (b) the banks and custodians the Firm uses to hold its own money and assets, as well as its clients' money and custody assets and TTCA money and assets;of the terms and effects of these Requirements. This must be in a form to be agreed in advance with the Authority.
- (17) By close of business on the day that is 2 days after the Requirements come into force, the Firm must publish in a prominent place on its website a notice, the placement and wording of which will need to be agreed in advance with the Authority, setting out the terms and effect of these Requirements.
- (18) Once the notifications referred to in paragraph 16 have been made, and in any event by close of business on the day that is 10 days after the Requirements come into force, the Firm must provide to the Authority:
 - (a) Copies of the template notifications sent to all recipients referred to in paragraph 16.

- (b) A list of all parties to whom notifications have been sent pursuant to paragraph 16.
 - (c) Confirmation that, to the best of its knowledge, the Firm has sent notifications pursuant to paragraph 16 to all relevant parties.
- (19) A person approved to perform a senior management function ("SMF") at the Firm must send to the Authority by email by 12 noon every Friday (or the next business day should the Friday fall on a Bank Holiday), until such time as it is notified otherwise in writing by the Authority:
 - (a) written confirmation that the Firm is in compliance with these Requirements; and
 - (b) copies of up-to-date statements of all accounts held by the Firm with financial institutions, whether in the UK or elsewhere, and whether in respect of its own assets, client assets or both, showing at least all transactions in the previous week and the balances of the accounts.
- 1.2. In this First Supervisory Notice the term "Connected Person" means a person (including a body of persons corporate or unincorporate) who has or has had the following relationships with the Firm. The person is:
 - (1) A member of the Firm's group.
 - (2) A shareholder in the Firm or a member of the Firm's group.
 - (3) A controller of the Firm or a member of the Firm's group.
 - (4) An employee of the Firm or a member of the Firm's Group.
 - (5) A director, officer, manager or agent of the Firm or a member of the Firm's group.
- 1.3. These Requirements replace all other requirements imposed on the Firm pursuant to section 55L(5)(a) of the Act.
- 1.4. These Requirements 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

- 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:
 - (1) it is failing, or is likely to fail, to satisfy the Effective Suitability Threshold Condition pursuant to Paragraph 2C of Schedule 6 to the Act;
 - (2) it is failing, or is likely to fail, to satisfy the Suitability Threshold Condition pursuant to Paragraph 2E of Schedule 6 of the Act; and

- (3) it is desirable in order to advance one or more of the Authority's operational objectives, in particular the Authority's consumer protection objective (as defined in Section 1C of the Act).

2.2. The Authority has serious concerns that:

- (1) The Firm may not have appropriate systems and controls in place to ensure adequate protection for client money and assets. In particular, by its own admission the Firm has lost confidence in its books and records and therefore whether it can demonstrate that the client money and assets it holds are whole.
- (2) The Firm's business may have been used for a purpose connected with financial crime. In particular, that an individual with close links to the Firm and who is also a client of the Firm may have falsified his own trading statements.

3. DEFINITIONS

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

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

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

"the Authority" means the Financial Conduct Authority;

"the Firm" means IBP Markets Limited;

"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;

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

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

4. FACTS AND MATTERS - Background

- 4.1. The Firm is a wholesale broker providing custody services and access to equity and fixed income securities for non-retail clients. The Firm's services are split between a "model A" and "model B" offering. The Firm defines the model A business as the provision of execution and custody services to approximately fifty active wholesale clients directly, and the model B business as the provision of custody and execution service to currently 2 wholesale clients, both retail wealth managers, through a user interface platform offered by 'Service Provider A'. For the model A business, the Firm undertakes these activities in-house. According to the Firm, Model A makes up approximately 60% and Model B the remaining 40% of the Firm's revenues.
- 4.2. For the model B business, the Firm also purchases back-office support services from 'Service Provider A', including the generation of trading statements, trade processing and CASS reconciliations.
- 4.3. According to the latest set of management accounts the Firm shared with the Authority in June, its revenues for the year ended 31st December 2022 were £10.17mm, profits after tax £1.08mm and net assets of £1.94mm. The Firm's latest audited accounts from year end 31st December 20214 show it made revenues of £7.7mm (2020: £2.4mm); profit after tax of c£39k (2020: -£1k); and had net assets of c£859k (2020: £341k). The Firm's latest CMAR (01/07/23-31/07/23) states the Firm holds £40.5mm of client money and £560.5mm of custody assets.
- 4.4. The Firm has been authorised by the Authority since 13 September 2010 to conduct investment business. It has the following Part 4A Permissions:
 - a. Advising on investments (except on Pension Transfers and Pension Opt Outs).
 - b. Arranging (bringing about) deals in investments.
 - c. Dealing in investments as agent.
 - d. Dealing in investments as principal.
 - e. Making arrangements with a view to transactions in investments.
 - f. Safeguarding and administration of assets (without arranging).
 - g. Agreeing to carry on a regulated activity.
- 4.5. From December 2022 the Authority started to have concerns about the Firm. Following engagement between the Authority and the Firm in relation to these matters, the Firm agreed to a set of voluntary requirements which took effect from 24 May 2023 (the "VREQ"). The requirements stop the Firm from making payments to connected parties and from onboarding new clients. However, they allow the Firm to continue conducting regulated activities for existing clients, including providing trading and custody services.
- 4.6. Since the VREQ was agreed, the Authority has continued to engage with the Firm about its concerns that:

- (1) the Firm may not have appropriate systems and controls in place to ensure adequate protection for client money and assets; and
- (2) the Firm's business may have been used for a purpose connected with financial crime.

Systems and controls to ensure adequate protection for client money and assets

- 4.7. Money that a firm receives or holds for, or on behalf of, a client in the course of, or in connection with, its designated investment business or otherwise, is client money for the purposes of the Authority's client money assets sourcebook ("CASS") rules. The Firm has the permissions to hold and control client money and therefore is expected to comply with all relevant chapters in CASS 7. The Firm also has the permission for safeguarding and administration of assets (without arranging), therefore enabling the Firm to hold custody assets within the scope of CASS 6 and again expected to comply with all relevant provisions of CASS 6.
- 4.8. A title transfer collateral arrangement ("TTCA" in CASS 7) is an arrangement by which a client transfers full ownership of money to a firm for the purpose of securing or otherwise covering present or future, actual, contingent or prospective obligations. CASS 7.11.1R(3)(a) states that a firm must not enter into a TTCA in respect of money belonging to a retail client and CASS 7.11.1R(4) states that such money does not amount to client money provided that it is not with a retail client.
- 4.9. The purpose of CASS rules is to keep client money and assets safe, particularly but not exclusively in the event of a firm failure. One of the fundamental requirements of CASS rules is that client money must be segregated from the Firm's money, which ensures it is ring-fenced in the event of an insolvency.
- 4.10. The Authority has identified a number concerns with the Firm's compliance with both CASS 6 and 7. To date the Firm has been unable to demonstrate to the Authority it has a compliant CASS environment. There are material concerns over the accuracy of the Firm's books and records and whether these are sufficiently robust to allow it to perform a compliant client money reconciliation in order for the Firm to establish an appropriate client money position. The failure to do this results in client money being put at risk. The key concern over the Firm's books and records is due to the Firm's reliance on its outsourced service provider – "Service Provider A" – to perform client money reconciliations using inaccurate or potentially falsified data. This is described in more detail below.
- 4.11. One of the key principles of CASS is that a firm must have accurate books and records so it can determine the amount of CASS assets it holds for each of its clients. Crucial to achieving this is the firm performing daily internal and external reconciliations as per CASS 6 and 7 using reliable and precise data. Without the underlying data being accurate there is a high risk of the firm operating with an unidentified CASS shortfall and, more importantly, in the event of firm failure, of CASS assets not being returned whole.
- 4.12. As the Firm has been unable to satisfy the Authority as to the accuracy of its books and records, it follows that the Firm does not have a compliant client money reconciliation process which clearly articulates the Firm's CASS position, and therefore puts client assets at risk.

- 4.13. Furthermore, a large volume of CASS controls predicates on the use of accurate and timely data, and without that fundamental underpinning, compliance – and ultimately the safety of the assets – cannot be satisfied to any meaningful degree.

Concerns over the accuracy of source data used for reconciliations

- 4.14. As described above, "Service Provider A" provides back-office services to the Firm. These services to the Firm include generating trading statements, trade processing and CASS reconciliations. "Individual A" is controller and CEO of "Service provider A". "Individual A" is also a minority shareholder and client of the Firm. As set out in the section headed 'firm used as a vehicle for potential financial crime' below, the Authority has significant concerns about "Individual A's" involvement in the Firm and therefore the accuracy of the underlying data received from "Service Provider A" in order for the Firm to perform the client money reconciliation.
- 4.15. This is because the firm has identified that "Individual A" appears to have falsified their trading statements thought the Firm with the records building a picture of highly profitable trading activity which the Firm is unable to reconcile with its own records. The Firm has transferred to "Individual A" over £11m on the basis of the balances shown in their statements. While the Firm continues to assert their view that no client money has gone missing as a result, they are unable to verify this or whether client money in the Firm is whole as a result of the activity.
- 4.16. The Firm's client money reconciliations rely on data from "Service Provider A", however the Firm has stated to the Authority that it currently cannot rely on any data from "Service Provider A" and that as a result of this uncertainty it cannot confirm how much it owes and holds money and assets for clients before a forensic audit reconciling the Firm's CASS position has concluded.
- 4.17. If inaccurate client money data has formed the basis of any client money reconciliations the Firm has carried out, it would be unable to produce an accurate and up-to-date picture of its CASS position. Accurate and up-to-date books and records are a central tenet to a compliant CASS environment. If the Firm is unable to rely on or validate the data which forms the basis of its CASS reconciliations, the Authority cannot be confident that the Firm is providing an appropriate degree of protection for its client assets.

Client money reconciliations

- 4.18. The Firm has not been able to adequately demonstrate it has systems and controls in place to perform compliant internal client money reconciliation or, more fundamentally and as above, that the accuracy of data feeding into the reconciliations is accurate and up to date.
- 4.19. The Authority requested reconciliation data from the Firm on 31 August 2023 which included reconciliation front coversheets. The Firm responded on the same day, as requested, but did not include the coversheets and only provided the coversheets following a second request. The Firm explained the cover sheets were delayed due to the following:

"compiling the information into a central file and the formatting of the uniformed front sheets for your ease of reference. I also understand that the key stakeholders for CASS in our Operations and Finance team are on annual leave and/or working remotely today due to rail strikes."

- 4.20. The Authority expects that a Firm would have an internal client money reconciliation coversheet which clearly articulates Client Money Resource and Requirement on a daily basis without the need to format or produce these coversheets specifically at our request.
- 4.21. The Authority has queried with the Firm entries "MM amount" which showed £11.5m. The Firm stated, in an email dated 12 September 2023, that this amount was "...excess TTCA cash is reported as CASS balance in RBC under excess ISIN: IE00BZ163M45, in the case of margin requirements the differentials are brought back under TTCA and this is reflected under the 'MM amount' as 11,500,000". This would indicate that the Firm are including TTCA monies in their client money resource. TTCA monies do not come under CASS and should not be reflected on the reconciliation.
- 4.22. The reconciliation information provided by the Firm does not fully articulate how the Firm has calculated the Client Money Resource and Requirement figure, which ultimately determines whether the Firm has a client money shortfall or surplus, nor is it clear how or whether the Firm has followed the evidential requirements laid out in the FCA Handbook. If the Firm is basing the reconciliation on inaccurate data, the Firm could potentially be operating with an unknown shortfall or removing too much - or not enough - client money in the event of a client money surplus. In the event of an insolvency, the Authority is concerned that an Insolvency Practitioner may not be able to identify which funds belongs to whom, potentially resulting in losses. As such, undertaking compliant client money reconciliations is a fundamental CASS process, which the Authority is concerned the Firm may not be carrying out correctly.
- 4.23. The reconciliation spreadsheet dated 29 August 2023 which the Authority reviewed from the Firm includes entries for a model B client of the Firm in various currencies. Some of these are negative balances and they reduce the amount that needs to be segregated inappropriately by USD – 4,239,849.10, EUR – 2,630.70 and GBP - 1,250,607.10. According to the spreadsheet, these negative balances relate to funded liquidations," warehoused positions," unallocated trades and error trades. This results in the Firm effectively operating with a client money shortfall because the Firm has included negative client balances in its internal reconciliation when they are only allowed to include positive balances in the reconciliation.
- 4.24. Furthermore, based on earlier reconciliations the Firm provided on 3 May 2023, it does not appear that the Firm is performing a compliant internal client money reconciliation. For example, initially there was no cover sheet provided, and there was no clear articulation of the Client Money Resource and Requirement, as per CASS 7.16.8R and 7.16.10R, nor was there evidence of the evidential calculations per CASS 7.16.22E. Either the Firm did not have these items or did not submit them when initially requested by the Authority. The Firm has not clearly demonstrated that it is using only internal sources of information to perform its internal client money reconciliations as per CASS 7.16.16 (1)).

Client Transaction Account

- 4.25. The Authority has identified concerns about the way in which the Firm has used a CTA which is held in the name of a separate and connected firm. A CTA is an account with an Intermediate Broker used for transactions that are due to occur or settle. The Authority would not expect there to be any excess balances held in a CTA.

- 4.26. As part of the information provided to the Authority on 2 May 2023, the Firm stated that clients deposit money directly into this CTA, with the Firm moving any monies deposited there into the Firm's client bank account through daily sweeps. The Authority highlighted the approach is not consistent with the Authority's expectations. The Firm stated that "in practice...any client money promptly ends up in a client bank account." This approach is in contravention of CASS 7.13.6R, which requires client money to be paid directly into a client bank account and only those sums required for trading obligations, or which are required to keep the transaction account open should be held in transactions accounts, as per CASS 7.14.4G. The Authority has highlighted to the Firm that it considers that their use of the Client Transaction Account ("CTA") may not have been in line with CASS 7.14.2R.
- 4.27. In an email from the Firm's dated 12 July 2023, it stated "Please note, our client has already asked its Model B firms (and the underlying clients) to stop making any payments of client money into this account. The account having daily sweeps means, in practice, that any client money promptly ends up in a client bank account." This comment is indicative of a lack of knowledge on behalf of the firm as a Client Transaction Account should only receive client money in relation to a transaction, and not for the receipt of client money to then be swept into another account.

Conclusions

- 4.28. The Firm currently doesn't have confidence in its books and records. In response to the concerns raised by the Authority, the Firm instructed an independent auditor to provide a forensic examination of "Individual A's" trades and whether client money in the Firm is whole.
- 4.29. The Firm states that it can only have full certainty about whether there is a CASS shortfall once the forensic auditors have concluded their exercise. The Authority understands that following a stage 1 data sourcing exercise, the auditors will undertake a stage 2 analytical exercise with a view to reconcile and verify whether client assets in the firm are whole.
- 4.30. In line with the Firm's earlier indications, the Authority initially expected the auditors to conclude their stage 2 work by the end of August. However, the Firm was not ready to start the work before 18 August. It then asked for the Authority's view on the stage 2 for the work- as previously agreed with the Authority.
- 4.31. The Authority reviewed the formal proposed scope for the audit and raised concern that the scope of work was not as comprehensive as the Firm had led the Authority to believe. The proposed scope also makes clear that the usefulness of the exercise will be limited by it relying on data from "Service Provider A" and by the fact the report will not be commenting on the processes and controls in place at the Firm to ensure CASS compliance. The forensic auditors also provided a side letter stating that the Authority could not place any reliance on the findings or use it as a basis for any regulatory action. Furthermore, once commenced, the reconciliations would take a further nine weeks to conclude- meaning the exercise would not complete before November at the earliest.
- 4.32. Given the Authority's concerns over the scope of the forensic audit not being as robust as the Authority had expected and its outputs being reliant on accurate source data from "Service Provider A", combined with delays in commencing the work, the Authority is concerned that client money and assets in the Firm continue to be subject to significant risk until robust, independent verification of

its CASS position is obtained. The work currently being scoped by the Firm does not appear to be able to provide this.

Firm used as a vehicle for potential financial crime

- 4.33. 'Individual A' has a number of close connections to the Firm. Until 31 May 2023 'Individual A' was a client of the Firm and executed trades for themselves through a personal trading account held at the Firm.
- 4.34. The Firm opened a trading account for 'Individual A' in June 2021. According to account opening paperwork from 21 June 2021, 'Individual A' requested to be categorised as an Elective Professional client due to his knowledge and experience of trading. 'Individual A' stated that he had had approximately 6 years of trading experience, had traded a portfolio of approximately £250 million in this period, had an income of £250k per annum. The Authority considered that the due diligence performed as part of the onboarding process was insufficient as there was no documentation confirming income, trading history or bank accounts confirming assets.
- 4.35. 'Individual A's' trading account shows trades and cash transactions from January 2021. The Firm has not been able to explain how 'Individual A' opened an account almost 6 months prior to carrying out KYC (Know Your Customer) checks on them and formally opening his trading account.
- 4.36. To explore the concerns, the Authority asked for the Firm to send it the trading statements for 'Individual A' on various occasions from April 2023. The Firm provided a trading statement for 'Individual A' on the 2 May and the 11 of May. It was noted at the time the limited period covered by both statements did not match each other.
- 4.37. The Firm noted that it was not easy to produce 'Individual A's' trading statement. According to the statements, Individual A's trading activity was highly profitable with total aggregate investment of £1.2m generating profits of c.£12m between January 2021 and May 2023. The Firm subsequently stated to the Authority that they had transferred to 'Individual A' in total £10.8m as a result of the profits recorded in their trading statement.
- 4.38. The Firm did not initially raise concerns about the statements, and they maintained the view 'Individual A' appeared to have legitimately created the significant trading profits on his account. However, the Firm eventually stated that they could not be confident in the statements being correct.
- 4.39. The Firm, in a letter dated 1 June 2023, stated that "[the Firm] has serious concerns with regarding 'Individual A' and his trading". Later in the letter, it states that there have been "identified discrepancies between the reported trades in 'Individual A's' trading statements provided."
- 4.40. The Firm stated that it appears 'Individual A' falsified the trading statements, including in them numerous trades for which 'Individual A' placed no orders through the Firm, and which according to the Firm's own records have been undertaken for other clients of the Firm instead. The Firm also stated that the statements appeared to exclude trades which the Firm could verify had been executed for 'Individual A's' account.
- 4.41. The Firm stated that while they believed client monies remained whole despite 'Individual A's' activity, they could not be fully confident that all the funds transferred to 'Individual A' from the Firm's CASS accounts based on the c£12mm

balance on their trading account belonged to them or that client money was indeed whole. These statements contradict and despite several requests from the Authority, the Firm has not been able to provide evidence showing that all funds transferred to "Individual A" have belonged to them. Subsequently, the Firm instructed an independent auditor to provide a forensic examination of 'Individual A's' trades and whether client money in the firm is whole.

- 4.42. As the Authority has identified that 'Individual A' may have falsified their trading statements, the Authority is concerned that the Firm's business may have been used for a purpose connected with financial crime.
- 4.43. Based on the Firm's letter of 1 June, the Firm itself identified concerns with the data provided to them by 'Service Provider A' and by extension 'Individual A'. Therefore, according to the Firm, the same could be said for the data provided by 'Service Provider A' to the Firm to perform the Internal and External Client money and Custody Asset reconciliations because 'Individual A's' trading account formed part of these reconciliations.
- 4.44. Given the statements made by the Firm, the Authority is also concerned that data provided by 'Service Provider A' may have been manipulated to mask a possible shortfall and/or to mask 'Individual A's' trading activity. Due to material concerns with the data source, the Authority is unable to verify the CASS position of the firm. The circumstances which the firm has identified also suggest the firm lacked appropriate controls and oversight over 'Service Provider A', and that more directly, their books and records were not and are still not accurate and up to date.
- 4.45. The regulatory provisions relevant to this First Supervisory Notice are set out in the Annex.

Analysis of failings and risks

- 4.46. The FCA's Threshold Conditions represent the minimum conditions which a firm is required to satisfy, and continue to satisfy, to be given and to retain permission to carry on regulated activities.
- 4.47. The 'Suitability' Threshold Condition requires the Firm to be a fit and proper person having regard to all the circumstances.
- 4.48. The Principles set out the fundamental obligations of firms under the regulatory system:
 - (1) Principle 2 requires the Firm to conduct its business with due skill, care, and diligence.
 - (2) Principle 3 requires the Firm to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
 - (3) Principle 10 requires the Firm to arrange adequate protection for clients' assets when it is responsible for them.
- 4.49. Chapter 7 of CASS applies to a firm that receives money from or holds money for or on behalf of a client in the course of or in connection with its investment business. Chapter 7.15 of CASS sets out the requirements a firm must meet when keeping records and accounts of the client money it holds. Chapter 7.16 of

CASS sets out the methods of client money reconciliation that are appropriate to meet the requirements of Chapter 7.15 of CASS.

- 4.50. The Authority has concluded, considering 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. The Authority considers that the Requirements are a proportionate and appropriate means to address the current risks.

Timing and duration of the Requirements

- 4.51. It is necessary to impose the Requirements to take immediate effect given the seriousness of the risks to new investors and given the Authority's view of the scale of remedial work required to bring the Firm's client money and custody environment into compliance with the requirements of the regulatory regime.
- 4.52. The Authority considers that it is necessary for the Requirements to remain in place until varied or cancelled by the Authority (either on the application of the Firm or of the Authority's own volition).

5. PROCEDURAL MATTERS

Decision-maker

- 5.1. 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.
- 5.2. This First Supervisory Notice is given under section 55Y (4) and in accordance with section 55Y (5) of the Act.
- 5.3. The following statutory rights are important.

Representations

- 5.4. 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 (FCAActions@fca.org.uk) and the SPC Decision Making Secretariat (SPCDecisionMakingSecretariat@fca.org.uk).

The Tribunal

- 5.5. 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.

- 5.6. 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, 5th Floor, Rolls Building, Fetter Lane, London EC4A 1NL (telephone: 020 7612 9730; email: uttc@hmcts.gsi.gov.uk).
- 5.7. 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>.
- 5.8. 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 (FCAActions@fca.org.uk) and the SPC Decision Making Secretariat (SPCDecisionMakingSecretariat@fca.org.uk).

Confidentiality and publicity

- 5.9. 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).
- 5.10. 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

- 5.11. For more information concerning this matter, contact (FCAActions@fca.org.uk).
- 5.12. Any questions regarding this matter generally or the executive procedures decision-making process should be directed to the SPC Decision Making Secretariat (SPCDecisionMakingSecretariat@fca.org.uk).

Director, The Authority

ANNEX

RELEVANT STATUTORY PROVISIONS

1. The Authority's operational objectives established in section 1C of the Act include securing an appropriate degree of protection for consumers.
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 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 section 55L of the Act if, among other things, a firm is failing to satisfy any of the Threshold Conditions or is likely to do so.
7. COND 2.3.1A UK reflects the provisions of the Act (paragraph 2C of Schedule 6) to the effect that a firm must be capable of being effectively supervised by the Authority having regard to all the circumstances. The matters which are relevant in determining whether a firm is a capable of being effectively supervised include the way in which the firm's business is organised.
8. COND 2.5.1A UK reflects the provisions of the Act (paragraph 2E of Schedule 6) to the effect that a firm must be a fit and proper person having regard to all the circumstances. The matters which are relevant in determining whether a firm is a fit and proper person include the need to ensure the firm's affairs are conducted in

an appropriate manner (having regard in particular to the interests of consumers and the integrity of the UK financial system) and whether the firm's business is being, or is to be, managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner.

The Enforcement Guide

9. The Authority's approach in relation to its own-initiative powers is set out in Chapter 8 of the Enforcement Guide (EG), certain provisions of which are summarised below.
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 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 ensure a firm meets its regulatory requirements. 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.
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 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 information indicating significant loss, risk of loss or other adverse effects for consumers, where action is necessary to protect their interests.
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.
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.

Decision Procedure and Penalties Manual ("DEPP")

18. DEPP 2.5.7G provides that an Authority staff under executive procedures will take the decision to give a supervisory notice exercising the Authority's own-initiative powers (by removing a regulated activity, by imposing a limitation or requirement or by specifying a narrower description of regulated activity), including where the action involves a fundamental variation or requirement.

Principles for Businesses ("PRIN")

18. PRIN sets out the fundamental obligations of firms under the regulatory system:
 - Principle 2 requires the Firm to conduct its business with due skill, care, and diligence.
 - Principle 3 requires the Firm to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
 - Principle 10 requires the Firm to arrange adequate protection for clients' assets when it is responsible for them.

Client Assets (CASS)

19. Chapter 7 of CASS applies to a firm that receives money from or holds money for or on behalf of a client in the course of or in connection with its investment business. Chapter 7.15 of CASS sets out the requirements a firm must meet when keeping records and accounts of the client money it holds. Chapter 7.16 of CASS sets out the methods of client money reconciliation that are appropriate to meet the requirements of Chapter 7.15 of CASS.