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## FIRST SUPERVISORY NOTICE

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**To:** **KBFS Financial Limited**

**Reference Number:** **831504**

**Address:** **Egdon Hall, Lynch Lane Office, Lynch Lane, Weymouth, DT3 5AB**

**Date:** **23 October 2023**

### 1 ACTION

1.1 For the reasons given in this First Supervisory Notice, and pursuant to sections 55J(2)(a), 55J(1)(a) and (c) and 55L(3)(a) of the Financial Services and Markets Act 2000 ("the Act"), the Financial Conduct Authority ("the Authority") has decided to vary with immediate effect the Part 4A permission granted to KBFS Financial Limited ("Firm") by removing all of its regulated activities, and has also decided to impose the following requirements on the Firm (the "Requirements") with immediate effect.

#### Assets requirement

- (1) Save as set out in Requirement (2), the Firm must not, without the prior written consent of the Authority, take any action which has, or may have the effect of disposing of, withdrawing, transferring, dealing with or diminishing the value of any assets it holds or receives, for itself or on behalf of another (whether in the United Kingdom or elsewhere).
- (2) 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).
- (3) For the purposes of Requirement (1) above, the following would be in the ordinary and proper course of business:
  - a. Any and all fees incurred or paid in exchange for professional advisory

services;

- b. Any amounts due to be paid to legitimate creditors for sums incurred prior to the imposition of the Requirements, including but not limited to suppliers' fees and sums owing to HMRC;
  - c. Any income or sums collected and received by the Firm on behalf of any third parties and which are to be paid to such third parties;
  - d. Any and all salaries of the Firm's staff, including to its directors, contractors or any other employees, where such salaries have been agreed prior to the imposition of the Requirements.
- (4) For the avoidance of doubt, for the purposes of Requirement (1) above, the following would not be in the ordinary and proper course of business:
- a. The making of any distribution to the Firm's shareholders whether by way of capital distribution or dividends;
  - b. Subject to Requirement (3) above, any payment to the Firm's shareholders, directors, officers, employees, and/or any connected entities or persons;
  - c. The making of any gift or loan by the Firm to any party; or
  - d. The entry into any financial reconstruction, sale of any part of the Firm (whether share or asset based) or reorganisation.

#### Notification requirements

- (5) The Firm must, within 14 days of service of this Notice, write to all of its clients informing them of the imposition of these Requirements and their effects. The wording of this communication is to be first agreed with the Authority. The method of delivery must be agreed in advance by the Authority.
- (6) Once the notifications referred to at Requirement (5) above have been made, within 24 hours, the Firm must supply to the Authority:
- a. Copies of the template notifications sent to all recipients;
  - b. A list of all parties to whom notifications have been sent; and
  - c. Confirmation that, to the best of its knowledge, the Firm has sent the specified notifications to all relevant parties.

#### Records retention

- (7) The Firm must secure all books and records and preserve all information, including material held via online/cloud-based systems to which the Firm has access, in relation to regulated activities carried on by it. These include but are not limited to all: (i) client lists; (ii) communications with clients; (iii) financial records.
- (8) The Authority must be notified within 24 hours of receipt of this Notice that the Firm has secured these books and records, which must be retained in a form and at a location within the UK. This is so that the records can be

provided to the Authority, or to a person named by the Authority, promptly upon its request.

- 1.2 The Requirements set out at paragraphs (1) to (4) above comprise an asset requirement within the meaning of section 55P(4) of the Act.
- 1.3 The effect of the Variation is that the Firm no longer has permission to conduct any regulated activities.

## **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 powers under section 55J(2)(a) and section 55L(3)(a) of the Act to vary the permission granted to the Firm and to impose the Requirements on the Firm because it is failing, or is likely to fail, to satisfy the Threshold Conditions and it is desirable to advance the Authority's operational objective of securing an appropriate degree of protection for consumers.

### The Threshold Conditions

- 2.2 The Threshold Conditions are minimum requirements that firms need to meet to be authorised and to continue carrying on regulated activities. Sections 55J of the Act permits the Authority to vary the permission granted to the Firm, and section 55L of the Act permits the Authority to impose requirements on the Firm's Part 4A permission, because the Firm:
  - 1) is failing, or is likely to fail, to satisfy the Appropriate Resources Threshold Condition pursuant to section 2D of Schedule 6 of the Act;
  - 2) is failing, or is likely to fail, to satisfy the Effective Supervision Threshold Condition pursuant to section 2C of Schedule 6 of the Act; and
  - 3) is failing, or is likely to fail, to satisfy the Suitability Threshold Condition pursuant to section 2E of Schedule 6 of the Act.
- 2.3 The Authority considers that the Firm is failing, or likely to fail, to meet the Appropriate Resources and Effective Supervision Threshold Condition. Specifically:
  - 1) The Firm has repeatedly failed to respond to the Authority, including failing to respond to an information requirement. The Firm has been given an extension and multiple reminders to provide the information as required. The information requirement relates specifically to the Firm's preparation for the British Steel Pension Scheme ("BSPS") consumer redress scheme and the Firm's financial position.
  - 2) The Firm has failed to submit financial regulatory returns since November 2021, which it should have provided such that it could, among other things, share details relating to its financial position with the Authority.
- 2.4 The Authority considers therefore that the Firm cannot be effectively supervised, nor can the Authority be satisfied that it has appropriate financial resources.
- 2.5 The Authority also considers that the Firm is failing, or likely to fail, to meet the Suitability Threshold Condition. Specifically:

- 1) It appears that the Firm has failed to pay redress awarded by the Financial Ombudsman Service ("FOS") in relation to unsuitable pension-transfer advice given to 5 clients with a defined-benefit ("DB") occupational pension scheme with British Steel. It also appears that the Firm has failed to engage with these 5 clients in relation to the FOS awards.
  - 2) Supervision is very concerned that the Firm has not been open and cooperative with the Authority. The Firm failed (without explanation) to respond to the Authority's information requirement, and in addition failed to disclose to the Authority appropriately matters relating to the Firm of which the Authority would reasonably expect notice, namely the decisions of the FOS. Notwithstanding the Firm's failure to engage with the Authority for a prolonged period, the Firm's directors applied to the Registrar of Companies House for striking-off and dissolution, without notifying the Authority. This failure by the Firm to notify the Authority of such matters is particularly concerning in the context of the Authority's repeated attempts to engage the Firm in relation to its concerns, and requests from its own clients and the FOS.
- 2.6 The Authority therefore has reason to believe that the Firm is failing (or is likely to fail) to satisfy the Suitability Threshold Condition, pursuant to paragraph 2E of Schedule 6 to the Act. Supervision considers that the Firm's repeated failure to comply with an information requirement, its repeated failure to engage with those clients in relation to their FOS awards, and its failure to notify the Authority that it had applied to be struck off and dissolved means the Firm is not a fit and proper person.
- 2.7 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.
- 2.8 The Authority considers that imposition of the Requirements should take immediate effect because the matters set out in this First Supervisory Notice demonstrate that the Firm is unable to manage its affairs in a sound and prudent manner, and is putting consumers at risk.

### **3 DEFINITIONS**

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

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

"the Authority" means the Financial Conduct Authority;

"BSPS" means the British Steel Pension Scheme;

"the Firm" means KBFS Financial Limited;

"FOS" refers to the Financial Ombudsman Service;

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

"Requirements" means the requirements imposed on the Firm's Part 4A Permission pursuant to this First Supervisory Notice and as contained in section 1 above; and

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

## **4 FACTS AND MATTERS**

### **Background**

- 4.1 The Firm is an advisory firm, with permissions to advise on investments (except on pension transfers and pension opt outs), advise on pension transfers and pension opt outs (limited pension transfer activity), arrange deals in investments, make arrangements with a view to transactions in investments and to advise on peer-to-peer agreements. The Firm was incorporated on 23 March 2017.
- 4.2 The Firm was authorised by the Authority on 1 July 2019. Between 1 October 2015 and 31 July 2019, the Firm’s Senior Manager Function holder (“the Firm’s Director”) provided defined-benefit pension transfer advice to clients under permissions as a sole trader. On 22 January 2019, the Firm’s Director applied for a change of legal status to transfer her sole trader permissions to the Firm, and the Firm signed a Deed Poll Declaration, accepting any liabilities that may arise from the past business of the sole trader.

### **Failings and risks identified**

#### *The Authority’s information request*

- 4.3 In May 2023, the Authority sought information from the Firm regarding its preparations for the BSPS redress scheme. The Firm did not respond to the Authority’s original contact and so, on 12 July 2023, the Authority sent an information requirement to the Firm under section 165 of the Act. The Authority’s letter explained that the Authority was exercising statutory powers to obtain the information sought from the Firm and referred to certain of the consequences for the Firm should it fail to respond without reasonable excuse.
- 4.4 The Firm was required to provide:
- (1) Further details of the Deed Poll Declaration signed on 31 July 2019.
  - (2) Details of what the Firm has done to prepare for the BSPS consumer redress scheme, and of what the Firm has been doing since its implementation.
  - (3) Confirmation of the Firm’s latest financial position to meet its potential liabilities under the BSPS, including:
    - a. Financial accounts as at 31 March 2023, including a profit and loss, balance sheet and a cash flow statement, and Management accounts (if the Firm is deemed to be a “micro” entity).
    - b. 2 years financial forecast factoring in any potential redress liabilities under the BSPS.
  - (4) Copies of the Firm’s:
    - a. complaints register for BSPS consumers; and
    - b. register of any offers of settlements made to BSPS consumers who have not complained.
  - (5) Details of the remedial work the Firm has undertaken following the complaints

received concerning its regulated activities.

- (6) A copy of the Firm's latest professional indemnity insurance policy cover and proposal form, and confirmation of whether the cover includes the BSPS.
  - (7) Confirmation of what additional capital was the Firm holding in relation to any exclusions imposed on the Firm's professional indemnity cover.
  - (8) An explanation of why the Firm has not submitted its Retail Mediation Activities ("RMA") report since 30 September 2021, together with all relevant RMA reports.
  - (9) Confirmation of whether the Firm has received or is in the process of receiving insolvency advice. The Firm is required to provide evidence of any relevant correspondence received to date.
  - (10) The Firm's assessment of its solvency position.
  - (11) A copy of the Firm's updated wind-down plan and confirmation of the date on which it was last reviewed.
- 4.5 The Authority requested that the information be provided by 26 July 2023 and sent the letter by email to the Firm's stated email address for correspondence held by the Authority. The Authority explained the consequences of failing to comply with the information requirement without reasonable excuse, including being found to be in contempt of Court under the Act and / or the risk of disciplinary action under the Authority's Principles for Businesses.
- 4.6 No response was received from the Firm and no information was provided by the Firm in response to any of the items requested. On 27 July 2023, the Authority sent a reminder to the Firm as to the need to respond to the information request and of the potential consequences of failing to. The Authority asked the Firm to provide the information by no later than 31 July 2023.
- 4.7 On 7 August 2023, the Authority wrote to the Firm to obtain the information requested on 12 July 2023. The Authority noted that the Firm's failure to respond raised concerns that the Firm was not meeting the Threshold Conditions. The Authority also invited the Firm's Director to consider applying voluntarily for the imposition of conditions on their approval. The Authority requested a response by 18 August 2023. No response was received.
- 4.8 On 26 September 2023, the Firm's Director sent an email to the email address "firm.queries@fca.org.uk", requesting an up-to-date redress calculator for the quarter. In this email, there was no reference to the Authority's request for information of 12 July 2023 or subsequent correspondence. The email from the Firm's Director was sent from the same email address to which the information requirement had been sent by the Authority.
- 4.9 On 27 September 2023, the Authority spoke with an individual understood to be connected to the Firm's Director and who the Authority also understands to be a former adviser engaged by the Firm. The individual informed the Authority that the Firm's Director had travelled abroad a few days previous and was not expected to return until the middle of October 2023. There was no explanation provided during this conversation as to why the Firm's Director had, despite this, contacted the Authority via email on the previous day (see paragraph 4.8).

4.10 On 13 October 2023, On 13 October 2023, the Authority sent the Firm an email attaching the BSPS Redress calculator for Q4. On 20 October 2023, the Firm's Director called the Authority's Firm Helpline and stated that the Firm had not received this calculator. Ms Brown followed up her call with an email to the email address "[bpsnotifications@fca.org.uk](mailto:bpsnotifications@fca.org.uk)" stating that she had repeatedly asked for an updated calculator and requested that this be sent urgently. The Authority have checked their records and have confirmed that the email was sent on 13 October to the email address understood by the Authority to be the address typically used by the Firm.

4.11 As of the date of this Notice, the Authority has received no response from the Firm to its information request or subsequent attempts to establish contact with the Firm and obtain the information sought. The Authority notes that this is despite the Firm making contact with the Authority on 26 September 2023, in which the Firm requested provision of a redress calculator, and despite the Authority also establishing contact with an individual connected to the Firm's Director who indicated that they would seek to bring the matter to the Firm's Director's attention. Further, the Authority notes that the contact email address provided by the Firm to the Authority, and which the Authority has used to send its correspondence to, is the same address that the Firm's Director used when communicating with the Authority on 26 September 2023.

*The Firm's application to be dissolved and struck off*

4.12 On 21 August 2023, the Firm applied to the Registrar of Companies House for it to be dissolved and struck off the Register of Companies. On 9 September 2023, the Registrar suspended the application for striking off and dissolution of the Firm, having received an objection to the application.

4.13 A firm is required to provide the Authority with a wide range of information to enable the Authority to meet its responsibilities for monitoring a firm's compliance with requirements imposed by or under the Act. This includes an expectation that a firm must notify the Authority immediately if an application is made to dissolve the firm or to strike it off the Register of Companies. The Firm did not notify the Authority of its application to the Registrar of Companies.

*Concerns relating to FOS awards made against the Firm*

4.14 On 26 June 2023, the Authority became aware of that the FOS had made awards against the Firm in which the FOS had awarded redress to certain of the Firm's customers. The Authority expects a firm to notify the Authority immediately of any such awards, particularly in circumstances where the amount awarded is potentially significant in relation to the firm's financial resources. The Firm has not, as at the date of this Notice, notified the Authority of the fact that these awards had been made against it.

4.15 The Authority also has serious concerns that the Firm may have failed to pay redress owed to clients in relation to these awards by the FOS.

*Failure to submit regulatory returns*

4.16 The last regulatory returns from the Firm were filed on 21 November 2021. However, as of the date of this application, the Firm has failed to submit regulatory returns since November 2021. As a result of the Firm's failure to submit its returns,

the Authority has been unable to assess whether the Firm has the appropriate financial resources.

- 4.17 The Authority considers that the failure to submit these regulatory returns is exacerbated by the Firm's subsequent failure to respond to the Authority's questions about the Firm's financial position.

## **5 CONCLUSION**

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

### **Analysis of failings and risks**

#### Breach of Threshold Conditions

- 5.2 The Authority has concluded, on the basis of the facts and matters described above that it is necessary to exercise the powers under sections 55J and 55L of the Act to vary the permission granted to the Firm and impose requirements on the Firm because it is failing or is likely to fail, to satisfy the Threshold Conditions.

- 5.3 The Threshold Conditions are minimum requirements that firms need to meet to be authorised and to continue carrying on regulated activities. Section 55J of the Act permits the Authority to vary the Firm's Part 4A permission and section 55L of the Act permits the Authority to impose requirements a Firm's Part 4A permission, because the Firm:

- 1) is failing, or is likely to fail, to satisfy the Appropriate Resources Threshold Condition pursuant to section 2D of Schedule 6 of the Act;
- 2) is failing, or is likely to fail, to satisfy the Effective Supervision Threshold Condition pursuant to section 2C of Schedule 6 of the Act; and
- 3) is failing, or is likely to fail, to satisfy the Suitability Threshold Condition pursuant to section 2E of Schedule 6 of the Act.

- 5.4 The Authority considers that the Firm is failing, or is likely to fail, to meet the Appropriate Resources and Effective Supervision Threshold Condition. Specifically:

- 1) The Firm has consistently failed to respond to an information requirement issued by the Authority. The information requested specifically relates to its financial resources in light of concerns about the Firm's ability to pay redress to its clients.
- 2) The Firm has failed to submit financial regulatory returns outstanding since November 2021. Those regulatory returns ought to contain sufficient information for the Authority to be able to ascertain more about the adequacy of a firm's financial resources. The Firm's failure to submit these regulatory returns is therefore preventing the Authority from assessing the adequacy of the Firm's financial resources.
- 3) The Firm has been given a number of opportunities to respond to the Authority's information request and attempts to obtain information, over the course of several months. The Firm has failed to respond to that correspondence and has provided no explanation for this.



5.5 The Authority considers therefore that the Firm cannot be effectively supervised, nor can the Authority be satisfied that the Firm has appropriate financial resources.

5.6 The Authority also considers that the Firm is failing, or is likely to fail, to meet the Suitability Threshold Condition. Specifically:

- 1) It appears that the Firm has failed to pay redress awarded by the FOS in respect of 5 of the Firm's clients.
- 2) Supervision is very concerned that the Firm has not been open and cooperative with the Authority. The Firm failed (without explanation) to respond to the Authority's information requirement, and in addition failed to disclose to the Authority appropriately anything relating to the Firm of which the Authority would reasonably expect notice, namely the decisions of the FOS. Notwithstanding the Firm's failure to engage with the Authority over a prolonged period, the Firm's directors took the step of applying to the Registrar for strike-off and dissolution, without notifying the Authority.
- 3) Given the above, Supervision is concerned that the Firm is no longer meeting the Threshold Condition that it be a fit and proper person, and it is concerned that the Firm may be in breach of Principle 11 of the Authority's Principles for Businesses (the "Principles") by failing to deal with Authority in an open and cooperative way and failing to disclose to the Authority appropriately anything relating to the Firm of which the Authority would reasonably expect notice

5.7 The Authority has concluded, in light of the matters set out above, that it is necessary to exercise its own-initiative power:

- by varying the permission granted to the Firm by removing all its regulated activities under section 55J(2) of the Act; and
- by imposing the Requirements under section 55L(3)(a) of the Act.

5.8 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 and the variation**

5.9 It is necessary to impose the Requirements and to seek the variation of the Firm's Part 4A permission, given the seriousness of the risks and the need to protect consumers.

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

## **6 PROCEDURAL MATTERS**

### **Decision-maker**

6.1 The decision which gave rise to the obligation to give this First Supervisory Notice was made by an Authority staff member under executive procedures according to DEPP 2.5.7G 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 8 November 2023 or such later date as may be permitted by the Authority. Any notification or representations should be sent to:

Supervision, Policy and Competition Decision Making Secretariat

The Financial Conduct Authority

12 Endeavour Square

London

E20 1JN

Email: [SPCDecisionMakingSecretariat@fca.org.uk](mailto:SPCDecisionMakingSecretariat@fca.org.uk) and [Gemma.Barnett@fca.org.uk](mailto:Gemma.Barnett@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 Gemma Barnett ([Gemma.Barnett@fca.org.uk](mailto:Gemma.Barnett@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 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)).

Camille Blackburn  
Director, Wholesale Buy-Side Asset Management – Supervision, Policy & Competition

## **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 55P of the Act allows a requirement to be imposed under section 55L of the Act prohibiting the disposal of, or other dealing with, any of an authorised person's assets (whether in the UK or elsewhere), or restricting such disposals or dealings.
5. 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).
6. 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 Enforcement Guide**

7. 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.
8. 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)).

9. 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)).
10. EG 8.2.3 states that in the course of its supervision and monitoring of a firm or as part of an enforcement action, the Authority may make it clear that it expects the firm to take certain steps to meet regulatory requirements. In the vast majority of cases the Authority will seek to agree with a firm those steps the firm must take to address the Authority's concerns. However, where the Authority considers it appropriate to do so, it will exercise its formal powers under section 55J of the Act to vary a firm's permission and/or 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)).
11. EG 8.3.1 states that the Authority may impose a variation of permission or 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.
12. 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.
13. EG 8.3.3 states that it is not possible to provide an exhaustive list of the situations that will give rise to such serious concerns, but they are likely to include one or more of four listed characteristics, these include: 1) information indicating significant loss, risk of loss or other adverse effects for consumers, where action is necessary to protect their interests; 2) information indicating that a firm's conduct has put it at risk of being used for the purposes of financial crime, or of being otherwise involved in crime; 3) evidence that the firm has submitted to the Authority inaccurate or misleading information so that the Authority becomes seriously concerned about the firm's ability to meet its regulatory obligations; 4) circumstances suggesting a serious problem within a firm or with a firm's controllers that calls into question the firm's ability to continue to meet the threshold conditions.
14. EG 8.3.4 states that the Authority will consider the full circumstances of each case when it decides whether a variation of a Part 4A permission under or an imposition of a requirement is appropriate and sets out a non-exhaustive list of factors the Authority may consider, these include:
  - a. EG 8.3.4(4) concerning 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.
  - b. EG 8.3.4(8) concerning the firm's conduct. The Authority will take into account whether the firm identified the issue, brought it promptly to the Authority's attention and what steps the firm has taken or is taking to address the issue.
15. 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.

### Threshold Conditions

16. The section of the Handbook entitled "Threshold Conditions" (COND) gives guidance on threshold conditions. COND 1.2.3G provides that the Authority may exercise its own-initiative powers under section 55L and/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.
17. COND 1.3.2G states that the Authority will consider whether a firm satisfies, and will continue to satisfy, the Threshold Conditions in the context of the size, nature, scale and complexity of the business which the firm carries on or will carry on if the relevant application is granted.
  7. COND 2.3.1A (para 2C, Sch. 6) states that the firm:
    - (1) [...] *must be capable of being effectively supervised by the FCA having regard to all the circumstances including – [...]*
      - (c) *The way in which the firm's business is organised; [...]*
      - (f) *If the Firm has close links with another person (CL)-*
        - (i) *the nature of the relationship between the Firm and CL;*
        - (ii) *whether those links are or that relationship is likely to prevent the FCA's effective supervision of the Firm; [...]*
18. COND 2.3.3G states that in assessing the Threshold Conditions set out in paragraphs 2C and 3B of Schedule 6 to the Act (which includes the Effective Supervision Threshold Condition), factors which the FCA will take into consideration include, among other things, whether:
  - (1) *it is likely that the FCA will 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 for which the FCA is responsible and to identify and assess the impact on its statutory objectives; this will include consideration of whether the firm is ready, willing and organised to comply with Principle 11 (Relations with regulators) and the rules in SUP on the provision of information to the FCA; [...]*
19. COND 2.4.1A (para 2D, Sch. 6 of the Act) states that:
  - (1) *The resources of [a firm] must be appropriate in relation to the regulated activities that it carries on or seeks to carry on.*
  - (2) *The matters which are relevant in determining whether the firm has appropriate resources include: [...]*
    - (a) *the nature and scale of the business carried on, or to be carried on by [a firm];*
    - (b) *the risks to the continuity of the services provided by, or to be provided by [a firm].*
  - (3) *Financial resources – [...]* *The matters which are relevant in determining whether the firm has appropriate financial resources include*
    - (a) *the provision [the firm] makes and, if [the firm] is a member of a group, which other members of the group make, in respect of liabilities; and*
    - (b) *the means by which [the firm] manages and, if [the firm] is a member of a group, by which other members of the group manage, the incidence of risk in connection with [the firm]'s business.*

20. COND 2.5.6G states that the FCA may have regard to include, but are not limited to, whether:

1. *the firm has been open and co-operative in all its dealings with the FCA and any other regulatory body (see Principle 11 (Relations with regulators)) and is ready, willing and organised to comply with the requirements and standards under the regulatory system (such as the detailed requirements of SYSC and, in relation to a firm not carrying on, or seeking to carry on, a PRA-regulated activity only, the Prudential Standards part of the FCA Handbook) in addition to other legal, regulatory and professional obligations; the relevant requirements and standards will depend on the circumstances of each case, including the regulated activities which the firm has permission, or is seeking permission, to carry on [...]*

*Principles for Businesses ("PRIN")*

21. Principle 11 of PRIN states that a firm must deal with its regulators in an open and cooperative way, and must disclose to the Authority appropriately anything relating to the firm of which that regulator would reasonably expect notice.

*Supervision Manual ("SUP")*

22. Chapter 15 of SUP sets out the Authority's rules on events and changes in condition that a firm must notify, usually as soon as possible, if the Authority is to be able to carry out its monitoring function effectively and react in good time to developments that may require a regulatory response.
23. SUP 15.3.1 R states that a firm must notify the Authority immediately if it becomes aware, or has information which reasonably suggests, that any of the following has occurred, may have occurred or may occur in the foreseeable future:
1. the firm failing to satisfy one or more of the threshold conditions; or
  2. any matter which could have a significant adverse impact on the firm's reputation; or
  3. any matter which could affect the firm's ability to continue to provide adequate services to its customers and which could result in serious detriment to a customer of the firm.
24. SUP 15.3.21R requires that a firm must notify the Authority immediately of any of the following events:
1. the calling of a meeting to consider a resolution for winding up the firm; or
  2. an application to dissolve the firm or to strike it off the Register of Companies;
25. SUP 15.6.1R requires that a firm must take reasonable steps to ensure that all information it gives to the Authority in accordance with a rule in any part of the Handbook (including Principle 11) is:
1. factually accurate, or in the case of estimates and judgements, fairly and properly based after appropriate enquiries have been made by the firm; and
  2. complete, in that it should include anything of which the FCA would reasonably expect notice.

26. Chapter 15.7 of SUP specifies the form and method of notification. SUP 15.7.1R requires a notification to be given in writing. SUP 15.7.4R specifies the methods of notification from a firm under this rule must be given to or addressed for the attention of the firm's usual supervisory contact at the Authority and delivered to the Authority by one of the methods in SUP 15.7.5AR.