FINANCIAL CONDUCT AUTHORITY

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SECOND SUPERVISORY NOTICE

To: **Fortuna Wealth Management Limited**

Of: **24 Cannon Road**
Wombourne
Wolverhampton
Staffordshire
WV5 9HR

FRN: **774173**

Dated: **9 December 2019**

ACTION

1. For the reasons set out in this Second Supervisory Notice, the Authority has decided not to rescind the requirements set out in paragraphs 1.1 to 1.6 below, which were imposed on FWML with immediate effect by a First Supervisory Notice dated 29 August 2019.

1.1 The Firm must not, without the prior written consent of the Authority, carry out any regulated activities.

1.2 The Firm must not, without the prior written consent of the Authority, in any way dispose of, transfer, deal with or diminish the value of any of its own assets (whether in the United Kingdom or elsewhere).

1.2.1 This requirement does not prohibit the Firm from dealing with or disposing of any of its assets in the ordinary and proper course of business, amounting to no more than £2,000 per month. For the

avoidance of doubt, the following would not be in the ordinary and proper course of business for these purposes:

- the disposal, transfer or sale in whole or in part of the Firm's client base;
- the making of any capital distribution;
- the payment of unusual or significant amounts to the Firm's shareholders, employees, officers or directors or any persons connected thereto;
- the making of any gift or any significant loan by the Firm to any party;
- the entry into any financial reconstruction or organisation;
- taking any other action that is outside the scope of the Firm's ordinary day-to-day business which would have the effect of diminishing the value of its assets.

1.2.2 For the avoidance of doubt the requirement set out in this paragraph 1.2 is an asset requirement within the meaning of section 55P(4)(a) of the Act.

1.3 The Firm must not, without the prior written consent of the Authority, dispose of, transfer or sell in whole or in part its client base.

1.4 The Firm must, by 31 October 2019, refund any ongoing service fees that it has received from clients for whom it did not provide any service. The Firm has not yet refunded these fees, but has informed the Authority that it intends to do so and has provided the Authority with details of certain proposed repayments. It must therefore do so immediately the Authority approves its repayment plans.

1.5 The Firm must, within two weeks of the date of the First Supervisory Notice, instruct any party involved in any transactions related to the Firm's regulated activity (for example, but not limited to, product providers, SIPP operators, Discretionary Fund Managers and/or ISA managers) which have not yet been completed, to put on hold those transactions. The Firm has provided the Authority with evidence which indicates that it has complied with this requirement.

1.6 The Firm must, within two weeks of the date of the First Supervisory Notice, notify all its clients (in a form satisfactory to the Authority) of the terms and effects of the requirements set out in paragraphs 1.1 to 1.5 above. The Firm has provided the Authority with evidence which indicates that it has complied with this requirement.

REASONS FOR ACTION

2. On the basis of the facts and matters described in this Second Supervisory Notice, having considered the representations made by FWML on the First Supervisory Notice, the Authority has decided not to rescind the Requirements for the following reasons:

a. It continues to appear to the Authority that the Firm is failing to satisfy the Threshold Conditions; and

b. The Authority considers that the imposition of the Requirements remains desirable in order to advance its consumer protection objective (set out in section 1C of the Act).

3. The Authority has concluded that the Firm is failing to satisfy the Threshold Conditions on the basis that:

a. It is not capable of being effectively supervised and is therefore failing to satisfy the Effective Supervision Threshold Condition; and

b. It appears to the Authority that the Firm has breached Principle 1 (Integrity) and Principle 11 (Relations with Regulators) of the Principles, and is therefore failing to satisfy the Suitability Threshold Condition.

DEFINITIONS

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

"the Authority" means the Financial Conduct Authority;

"AWUL" means Active Wealth (UK) Ltd;

"the Effective Supervision Threshold Condition" means the threshold condition set out in paragraph 2C of Schedule 6 to the Act;

"the First Supervisory Notice" means the First Supervisory Notice given to FWML dated 29 August 2019;

"FOS" means the Financial Ombudsman Service;

"FSCS" means the Financial Services Compensation Scheme;

"FWML" or "Firm" means Fortuna Wealth Management Limited (formerly Fidelis Wealth Management Limited, and before that, AWG Financial Limited);

"the Handbook" means the Authority's Handbook of rules and guidance;

"High-Risk Bonds" means three series of bonds issued by a company listed on the Irish Stock Exchange;

"the Information Requirement" means the information requirement sent pursuant to section 165 of the Act by the Authority to the Firm on 12 June 2019;

"NBR" means new business register;

"Non-standard Investments" means investments that are typically higher risk or speculative propositions, and the entire amount invested is at risk. These investments tend to be illiquid and difficult to value, and there may be little or no recourse to the FOS and FSCS, for example if the arrangement is mis-managed;

"the Principles" means the Authority's Principles for Businesses;

"the RDC" means the Authority's Regulatory Decisions Committee;

"the Requirements" means the requirements which were imposed on the Firm by the First Supervisory Notice, detailed in paragraphs 1.1 to 1.6 of this Notice;

"the Suitability Threshold Condition" means the threshold condition set out in paragraph 2E of Schedule 6 to the Act;

"the Threshold Conditions" means the threshold conditions set out in Part 1B of Schedule 6 to the Act;

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

"the Visit" means the visit that the Authority conducted at the Firm's premises on 26 June 2019.

FACTS AND MATTERS RELIED ON

Background

4. FWML has been regulated by the Authority since 1 June 2017. Subject to the requirement set out in paragraph 1.1 above, it has permission to carry on the following regulated activities:

   a. Advising on investments;

   b. Advising on Pension Transfers and Pension Opt Outs;

   c. Agreeing to carry on a regulated activity;

   d. Arranging (bringing about) deals in investments;

   e. Making arrangements with a view to transactions in investments.

5. The Firm's sole director and shareholder is Mr Andrew John Deeney. He also holds the CF1 (director), CF10 (compliance oversight), CF11 (money laundering reporting) and CF30 (customer) functions of FWML and is responsible for Insurance Distribution at the Firm.

Mr Deeney's involvement in AWUL

6. Between 6 February 2015 and 12 December 2017, Mr Deeney held the CF30 (customer) function at AWUL, a financial advice firm which went into liquidation on 5 February 2018, and has since been dissolved.

Misleading the Authority in relation to the High-Risk Bonds

7. Mr Deeney set up FWML in June 2017, prior to leaving AWUL. On 24 November 2017, AWUL applied for requirements to be imposed on it which, among other things, prevented it from taking on new clients and limited its ability to advise existing clients. On 5 February 2018, AWUL entered liquidation. On 28 February 2018, FWML purchased AWUL's client book, consisting of approximately 900 clients, for £5,000. Ultimately, FWML took on approximately 150 of these clients.

8. Between 29 December 2017 and 29 August 2018, around 30 of FWML's clients invested in the High-Risk Bonds. In total, FWML's clients invested around £1.6m in the High-Risk Bonds.

9. The High-Risk Bonds are Non-standard Investments.

10. In March 2019, the Authority asked FWML to provide an NBR which included a breakdown of standard investments and Non-standard Investments arranged by FWML (save for a category of investments of which the Authority was already aware – which did not include the High-Risk Bonds). FWML provided an NBR with a breakdown that did not include details of the High-Risk Bonds.

11. On 12 June 2019 Authority sent FWML the Information Requirement. Question 1.3 asked FWML to provide certain information in relation to "*any investments in debt instruments that the firm or its subsidiaries/affiliates/appointed representatives are in any way involved in the manufacture and/or distribution of*". FWML's answer stated: "*We do not advise on these types of investments*". Question 3.1 asked whether, "*the firm or its affiliates/subsidiaries/appointed representatives arrange for individual investors to invest directly or indirectly (e.g. by way of a fund) in debt instruments including bonds, loan notes or debentures*." FWML answered "*No*". The High-Risk Bonds are debt instruments.

12. Subsequently, on 24 June 2019, the Authority received information from another authorised firm which indicated that FWML had advised and arranged for approximately 30 clients to invest in the High-Risk Bonds.

13. On 26 June 2019, the Authority conducted a visit of FWML.

14. During the Visit, Mr Deeney was asked whether the Firm had arranged investments in the High-Risk Bonds. He stated that it had not.

15. When Mr Deeney was shown an application form he had completed that indicated he had advised customers to invest in the High-Risk Bonds and arranged that investment, he suggested that these clients had been formerly advised by AWUL to invest in the High-Risk Bonds and that, after AWUL had become subject to restrictions on 24 November 2017, FWML had completed the transactions in AWUL's place.

16. Subsequently, during the oral representations meeting with the RDC on 26 November 2019, Mr Deeney stated that the Firm had advised two of the clients to invest in the High-Risk Bonds. The Firm completed application forms for the High-Risk Bonds on behalf of a number of additional clients and in several cases wrote covering letters indicating that it had advised them on the suitability/appropriateness of the bonds. It is notable that the majority of these investments occurred after AWUL went into liquidation on 5 February 2018.

17. The Authority therefore concludes that:

    a. On any view, FWML's involvement in these investments should have been disclosed in the NBR that the Authority had asked FWML to provide;

b. Similarly, however many clients AWUL actually advised, FWML's answers to the Information Requirement were false;

c. The statements made by Mr Deeney during the Visit, that FWML had not arranged investments in the High-Risk Bonds, that AWUL had advised all of the clients to invest and that FWML had only completed the transactions in AWUL's place, were not true.

Charging fees without providing any service

18. As a result of the Visit and the Authority's inquiries since, the Authority has discovered that FWML received ongoing service fees from the clients it acquired from AWUL (approximately 150 people). FWML has told the Authority that it has carried out ongoing reviews for only 27 of these clients. Consequently, FWML took fees from at least 120 clients without providing them with any service, and, it would appear, without those clients' knowledge or consent. Only when the Authority raised this with FWML did it suggest it would refund the fees wrongfully taken from its clients. It has not yet done so. Based on the information that the Firm has provided, it appears that these fees total nearly £20,000.

FAILINGS AND RISKS TO OPERATIONAL OBJECTIVES

19. The regulatory provisions relevant to this Second Supervisory Notice are set out in Annex A.

20. Section 55L of the Act allows the Authority to impose a new requirement, or to vary a requirement previously imposed by the Authority under section 55L, on an authorised person if it appears to the Authority that the authorised person is failing, or is 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)). This power is referred to as the Authority's own-initiative requirement power.

21. For the reasons summarised below, it continues to appear to the Authority that FWML is failing to satisfy the Threshold Conditions and the Authority continues to consider that the exercise of its own-initiative requirement power is desirable in order to advance its consumer protection operational objective.

Failure to satisfy the Threshold Conditions

Breach of Principles 1 and 11 – Recklessly misleading the Authority with regard to arranging investments in High-Risk Bonds

22. It appears to the Authority that the Firm acted recklessly and did not deal with the Authority in an open and cooperative way when, on several occasions, it failed to disclose that it had arranged investments in the High-Risk Bonds for its clients, and denied having advised on or arranged such investments. In doing so, the Firm was aware of the risk that the Authority wished to know about the Firm's involvement with such bonds and would conclude from the Firm's responses that it had no involvement. Accordingly, it appears to the Authority that the Firm acted in breach of Principles 1 and 11.

Breach of Principle 1 – Recklessly receiving ongoing fees from clients without providing any service

23. It appears to the Authority that the Firm acted recklessly and with a lack of integrity when it received ongoing fees from a large number of clients without providing any service to them and without having any contractual or other basis for doing so, and failed in a timely way to stop the payment of such fees to it and to refund the fees to its clients. Accordingly, it appears to the Authority that the Firm acted in breach of Principle 1.

Failure to satisfy the Suitability Threshold Condition – Lack of fitness and propriety

24. As it appears to the Authority that the Firm committed the above breaches of Principles 1 and 11, the Authority considers that the Firm is failing to satisfy the Suitability Threshold Condition, in that it is not fit and proper having regard to all the circumstances. In particular, this is because the Firm has failed to conduct its business with integrity and in compliance with proper standards.

Failure to satisfy the Effective Supervision Threshold Condition – Lack of adequate information

25. As it appears to the Authority that the Firm recklessly and repeatedly failed to deal with the Authority in an open and cooperative way, in breach of Principles 1 and 11, the Authority is not satisfied that it is likely that it will receive adequate information from the Firm to enable it to determine whether the Firm is complying with relevant regulatory requirements. As a result, it appears to the Authority that the Firm is failing to satisfy the Effective Supervision Threshold Condition.

Desirable in order to advance the Authority's operational objectives

26. The Authority is of the view that, given the failings detailed in this Second Supervisory Notice, the imposition of the Requirements continues to be necessary and proportionate in order to advance its consumer protection objective.

REPRESENTATIONS

27. Annex B contains a brief summary of the key representations made by FWML and how they have been dealt with. In making the decision which gave rise to the obligation to give this Second Supervisory Notice, the Authority has taken into account all of the representations made by FWML, whether or not set out in Annex B.

PROCEDURAL MATTERS

28. This Second Supervisory Notice is given to the Firm under section 55Y(7) of the Act, and in accordance with section 55Y(9) of the Act.

29. The following paragraphs are important.

Decision Maker

30. The decision which gave rise to the obligation to give this Notice was made by the RDC.

The Tribunal

31. The Firm has the right to refer the matter to which this Second Supervisory Notice relates to the Tribunal. 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 Second Supervisory Notice is given to it to refer the matter to the Upper Tribunal.

32. A reference to the Tribunal can be made by way of a signed reference notice (Form FTC3) and filed with a copy of this Second Supervisory Notice. The Tribunal's contact details are: The Upper Tribunal, Tax and Chancery Chamber, Fifth Floor, Rolls Building, Fetter Lane, London, EC4A 1NL (telephone: 020 7612 9730; email: uttc@hmcts.gsi.gov.uk).

33. For further information on the Upper Tribunal (including the power to vary time periods) you should refer to the HM Courts and Tribunals Service website which will provide guidance and the relevant form to complete. The relevant page on the HM Courts and Tribunals Service website can be accessed via the following link:

    http://www.justice.gov.uk/forms/hmcts/tax-and-chancery-upper-tribunal

34. A copy of Form FTC3 must also be sent to Kevin Smith at the Authority, 12 Endeavour Square, E20 1JN, London at the same time as filing a reference with the Upper Tribunal.

Publicity

35. The Firm should note that section 391 of the Act requires the Authority, when this Second Supervisory Notice takes effect, to publish such information about the matter as it considers appropriate.

Contacts

36. For more information concerning this matter generally, the Firm should contact Kevin Smith at the Authority (direct line: 0131 301 2042).

Tim Parkes
Chair, Regulatory Decisions Committee

ANNEX A

RELEVANT STATUTORY PROVISIONS

1. The Authority's operational objectives are set out in section 1B of the Act and include securing an appropriate degree of protection for consumers (section 1C).

2. Section 55L of the Act allows the Authority to impose a requirement on an authorised person with a Part 4A permission where it is desirable to do so in order to advance one or more of the Authority's operational objectives (section 55L(2)(c)) or where a firm is failing, or is likely to fail, to satisfy the threshold conditions for which the Authority is responsible (section 55L(2)(a)).

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)). Section 55N(2) provides that a requirement may extend to activities which are not regulated activities.

4. Pursuant to section 55P(4)(a) of the Act, an assets requirement means a requirement prohibiting the disposal of, or other dealing with, any of the subject's assets (whether in the United Kingdom or elsewhere) or restricting such disposals or dealings. If the Authority gives notice of such a requirement to any institution with whom the subject has an account, the notice has the effects, for that institution, set out in section 55P(6) of the Act. Those effects are that—

   (a) the institution does not act in breach of any contract with the subject if, having been instructed by the subject (or on the subject's behalf) to transfer any sum or otherwise make any payment out of the subject's account, it refuses to do so in the reasonably held belief that complying with the instruction would be incompatible with the requirement, and

   (b) if the institution complies with such an instruction, it is liable to pay to the Authority an amount equal to the amount transferred from, or otherwise paid out of, the subject's account in contravention of the requirement.

5. Section 55Y of the Act allows a requirement or variation imposed under the own-initiative requirement power or own-initiative variation power to take effect immediately (or on a specified date) only 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) The [Authority] may not publish information under this section if, in its opinion, publication of the information would be—

   (a) unfair to the person with respect to whom the action was taken or proposed to be taken,

   (b) prejudicial to the interests of consumers […]

(7) Information is to be published under this section in such manner as the [Authority] considers appropriate."

7. Paragraph 2C to Schedule 6 to the Act states, in relation to a person ("A") carrying on or seeking to carry on regulated activities which do not consist of or include a PRA-regulated activity, that:

> "(1) A must be capable of being effectively supervised by the FCA having regard to all the circumstances including-
>
> (a) the nature (including the complexity) of the regulated activities that A carries on or seeks to carry on;
>
> (b) the complexity of any products that A provides or will provide in carrying on those activities;
>
> (c) the way in which A's business is organised;
>
> …
>
> (f) if A has close links with another person ("CL")—
>
> (i) the nature of the relationship between A and CL,
>
> (ii) whether those links are or that relationship is likely to prevent the FCA's effective supervision of A ...
>
> (2) A has close links with CL if-
>
> (e) CL owns or controls 20% or more of the voting rights or capital of A …"

8. Paragraph 2E to Schedule 6 to the Act states, in relation to a person ("A") carrying on or seeking to carry on regulated activities which do not consist of or include a PRA-regulated activity, that:

> "A must be a fit and proper person having regard to all the circumstances, including-
>
> […]
>
> (c) the need to ensure that A'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;
>
> (d) whether A has complied and is complying with requirements imposed by the [Authority] in the exercise of its functions, or requests made by the [Authority], relating to the provision of information to the [Authority] and, where A has so complied or is so complying, the manner of that compliance;
>
> (e) whether those who manage A's affairs have adequate skills and experience and have acted and may be expected to act with probity;
>
> (f) whether A'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";
>
> […]."

RELEVANT HANDBOOK PROVISIONS

9. In exercising its power to impose requirements, the Authority must have regard to guidance published in the Handbook. The relevant main considerations in relation to the action specified above are set out below.

Guidance concerning the relevant threshold conditions

10. Guidance on the Threshold Conditions is set out in the part of the Handbook entitled Threshold Conditions ("COND").

COND 2.3 – Effective supervision: Paragraph 2C of Schedule 6 to the Act

11. COND 2.3.1A reproduces paragraph 2C of Schedule 6 to the Act (the "Effective Supervision Threshold Condition") (as set out in part above).

12. COND 2.3.3G(1) states that, in assessing the Effective Supervision Threshold Condition, the Authority will take into consideration whether it is likely that the Authority will receive adequate information about 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 Authority 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 (the Supervision module in the Handbook) on the provision of information to the Authority.

COND 2.5 – Suitability: Paragraph 2E of Schedule 6 to the Act

13. COND 2.5.1A(1) reproduces paragraph 2E of Schedule 6 to the Act ("the Suitability Threshold Condition") (as set out in part above).

14. COND 2.5.3G(1) states that the Authority may consider that a firm is not suitable because of doubts over the individual or collective suitability of persons connected with the firm.

15. COND 2.5.4G(2) provides examples of general considerations to which the Authority may have regard in assessing whether a firm will satisfy and continue to satisfy the Suitability Threshold Condition.

16. COND 2.5.6G provides that the Authority may have regard when assessing whether a firm will satisfy, and will continue to satisfy the threshold conditions, to whether the firm has been open and co-operative in all of its dealings with the Authority and is ready, willing and organised to comply with the requirements and standards under the regulatory system.

PRIN – Principles for Businesses

17. PRIN 1.1.2G states that the Principles are a general statement of the fundamental obligations of firms under the regulatory system. PRIN includes:

> Principle 1 - *"A firm must conduct its business with integrity.";*
>
> Principle 11 - *"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"*.

OTHER RELEVANT REGULATORY PROVISIONS

18. The Authority's policy in relation to its enforcement powers is set out in the Enforcement Guide (EG), certain provisions of which are summarised below.

19. EG 8.1 reflects the provisions of sections 55J and 55L of the Act that the Authority may use its power to vary an authorised person's Part 4A permission or impose a requirement where a firm is failing or is likely to fail to satisfy the threshold conditions (EG 8.1(1)); or where it is desirable to exercise the power in order to advance one or more of its operational objectives (EG 8.1(3)).

Imposing requirements on the Authority's own-initiative

20. EG 8.2.1 provides that the Authority will have regard to its statutory objectives and the range of regulatory tools that are available to it, when it considers how it should deal with a concern about a firm. The Authority will also have regard to: (1) the responsibilities of a firm's management to deal with concerns about the firm or about the way its business is being or has been run; and (2) the principle that a restriction imposed on a firm should be proportionate to the objectives the Authority is seeking to achieve.

21. EG 8.2.3 provides that the Authority will exercise its formal powers under section 55J or 55L of the Act, where the Authority considers it is appropriate to ensure a firm meets its regulatory requirements. EG 8.2.3(1) and (2) specifies that the Authority 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 and it is concerned that the consequences of a firm not taking the desired steps may be serious. EG 8.2.6 gives examples of the circumstances in which the Authority will consider varying a firm's Part 4A permission because it has serious concerns about a firm, or about the way its business is being or has been conducted. These include:

> "(1) in relation to the grounds for exercising the power under section 55J(1)(a) or section 55L(2)(a) of the Act, the firm appears to be failing, or appears likely to fail, to satisfy the threshold conditions relating to one or more, or all, of its regulated activities, because for instance:
>
> […]
>
> (b) the firm appears not to be a fit and proper person to carry on a regulated activity because:
>
> […]
>
> (iii) it has breached requirements imposed on it by or under the Act (including the Principles and the rules), for example in respect of its disclosure or notification requirements, and the breaches are material in number or in individual seriousness;
>
> […]"

22. EG 8.4 states examples of requirements that the Authority may consider imposing when exercising its own-initiative power in support of its enforcement function. These include a requirement that prohibits the disposal of, or other dealing with, any of the firm's assets or restricts those disposals or dealings (EG 8.4.4).

23. EG 8.5.5 states the Authority may decide to keep a firm's Part 4A permission in force to maintain the firm's status as an authorised person to use administrative enforcement powers against the firm.

Use of the own-initiative powers in urgent cases

24. 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.

25. EG 8.3.2 provides the circumstances in which the Authority will consider exercising its own initiative power as a matter of urgency. These include where the information available to it indicates serious concerns about the firm or its business that need to be addressed immediately and 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.

26. EG 8.3.3 sets out a non-exhaustive list of situations which the Authority will consider in exercising its own-initiative power as a matter of urgency. These include:

> "(1) information indicating significant loss, risk of loss or other adverse effects for consumers, where action is necessary to protect their interests;
>
> […]
>
> (3) evidence that the firm has submitted to the [Authority] inaccurate or misleading information so that the [Authority] becomes seriously concerned about the firm's ability to meet its regulatory obligations;
>
> (4) circumstances suggesting a serious problem within a firm or with a firm's controllers that calls into question the firm's ability to continue to meet the threshold conditions."

27. EG 8.3.4 states that the Authority will consider the full circumstances of each case when it decides whether an urgent imposition of a requirement is appropriate and sets out a non-exhaustive list of factors which will determine whether the urgent exercise of the Authority's own-initiative power is an appropriate response to serious concerns, 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 [Authority]'s urgent exercise of own-initiative powers will be appropriate, to protect the consumers' interests.
>
> […]
>
> (3) The nature and extent of any false or inaccurate information provided by the firm. Whether false or inaccurate information warrants the [Authority]'s urgent exercise of its own-initiative powers will depend on matters such as:
>
> (a) the impact of the information on the [Authority]'s view of the firm's compliance with the regulatory requirements to which it is subject, the firm's suitability to conduct regulated activities, or the likelihood that the firm's business may be being used in connection with financial crime;

(b) whether the information appears to have been provided in an attempt knowingly to mislead the [Authority], rather than through inadvertence;

(c) whether the matters to which false or inaccurate information relates indicate there is a risk to customer assets or to the other interests of the firm's actual or potential customers.

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

(5) The financial resources of the firm. Serious concerns may arise where it appears the firm may be required to pay significant amounts of compensation to consumers. In those cases, the extent to which the firm has the financial resources to do so will affect the [Authority]'s decision about whether exercise of the [Authority]'s own-initiative powers is appropriate to preserve the firm's assets, in the interests of the consumers. The [Authority] will take account of any insurance cover held by the firm. It will also consider the likelihood of the firm's assets being dissipated without the [Authority]'s intervention, and whether the exercise of the [Authority]'s power to petition for the winding up of the firm is more appropriate than the use of its own-initiative powers […].

[…]

(8) The firm's conduct. The [Authority] will take into account:

(a) whether the firm identified the issue (and if so whether this was by chance or as a result of the firm's normal controls and monitoring);

(b) whether the firm brought the issue promptly to the [Authority]'s attention;

(c) the firm's past history, management ethos and compliance culture;

(d) steps that the firm has taken or is taking to address the issue.

(9) The impact that use of the [Authority's] own-initiative powers will have on the firm's business and on its customers.

[…]"

ANNEX B

REPRESENTATIONS

1. FWML's representations (in italics) and the Authority's conclusions in respect of them are set out below.

The appropriateness of the decision to impose the Requirements

2. *The decision to impose the Requirements* [redacted] *has not been made on an objective basis. The Authority has admitted that it has been made on a protective basis, owing to a pre-existing investigation into Mr Deeney's activities at AWUL. The Firm is concerned that the Authority's decision to impose the Requirements has been unfairly influenced by its view of matters which pre-date the issues detailed in the First Supervisory Notice and which concern an entirely separate firm,* [redacted].

3. *The decision to impose the Requirements is also unreasonable and/or disproportionate, has been made without proper and impartial consideration of the evidence, and has failed to consider adequately the impact of the decision on the Firm and its customers.*

4. *The Firm considers that a more appropriate outcome would be for the Authority to accept the Firm's proposal that it take the following steps in response to the Authority's concerns:*

    a. *The Firm will conduct a suitability review of all clients holding investments in the High-Risk Bonds and will assist any client that wishes to exit their investment early, as well as covering any potential losses arising;*

    b. *The Firm will repay any ongoing advisory fees charged to customers where no ongoing advisory service has been provided;*

    c. *Before contacting any new business, the Firm will submit the proposed business case for independent review by an independent third-party compliance firm for approval prior to meeting with the client; and*

    d. *On a quarterly basis, the Firm will provide the Authority with its NBR, along with the results of the independent compliance review for each item of new business.*

5. The Authority does not agree that the decision to impose the Requirements was made [redacted] not on an objective basis and/or without proper and impartial consideration of the evidence. The decision to give FWML the First Supervisory Notice was made by the Chair of the RDC. The RDC is a committee of the Authority which operates separately from the rest of the Authority [redacted]. The RDC Chair decided to give FWML the First Supervisory Notice because he determined, having considered the relevant evidential material, and for the reasons set out in the First Supervisory Notice, that it appeared that the Firm was not satisfying the Threshold Conditions and that it was desirable to impose the Requirements to advance the Authority's consumer protection operational objective.

6. The Authority also does not agree that the decision to impose the Requirements was unreasonable and/or disproportionate. For the reasons set out in this Second Supervisory Notice, the Authority has decided that the Requirements are necessary

and appropriate and that the decision to impose them should not be rescinded. The Authority acknowledges that this decision will have a negative impact on the Firm's business, and could also affect the Firm's customers. Nevertheless, given the extent of the Authority's concerns and the seriousness of FWML's failings, the Authority considers that the action is proportionate and reasonable.

7. Further, as the Authority has concluded that FWML is not satisfying the Suitability and Effective Supervision Threshold Conditions, which are two of the fundamental conditions that a firm has to satisfy in order to be permitted to carry out regulated activities, the Authority does not consider that the steps proposed by the Firm would adequately address the Authority's concerns.

The High-Risk Bonds

8. *The Firm accepts it should have included in the NBR details of the High-Risk Bonds. However, the omission of this information and the Firm's response to the Information Requirement were the result of an honest mistake rather than a lack of integrity.*

9. The Authority considers the Firm must have been aware that there was a risk that the Authority wished to know about its involvement with the High-Risk Bonds, and would conclude from its response that it had no such involvement, and so has concluded that the Firm's failure to include details of the High-Risk Bonds in the NBR was reckless. Similarly, the Authority does not accept the Firm's explanation of its responses to the Information Requirement. Accordingly, the Authority concludes that on both occasions FWML acted with a lack of integrity.

The NBR

10. *The investments in the High-Risk Bonds were made on an execution-only basis and constituted business introduced by AWUL. The Firm did not include details of the High-Risk Bonds in the NBR in the mistaken belief that:*

    a. *The High-Risk Bonds did not fall within the scope of "new business", as it was not business on which the Firm itself had advised or been remunerated.*

    b. *The High-Risk Bonds did not constitute Non-standard Investments.*

11. *This mistaken belief was honestly held and was based on the following assessment by FWML of the position at the relevant time:*

    a. *The initial request to invest in the High-Risk Bonds came from clients who had been advised by AWUL prior to that firm going into liquidation in February 2018, and in respect of whom AWUL had been unable to complete the transaction.*

    b. *After carrying out due diligence on the providers and the underlying investment, the Firm concluded that the High-Risk Bonds fell within the Authority's definition of a standard investment.*

12. *The Firm therefore processed these investments on an execution-only basis. It took no remuneration in the process as it considered it was not appropriate to do so given its minimal involvement, but hoped to benefit by the clients approaching it for advice in the future.*

13. *In addition, the information omitted from the NBR does not indicate a risk to customer assets or to the other interests of the Firm's actual or potential customers, and there is no evidence to suggest any such risk. There was also no meaningful benefit to Mr Deeney or the Firm in omitting this information,* [redacted].

14. The Firm stated in the oral representations meeting with the RDC on 26 November 2019 that it had advised two clients to invest in the High-Risk Bonds. It is therefore clear that, even on the Firm's case, these investments should have been mentioned in the NBR.

15. However, in the application form for the investments, which FWML completed on behalf of its clients, the box stating "*Advised Investor*" was ticked and the client signed a declaration to the effect that they were a client of a firm that "*will comply with the suitability rules in relation to the investment promoted*". In addition, the majority of the investments were arranged after AWUL went into liquidation on 5 February 2018 and the authorised firm which received the application forms from the Firm informed the Authority that its understanding was that all clients who invested after that date received advice from FWML. That authorised firm also informed the Authority that the following statement was incorporated in several of the Firm's cover letters enclosing the application forms: "*We confirm that we have advised our Client, including in relation to the suitability (and where applicable, appropriateness) of products and services linked to the portfolios*. *In compliance with the [Authority] Rules we shall continue to monitor the suitability and appropriateness of all investment decisions made.*"

16. Whether or not FWML did advise all these clients, it was still required to include details of these investments as the Firm was required to provide an NBR which included a breakdown of investments it had arranged, rather than advised on.

17. In respect of the Firm's assertion that it concluded that the High-Risk Bonds are standard investments after carrying out due diligence, the Authority notes that Mr Deeney failed to produce any due diligence files when asked to do so during the Visit. The Firm subsequently provided documents that it states constitute the due diligence it carried out, but they appear to the Authority to be marketing material.

18. The Authority's view is that the High-Risk Bonds are Non-standard Investments. However, even if FWML genuinely believed that the High-Risk Bonds are standard investments, this was not relevant to its completion of the NBR, as it was clearly required to provide an NBR which included a breakdown of both standard and Non-standard Investments.

19. The Authority is particularly concerned about firms investing their retail clients into Non-standard Investments like the High-Risk Bonds, given the risk of loss, and it is therefore very important that firms give accurate information to the Authority about these investments. The Authority considers that the Firm would have been aware of this, [redacted], and that it would therefore have been aware that there was a risk that the Authority wished to know about its involvement with the High-Risk Bonds. As the Firm did not mention the High-Risk Bonds in the NBR, when the Authority received the NBR it did not raise any questions about the Firm's involvement with such investments.

The Information Requirement

20. *The Information Requirement sought information relating to the* "manufacture and distribution*" of debt instruments, amongst other matters. When completing its response to the Information Requirement, the Firm honestly believed that it had not manufactured or distributed any debt instruments. This belief was reasonably held, as the High-Risk Bonds had been invested on an execution-only basis.*

21. *The Firm's reply to question 1.3, that it had not advised on these types of investments, was true and the Authority has produced no evidence to suggest otherwise.*

22. *The Firm's reply to question 3.1, that it had not arranged investment in debt instruments, needs to be seen in the context of the Firm's understanding of the nature of the Authority's enquiries. The Firm reasonably believed they concerned the manufacture and distribution of mini-bonds and, having carried out due diligence, it did not consider the High-Risk Bonds to be mini-bonds.*

23. The Authority acknowledges that the Information Requirement contained instructions for responding to it, which stated that it related to "*the manufacturing and distributing of debt-based investment products to consumers*" and linked to an Authority article about mini-bonds. However, the Information Requirement also advised that the scope of questions should be interpreted broadly to avoid withholding information that may be relevant to the Authority's objectives, and that the Firm should seek clarification from the Authority if it had any questions about how to complete it, which it did not do.

24. In respect of the Firm's reply to question 1.3, the Firm has now admitted to advising two clients to invest in the High-Risk Bonds, and the Authority's view is that it is likely that the Firm advised many more. The Firm's response to question 1.3 is therefore clearly false.

25. In respect of the Firm's reply to question 3.1, the Authority considers that it is clear that the question did not just relate to the manufacture and distribution of mini-bonds. If the Firm thought it had this narrower focus, at the very least it should have sought clarification from the Authority. In not doing so, and answering as it did, the Authority considers that the Firm acted recklessly.

The Visit

26. *The Firm accepts that during the Visit, in response to a question as to whether the Firm had invested any clients into the High-Risk Bonds, Mr Deeney may have responded that it had not. However, he was confused at the time and thought the question was directed at whether the Firm had advised clients to invest in the High-Risk Bonds, which it had not. His reply also needs to be seen in the context of what was a stressful occasion.*

27. *Mr Deeney's subsequent statement that AWUL had advised clients about the High-Risk Bonds is corroborating evidence of his ongoing misunderstanding of the nature of the Authority's enquiries, which he believed were focused on whether the Firm had advised clients. This was an honest misunderstanding.*

28. *It was the case that AWUL had advised the clients to invest in the High-Risk Bonds. The Firm only carried-out execution-only transactions, on the basis of the clients approaching FWML to say that they still wanted to invest subsequent to the advice they had received.*

29. FWML arranged its clients' investments in the High-Risk Bonds. Further, as explained above, Mr Deeney has admitted that FWML advised two clients to invest in the High-Risk Bonds, and the application forms for the High-Risk Bonds and FWML's covering letters indicate that the Firm did advise more clients, in circumstances where the majority of investments occurred after AWUL went into liquidation on 5 February 2018. Accordingly, the Authority considers that Mr Deeney, and therefore the Firm, was not open and cooperative with the Authority during the Visit.

<u>The service fees</u>

30. *The Authority's assertion that service fees were taken without clients' knowledge or consent, and that fees had been wrongfully taken, is not an accurate representation of the position. The ongoing service fees were paid as a result of the novation of two agencies from AWUL to the Firm. Both these agencies provided an online investment platform, and clients would have been able to verify what ongoing fees and/or trail commission had been paid and continued to be paid if they had accessed the platform. It is also reasonable to assume that, when receiving advice from AWUL, each client was made aware of the fee structure and arrangements prior to investing.*

31. *It was only a small proportion of FWML's client base who were charged ongoing service fees where there was no contractual or other basis for doing so.*

32. *The Firm recognises it should have been more proactive in contacting clients acquired from AWUL to ascertain whether they wished to pay ongoing fees. However, it took steps more than a year prior to the Visit to rectify the position with regards to the payment of ongoing fees. By May 2018, the Firm had commenced the process of contacting clients to ascertain whether they wished to retain the Firm for ongoing advisory services. Where a client confirmed they wished to benefit from ongoing advisory services, the Firm began the process of providing reviews for that client. In early 2019 the Firm decided to stop receiving ongoing fees from clients who the Firm had not had any contact with and to provide a refund.*

33. *The Firm has completed a review of the ongoing advisory fees and commissions received and has identified that it has received ongoing payments for 153 clients. 90 of these clients do not have a service agreement or do not require an ongoing service and the Firm proposed on 1 August 2019 to repay any fees received to these clients. Of the remaining 63 clients, the Firm has carried out reviews for 27 clients and plans to complete reviews for the remaining clients by April 2020.*

34. *The Firm does not accept that the facts and circumstances concerning the payment of ongoing advisory fees demonstrate a lack of integrity. The Firm had every intention of contacting the relevant clients to ascertain whether they wished to maintain ongoing advisory services from the Firm, but 2018 was a very difficult year for Mr Deeney which impacted on the time the Firm had available for this work. The fact that it has taken more time than anticipated to complete this process does not mean that the Firm lacks integrity.*

35. If it was the case that clients could have discovered for themselves that ongoing service fees and/or trail commissions were now being paid to FWML by accessing an agency platform, that does not mitigate the Firm's failure to give notice to the clients itself. It was also not reasonable simply to assume that a client advised by AWUL had consented to ongoing fees or commission being paid; as soon as it took on AWUL's clients, the Firm should have proactively notified them of the basis for any future payment of ongoing fees and/or commission, and sought their consent.

36. The Firm has accepted that it has received ongoing payments for 90 clients who do not have a service agreement or do not require an ongoing service. On 1 August 2019, the Firm provided a spreadsheet to the Authority which showed that 101 clients had not signed FWML's Service Proposition & Engagement Standard Service Agreement. Whatever the correct number, it is clear that the Firm has received fees from a large number of clients without any proper basis for doing so.

37. Whilst the Firm asked one of the agencies to stop the payment of ongoing adviser fees in respect of some of its clients in January 2018, that was nearly a year after it bought the client book, during which time it had been receiving fees without providing any service. The Authority has also not seen any evidence that it decided to refund those clients at that point, and instead considers that FWML only decided to refund the fees when this was raised by the Authority. Further, other clients continued to be charged ongoing service fees in the following months, including after the Visit, despite no service being provided to them. The Firm has also acknowledged that it has not carried out a review for over half of the clients who it states required an ongoing service, despite apparently commencing the review process over 18 months ago. Even if it is the case that it intended to provide a service to these clients, the Firm must have realised that it was not appropriate to continue to receive fees in circumstances where it had not yet carried out a review and, due to its level of resources, would be unable to do so for many of its clients for some time. The Authority concludes that the Firm acted recklessly and with a lack of integrity by continuing to receive fees in these circumstances.

Impact of the imposition of the Requirements on the Firm and Mr Deeney

38. *The Requirements will have a material effect on the Firm as an ongoing concern and on the livelihood of Mr Deeney, its sole director/shareholder.* [Redacted].

39. The Authority acknowledges that the Requirements will have a material effect on the Firm and on Mr Deeney. However, the Authority considers that these consequences do not outweigh the public interest in protecting consumers and preventing firms that are unable to satisfy the Threshold Conditions from carrying on regulated activities. [Redacted].

Steps undertaken by the Firm since the First Supervisory Notice

40. *Without prejudice to its position in respect of the First Supervisory Notice, the Firm submits that account is taken of the fact it has taken the following steps since the First Supervisory Notice:*

    a. *It has sent its clients a letter, approved by the Authority, informing them of the restrictions imposed by the First Supervisory Notice on the Firm.*

b. *It has put a stop to any business written and submitted by the Firm, which had not yet been completed.*

c. *It has ceased to carry out any regulated activities, whilst these proceedings remain ongoing.*

d. *It has identified clients where ongoing advice fees have been received and were to be repaid, and submitted this information to the Authority for its approval.*

e. *It has issued instructions to relevant third parties to cease ongoing payments to the Firm with immediate effect for those clients where ongoing advice fees and commissions have been received and where no ongoing reviews have yet been provided.*

f. *It has undertaken further reviews of the High-Risk Bonds investments and identified the original due diligence relating to the High-Risk Bonds. These reviews show that all clients have seen an increase in the value of their investments.*

41. The Authority acknowledges that FWML has taken the steps outlined above, most of which it was required to do by the First Supervisory Notice. Notwithstanding these actions by the Firm, the Authority continues to consider that the Firm is not satisfying the Threshold Conditions, and that the Requirements are necessary to advance the Authority's consumer protection operational objective, and so has decided not to rescind the Requirements.

42. The Authority also acknowledges that to date clients who invested in the High-Risk Bonds do not appear to have suffered any loss. However, this does not mean that they were not exposed to an unacceptable risk, nor that FWML's failings are not serious.

Publication

43. *Publication of the First Supervisory Notice would be fundamentally unfair to the Firm and Mr Deeney given the impact on the Firm's business and the effect on its customers, in circumstances where the Authority's decision to impose the Requirements is disproportionate and there are reasonable grounds to dispute certain of the Authority's findings, on which that decision is based.*

44. *Publication would be likely to result in adverse media coverage, thereby prejudicing the Firm and Mr Deeney's standing as financial advisers, with a real possibility of closure of the business and consequent long-term impact on Mr Deeney's livelihood, who has been in the financial services sector for 27 years and would be unlikely to be in a position to find alternative employment in the short to medium term. It would also have an impact on the Firm's customers, and will seriously hamper any chance the Firm and Mr Deeney may have of maintaining effective ongoing client relationships.*

45. Section 391(5) of the Act requires the Authority, when a supervisory notice takes effect, to publish such information about the matter to which the notice relates as it considers appropriate. Section 391(6) of the Act provides that the Authority may not publish information if, in its opinion, publication would be unfair to the person with respect to whom the action was taken, prejudicial to the interests of consumers or detrimental to the stability of the UK financial system. The RDC, which has made the

decision to give FWML this Second Supervisory Notice, is not the decision-maker in respect of the publication of supervisory notices. The Firm's representations regarding publication should, however, be taken into account by the Authority staff responsible for deciding whether the First and Second Supervisory Notices should be published. Any further points that the Firm wishes to make regarding publication should be addressed to the Authority's case team.