
SECOND SUPERVISORY NOTICE

To: **FXBFI Broker Financial Invest Ltd**

Reference Number: **802288**

Address:
79 Spyrou Kyprianou
MGO Protopapas
Limassol
3076
Cyprus

Date: **2 July 2021**

1 ACTION

- 1.1 For the reasons given in this Notice, the Authority has decided not to rescind the Requirements imposed on FXBFI Broker Financial Invest ("FXBFI") and notified to it in the First Supervisory Notice ("the FSN") dated 26 April 2021.
- 1.2 The FSN notified FXBFI that the Authority had decided to impose, pursuant to section 55L(3) of the Act, the following Requirements on FXBFI with immediate effect:

- 1) FXBFI must not conduct any regulated activities with, or in respect of, any client who is resident in the United Kingdom, except as is necessary to comply with requirements 3) and 4) below.
- 2) FXBFI must not conduct any marketing activity to persons resident in the United Kingdom.
- 3) By 3pm on 30 April 2021, in respect of all its clients who are resident in the United Kingdom, FXBFI must close all open trading positions and liquidate the positions into pound sterling balances (save for hedged positions which should be netted off rather than closed individually). Any positive cash balance held by a client resident in the United Kingdom must be paid to a bank or payment account held in the client's name as soon as practicable and, in any event, by 11 May 2021.
- 4) By 28 April 2021, FXBFI must notify all its clients who are resident in the United Kingdom by email that it is no longer able to provide investment services to them and will be taking all reasonable steps to return all balances held by FXBFI on their behalf.
- 5) By 29 April 2021, FXBFI must provide the Authority with a copy of the text used for the purposes of notifying clients under requirement 4) and a list of the email addresses to which such notifications were sent.
- 6) By 28 April 2021, FXBFI must display on all websites used by it in the course of providing regulated activities, including but not limited to www.fxbfi.com and www.101investing.com, a notice of such size and prominence that all viewers of the website will inevitably see and be able to read it, which states: "FXBFI Broker Financial Invest Ltd, trading as 101investing, is not permitted to provide regulated financial services to residents of the United Kingdom."
- 7) By 28 April 2021, FXBFI must display on its trading platform, at the point when clients log into the trading platform, a notice of such size and prominence that all users seeking to log into the trading platform will inevitably see and be able to read it, which states: "FXBFI Broker Financial Invest Ltd, trading as 101investing, is not permitted to provide regulated financial services to residents of the United Kingdom."
- 8) FXBFI must secure all books and records and preserve information and systems relating to regulated activities carried on by it, and must retain these in a form at a location, to be notified to the Authority in writing no later than 7 calendar days after the coming into force of these Requirements, such that they (or, so as not to hinder FXBFI's performance of its business activities, true copies of them) can be provided to the Authority, or to a person named by the Authority, promptly on its request.

1.3 Accordingly, the Requirements shall remain in force unless and until varied or cancelled by the Authority (either on the application of FXBFI or on the Authority's own initiative).

2 REASONS FOR ACTION

- 2.1 The FSN notified FXBFI that the Authority had decided to impose Requirements on it, in the terms set out in paragraph 1.2 above, in order to advance the Authority's consumer protection objective. On the basis of the facts and matters described in this Notice, having considered the representations made by FXBFI in respect of the FSN, the Authority considers that the imposition of the Requirements continues to be necessary and appropriate.
- 2.2 FXBFI is an investment firm registered in Cyprus. It trades as '101investing'. It has a temporary permission under the TPR. It provides consumers with the ability to trade CFDs using an online platform, accessible through its website, www.101investing.com.
- 2.3 Trading in CFDs involves significant risks and can lead to substantial monetary losses in short spaces of time. CFDs are not generally suited to retail investors who are not sufficiently sophisticated to understand and manage the risks involved. For that reason, the Authority has imposed rules which restrict the marketing and sale of CFDs to retail consumers.
- 2.4 Between September 2020 and 26 April 2021, the Authority received 39 complaints or expressions of concern about the activities of FXBFI. These complaints increased in frequency in 2021. The complaints disclosed serious misconduct by FXBFI including the use of misleading financial promotions, failures to inform customers about the nature and risks of CFDs, applying pressure to invest additional funds and failing to allow customers to withdraw funds.
- 2.5 As a result of FXBFI's activities, some customers have lost very significant sums of money.
- 2.6 In the circumstances, the Authority considers that the continuing provision of regulated activities by FXBFI to UK consumers presents unacceptable risks. As a result, the Authority considers that it is desirable to impose requirements on FXBFI which prevent it from conducting regulated activities in respect of, and marketing its products to, UK consumers and ensures that the effect of these measures is brought to the attention of its current and potential future UK clients.
- 2.7 This action is taken in order to advance the Authority's consumer protection objective.

3 DEFINITIONS

- 3.1 In this Notice:

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

"the Authority" means the Financial Conduct Authority;

"CFD" means contracts for differences;

“COBS” means the Conduct of Business Sourcebook, part of the Handbook;

“the Evidence Bundle” means the Authority’s supporting evidence bundle which underpinned the Authority’s application for the FSN;

“the FSN” means the First Supervisory Notice, dated 26 April 2021;

“FXBFI” means FXBFI Broker Financial Invest Ltd (FRN 802288), which trades as ‘101investing’;

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

“MiFID” means the recast Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU;

“the Principles” means the Principles for Businesses, rules of the Authority in the section of the Handbook entitled PRIN;

“the Recommendation Paper” means the Authority’s paper recommending the imposition of Requirements on FXBFI dated 23 April 2021, which underpinned the Authority’s application for the FSN;

“the Requirements” mean the requirements set out at paragraph 1.1 of this Notice;

“the RTC” means the Authority’s Regulatory Transactions Committee;

“the TPR” means the temporary permissions regime for firms previously operating in the UK under European Economic Area passporting provisions; and

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

4 FACTS AND MATTERS

Background

- 4.1 FXBFI is a company registered in Cyprus. It trades as ‘101investing’. From 28 February 2018 to the introduction of the TPR, it had the right to provide cross-border services into the UK pursuant to EEA passporting provisions.
- 4.2 On 23 December 2020, FXBFI provided notice of its intention to enter the TPR and was thus given a temporary permission when the TPR was introduced on 1 January 2021. The TPR was designed to be a temporary regime for former passported firms until applications for full authorisation could be considered. The effect of this is that FXBFI is deemed to be an authorised person but the Authority has not yet assessed the ownership, internal controls and business practices of FXBFI.
- 4.3 FXBFI’s principal activity is the provision of CFDs on a trading platform which is accessed via its website www.101investing.com.

- 4.4 CFDs are complex financial derivative products which are used to speculate on the movement in prices on a wide range of assets. They frequently involve high levels of leverage which creates the risk of substantial losses in the event of even small adverse price fluctuations in the underlying assets. CFDs present significant risks to investors who lack the necessary experience, knowledge and expertise to make appropriate investment decisions. As a result, they are generally unsuitable products for inexperienced investors.
- 4.5 Under the terms of MiFID, investment firms are required to assess the compatibility of financial instruments with the needs of its clients and ensure that the financial instruments are offered or recommended only when this is in the interest of the client. They are also required to ensure that their marketing communications are fair, clear and not misleading, that they provide appropriate information to clients and that they act honestly, fairly and professionally in accordance with the best interests of its clients.
- 4.6 Although not subject to most of the Authority's rules, firms in the TPR are obliged to comply with the Principles which include, in particular, treating their customers fairly and communicating information to them in a way which is fair, clear and not misleading.
- 4.7 In addition, firms selling CFDs are subject to UK restrictions in respect of sales to retail consumers, including limits on the leverage that may be used.

Complaints

- 4.8 Between September 2020 and 26 April 2021, the Authority received 39 complaints or expressions of concern from consumers about the business activities of FXBFI and 101investing.com. Of these, 24 were made in 2021, while FXBFI was in the TPR.
- 4.9 These complaints presented a consistent pattern of serious misconduct by FXBFI in the provision of its services to UK consumers.
- 4.10 This included the use of misleading financial promotions to attract customers, typically advertised online. These advertisements frequently used trusted corporations to attract the interest of consumers, and, on occasion, made promises of significant and unrealistic returns within a short period of time.
- 4.11 A significant proportion of complainants appeared to operate with a lack of knowledge as to the nature of the investments they were trading and the risks attached to trading in CFDs. Representatives of FXBFI, who typically engaged with its clients by telephone, failed to ensure that these clients understood the true position.
- 4.12 After consumers opened trading accounts with FXBFI, typically with small initial sums, numerous complainants described how pressure was applied to invest increasing sums of money, often through persistent and harassing contact with the complainant. Several consumers were persuaded to increase their investments using credit cards and others were instructed to make additional investments to prevent further losses or the closure of their accounts. The frequency and consistency of these reports demonstrate that this was a typical and accepted means of business by FXBFI's representatives.

- 4.13 FXBFI does not have regulatory permission to provide investment advice. Despite this, some complainants described how FXBFI's representatives provided direction on the sectors in which to invest and advice on the tax implications of investing. Three complaints reported that FXBFI told them that it would help control their trading account or trade on their behalf.
- 4.14 17 complainants stated that FXBFI failed to comply with requests to return funds to them. Some of these consumers were told that they needed to either pay a fee, make a trade or deposit more funds in order to make a withdrawal.
- 4.15 As a result of transacting with FXBFI, some consumers lost very significant sums of money. 13 consumers lost over £10,000, with three consumers losing £50,000 or more.
- 4.16 Four complainants were offered compensation or settlement agreements by FXBFI, for values substantially lower than their initial investment.
- 4.17 Three examples of FXBFI's treatment of its clients are demonstrated by Customer A, Customer B and Customer C.

Customer A

- 4.18 Customer A invested £11,200 with FXBFI in January 2021.
- 4.19 Customer A approached FXBFI looking to invest in a well-known company. Having opened an account with FXBFI, Customer A was informed that he could not make his chosen investment. Instead he was told to invest in an alternative sector. Customer A told the firm that he did not understand what was happening. Although FXBFI was aware that Customer A had limited savings, FXBFI put pressure on him to invest using credit cards. Customer A made the £11,200 investment and was told he would have £28,000 at the end of the month.
- 4.20 When Customer A tried to withdraw his funds, this request was refused. He was told to make further investments as his account was in danger.
- 4.21 In subsequent correspondence between Customer A and FXBFI, FXBFI stated that Customer A lost £10,568 having invested £11,200 across 26 trades and that a settlement of £2,000 had been agreed.

Customer B

- 4.22 Customer B invested £29,500 with FXBFI.
- 4.23 Customer B wanted to invest in stocks but was persuaded to invest in other products. Customer B told FXBFI that he did not understand the investment. FXBFI replied that this was not a problem as he would have an account manager who would control the trading account for him. Customer B was pressurised into making more deposits with the promise of receiving high returns. When he asked to stop trading and have his funds returned, FXBFI informed him that his funds were gone.
- 4.24 FXBFI offered a £6,000 settlement agreement, which Customer B refused. The settlement agreement terms included that the complainant would inform any third party, including regulatory bodies, that have been made aware of the complaint, that FXBFI has dealt with the complaint to the full satisfaction of the complainant.

Customer C

- 4.25 Customer C invested £31,500 with FXBFI.
- 4.26 Customer C was guided how to correctly fill out the account registration forms, as well as where and how to invest funds by his account manager. When some of his trades closed because the margin level dropped too low, he was persuaded to put more money into his account to help recover his losses.
- 4.27 He was pressurised to upgrade his account to gold status even though FXBFI was aware that he did not meet the criteria to do so. In order to make this upgrade, the customer was compelled to deposit £16,000 of his savings and to wrongly declare his trading experience and net worth. FXBFI told Customer C that he would not lose these savings and that once the gold account had been opened, he would be able to withdraw these funds. However, Customer C was unable to withdraw his funds.
- 4.28 Customer C complained to the firm. Following this complaint, FXBFI sent him settlement agreements on 3 separate occasions: for £3,000 on 10 March 2021, for £5,000 on 19 March 2021 and for £6,500 on 16 April 2021. Each such agreement was declined by Customer C.

Representations

- 4.29 On 26 April 2021, the Authority gave FXBFI the FSN. On 4 May 2021, at the request of solicitors instructed by FXBFI, the Authority provided them with the Recommendation Paper and the Evidence Bundle. On 25 May 2021, FXBFI made written representations to the Authority in respect of the FSN. FXBFI elected not to make oral representations.

5 FAILINGS

- 5.1 The regulatory provisions relevant to this Second Supervisory Notice are set out in Annex A.
- 5.2 From the facts and matters described above, the Authority considers that FXBFI has acted in contravention of its obligations under MiFID and in breach of Principle 7 of the Principles by failing to ensure that its marketing communications are fair, clear and not misleading.
- 5.3 The Authority further considers that FXBFI has acted in contravention of its obligations under MiFID and in breach of Principle 6 of the Principles by failing:
- a) to assess the compatibility of the financial instruments with the needs of the clients to whom FXBFI provides investment services;
 - b) to provide appropriate information in good time to clients or potential clients with regard to FXBFI and its products;
 - c) to act honestly, fairly and professionally in accordance with the best interests of its clients by pressuring customers to invest money and declining to action requests to return investment monies; and
 - d) to handle complaints in an appropriate manner and to pay appropriate redress to clients who had lost money as a result of FXBFI's failure to comply with its obligations.

- 5.4 The Authority further considers that FXBFI has acted in breach of its regulatory permissions by providing investment advice to its clients without having authorisation to do so.
- 5.5 The Authority considers that the ongoing provision by FXBFI of regulated activities presents serious risks to the interests of UK consumers. As a result, the Authority has concluded that it is desirable to exercise its power to impose requirements to prevent FXBFI from providing any further regulated services to UK consumers, to ensure that all monies held by FXBFI on behalf of UK clients are returned as quickly as possible and to alert its UK clients to the imposition of the Requirements.
- 5.6 This action is taken to advance the Authority's consumer protection objective.
- 5.7 The Authority considers that the Requirements are an appropriate and proportionate means to protect against the risks identified.

6 PROCEDURAL MATTERS

Decision Maker

- 6.1 The decision which gave rise to the obligation to give this Second Supervisory Notice was made by the RTC. The RTC is a committee of the Authority which takes certain decisions on behalf of the Authority.
- 6.2 This Second Supervisory Notice is given under section 55Y(7) and in accordance with section 55Y(9) of the Act.
- 6.3 The following statutory rights are important.

Representations

- 6.4 Annex B contains a brief summary of the key representations made by FXBFI and how they have been dealt with. In making the decision which gave rise to the obligation to give this Notice, the Authority has taken into account all representations made by FXBFI.

The Tribunal

- 6.5 FXBFI has the right to refer the matter to which this Second Supervisory Notice relates to the Tribunal, which considers references arising from decisions of the Authority. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, FXBFI has 28 days from the date on which this Second 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 FXBFI and filed with a copy of this Second Supervisory Notice. The Tribunal's contact details are: Upper Tribunal (Tax and Chancery Chamber), 5th Floor, Rolls Building, Fetter Lane, London EC4A 1NL (telephone: 020 7612 9730; email: uttc@justice.gov.uk).

- 6.7 Further details can be found on the Upper Tribunal's website at <https://www.gov.uk/guidance/refer-a-financial-service-or-energy-market-decision-to-a-tribunal>.
- 6.8 A copy of Form FTC3 must also be sent to Laura Mackinnon at the Financial Conduct Authority, 12 Endeavour Square, London, E20 1JN (email laura.mackinnon2@fca.org.uk) at the same time as a reference is filed with the Tribunal.

Confidentiality and publicity

- 6.9 FXBFI should note that this Second 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 FXBFI should note that section 391(5) of the Act requires the Authority, when this Second Supervisory Notice takes effect (and this Second Supervisory Notice takes immediate effect), to publish such information about the matter to which the notice relates as it considers appropriate.

Authority contacts

- 6.11 For more information concerning this matter generally, contact Laura Mackinnon (email laura.mackinnon2@fca.org.uk, direct line 020 7066 67902) at the Authority.



Katherine Browne
Chair, Regulatory Transactions Committee

Annex A

RELEVANT STATUTORY PROVISIONS UNDER THE ACT

1. The Authority's operational objectives established in section 1B of the Act include securing an appropriate degree of protection for consumers (section 1C).
2. 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 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.
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. 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 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 MiFID PROVISIONS

5. Article 24 of MiFID concerns general principles and information to clients.
6. Article 24.1 of MiFID requires that, when providing investment or ancillary services, investment firms act honestly, fairly and professionally in accordance with the best interests of their clients.
7. Article 24.2 of MiFID requires that investment firms assess the compatibility of the financial instruments with the needs of the clients to whom they provide investment services and ensure that the financial instruments are offered or recommended only when this is in the interest of the client.
8. Article 24.3 of MiFID requires that all information, including marketing communications, addressed by investment firms to clients or potential clients shall be "fair, clear and not misleading". It also requires marketing communications shall be clearly identifiable as such.
9. Article 24.4 of MiFID requires appropriate information to be provided in good time to clients or potential clients with regard to the investment firm and its services,

the financial instruments and proposed investment strategies, execution venues and all costs and related charges.

10. Article 24.5 of MiFID requires that the information referred to in paragraph 24.4 shall be provided in a comprehensible form in such a manner that clients or potential clients are reasonably able to understand the nature and risks of the investment service and of the specific type of financial instrument that is being offered and, consequently, to take investment decisions on an informed basis.

RELEVANT REGULATORY PROVISIONS

The Principles

11. Principle 6 states "*A firm must pay due regard to the interests of its customers and treat them fairly*".
12. Principle 7 states: "*A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is fair, clear and not misleading*".

COBS

13. COBS 22.5 sets out restrictions on the retail marketing, distribution and sale of CFDs. By COBS 22.5.1-AG, these apply to firms in the TPR.
14. COBS 22.5.6R provides that a firm must not: (a) market, publish, provide or communicate in any other way any communication or information in a durable medium or on a webpage or website to a retail client or in such a way that it is likely to be received by a retail client; (b) approve or communicate a financial promotion in a durable medium or on a webpage or website; or (c) disseminate such a communication, information or financial promotion to a retail client, or in such a way that it is likely to be received by a retail client unless the firm includes a specified risk warning.
15. COBS 22.5.11R provides minimum levels of margin (which depend on the underlying asset) which a firm must require a retail client to post to open a position.
16. COBS 3.5.3R provides that, in relation to MiFID business, a firm may treat a retail client as an elective professional client if:
 - 1) The firm undertakes an adequate assessment of the expertise, experience and knowledge of the client that gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the client is capable of making his own investment decisions and understanding the risks involved;
 - 2) At least two of the following criteria are satisfied:
 - a) The client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters;
 - b) the size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments, exceeds €500,000;

- c) the client works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged;
- 3) the following procedure is followed:
- a) the client must state in writing to the firm that it wishes to be treated as a professional client either generally or in respect of a particular service or transaction or type of transaction or product;
 - b) the firm must give the client a clear written warning of the protections and investor compensation rights the client may lose; and
 - c) the client must state in writing, in a separate document from the contract, that it is aware of the consequences of losing such protections.

The Enforcement Guide

- 17. The Authority's policy in relation to its own-initiative powers is set out in chapter 8 of the Enforcement Guide (EG), certain provisions of which are summarised below.
- 18. 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. It will also have regard to 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 the principle that a restriction imposed on a firm should be proportionate to the objectives the Authority is seeking to achieve.
- 19. EG 8.2.3 provides that the Authority will exercise its formal powers under section 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, where it is concerned that the consequences of a firm not taking the desired steps may be serious or where the imposition of a formal statutory requirement reflects the importance the Authority attaches to the need for the firm to address its concerns.
- 20. EG 8.2.6 provides examples of 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 where the firm appears to be failing to satisfy the Threshold Conditions because its material and financial resources appear inappropriate for the scale or type of regulated activity it is carrying on, for example, where it has failed to take account of the need to manage risk professional indemnity insurance or where it is unable to meet its liabilities as they have fallen due; or the firm appears not to be a fit and proper person to carry on a regulated activity because it has breached requirements imposed on it by or under the Act, and the breaches are material in number or in individual seriousness.
- 21. EG 8.3.1 provides 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.
- 22. EG 8.3.2 provides that the Authority will consider exercising its own-initiative power as a matter of urgency where (1) the information available to it indicates serious concerns about the firm or its business that needs 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.

23. 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;... "*.

24. EG 8.3.4 states that the Authority will consider the full circumstances of each case when it decides whether an imposition of a requirement is appropriate and sets out a non-exhaustive list of factors the Authority may consider. These include:

"(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 it is that [the Authority]'s urgent exercise of its own-initiative powers will be appropriate, to protect the consumers' interests.*

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

...

(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.*

...

(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. [The Authority] will take into account the (sometimes significant) impact that a variation of permission may have on a firm's business and on market confidence. [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."*

Annex B

REPRESENTATIONS

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

Financial Promotions

2. *FXBFI rejects the Authority's allegations in relation to its marketing communications and rejects the suggestion that their business model involves promising unrealistic returns to customers. There are very clear warnings on FXBFI's website about the risk of trading CFDs and it is clearly explained that customers can lose their money. The Authority has not specified the "trusted corporations" alleged to have been used by FXBFI in financial promotions to attract consumers' interest, nor provided copies of the relevant financial promotions. The Authority has not specified what "promises of significant and unrealistic returns" are alleged to have been made.*
3. *FXBFI has a thorough and robust procedure in place for review and approval of marketing materials. The Marketing Policy includes that "all information addressed by the Company to its client or potential clients, including marketing communication, shall be fair, clear and not misleading". The Head of Compliance takes responsibility for ensuring this is the case and no adverts, email marketing or other marketing material can be distributed publicly before this review and approval process has been cleared.*
4. The Recommendation Paper and the Evidence Bundle were sent to, and received by, solicitors instructed by FXBFI on 4 May 2021. The Recommendation Paper and the Evidence Bundle contain the name of the "Trusted Corporation" named by 18 consumers, and provide specifics of the "promises of significant and unrealistic returns".
5. Any policies in existence at FXBFI are of limited value if not implemented fully across all communication channels, including telephone calls with consumers. FXBFI has failed to address the consumer evidence or to provide an explanation of why its communications with consumers, including telephone calls, failed to be fair, clear and not misleading.

6. The Authority acknowledges that FXBFI's website contains appropriate warnings in relation to trading CFDs. However, this warning alone is insufficient if not coupled with telephone communications with consumers that are fair, clear and not misleading. It is evident from the complainants that during telephone calls with the firm, a number of them were pressurised or persuaded to invest additional monies. FXBFI provided the Authority with recordings of calls with three complainants. The content of these is consistent with the complainants' evidence: the calls display the use of pressure tactics by FXBFI representatives, including pressure to use credit cards, loans and overdraft facilities. Given the high likelihood of losses arising through trading in CFDs, the Authority considers that any persuasion (and more so where pressure was applied) by FXBFI constitutes a breach of the MiFID requirement to act honestly, fairly and professionally in accordance with the best interests of the client and in breach of Principle 6.

Complaints handling process

7. *FXBFI notes that the complaints received by the Authority in relation to its UK clients constitute a very small fraction of FXBFI's client base and are therefore not a representative sample.*
8. *FXBFI has a robust customer complaints process in place and is committed to properly addressing all complaints raised by its customers. FXBFI is unable to comment on the four specific cases where the Authority has alleged that complainants were offered a level of compensation below the amount of their investments, as details were not provided by the Authority. FXBFI assesses each complaint on its merits and deals with each case fairly.*
9. Between September 2020 and April 2021, the Authority received 39 complaints or expressions of concern about FXBFI's and 101investing.com's activities. The Authority acknowledges that this represents a proportion of FXBFI's customer base, and not the experience of every customer. However, the volume of complaints within a short time period, and the consistency of themes within these complaints, give rise to serious concerns about FXBFI's business. The Authority considers that the evidence from these complainants is credible.
10. In April 2021, the Authority sent FXBFI an information requirement under section 165 of the Act in which it was provided with the names of Complainants A, B and C (see paragraphs 4.18 to 4.28 above) who were offered compensation at levels below

the amounts of their investments. FXBFI was asked to provide further information in relation to them. The Recommendation Paper and the Evidence Bundle also contained the names of Complainants A, B and C and provided further details of their complaints. The material provided by FXBFI in response is supportive of the three complainants' accounts of their dealings with FXBFI. FXBFI has failed to provide any explanation of why the settlement sums offered to Complainants A, B and C were substantially lower than the sums invested by them.

Understanding of investments and associated risks

11. *In accordance with UK regulatory requirements, the Company's representatives do not engage in detailed discussions with its customers on the suitability of the products for individual risk profiles. Customers complete questionnaires to enable FXBFI to assess their suitability for relevant products and sign user agreements which contain risk disclaimers. By doing so, and accepting the terms and conditions, the clients are confirming that they properly understand the nature of the investments they will be trading and associated risks. It was always made clear to clients that there is a risk they may lose money, and this was accepted by them.*
12. The Authority acknowledges that FXBFI has a full suite of legal and policy documents in place. However, the existence of these documents represents only part of FXBFI's interactions with consumers. It is incumbent on FXBFI to ensure that all consumers dealing with it are aware of the nature of the trading and the risks, particularly so in the high-risk area of CFDs. It is evident from the complaints detailed within the Recommendation Paper that many complainants did not understand the nature of the risks of CFD investment or even understand what they were trading in. FXBFI was explicitly made aware by some complainants that they did not understand the nature of the investments or method of investing. In the call recordings received by the Authority from FXBFI, each of the three complainants told FXBFI agents that they were novices to trading. It was clear that none of although FXBFI agents directed the complainants to the FXBFI website and provided some basic training, none of the complainants understood the risks or process of CFD trading. FXBFI has failed to address the substance of these complaints.

Pressure selling techniques and the provision of investment advice

13. *FXBFI entirely rejects the allegations that its representatives have been employing pressure selling techniques, and specifically denies that "persistent and harassing contact is made with its clients". If a client no longer wishes to be contacted a note will be made on their file not to contact them further.*
14. *FXBFI has put robust procedures in place to ensure that investment advice is not provided to customers when FXBFI does not have regulatory permission to provide this. These include daily call monitoring carried out by the Compliance Department, and comprehensive training of its sales representatives to ensure compliance with regulatory standards. The training makes clear to staff that serious behaviours may result in sanctions including a warning, penalty or termination of employment.*
15. The Authority's assessment of the complainants' evidence suggests that any compliance checks, call monitoring policies and training that may have been conducted by FXBFI were inadequate. The number of complaints and the similarity of complainants' evidence in relation to pressure-selling and harassing contact provides cogent evidence and demonstrates a consistent pattern of conduct by FXBFI.

Failure to return funds to clients

16. *FXBFI strongly denies the allegations that it is failing to comply with requests to return funds to the Complainants. FXBFI has a clear Withdrawal and Refund Policy in place. FXBFI does not charge withdrawal fees to clients although some banks may charge these.*
17. The Authority considers that the experience of the complainants strongly suggests that FXBFI is not complying with its Withdrawal and Refund Policy or its terms and conditions in respect of withdrawals. The consistency and number of complaints in respect of FXBFI's failure to return funds when requested makes the complainants' evidence on this compelling.

Conclusion

18. *The FSN is one-sided and unfair in that it fails to reflect the steps taken by FXBFI to implement robust controls to ensure good customer outcomes, including paying redress when complaints have been upheld. The complaints represent a very small*

proportion of FXBFI's UK business. There is a lack of evidence to substantiate the allegations.

19. *FXBFI has proactively complied with the Requirements set out in the FSN, and almost all cash balances held by clients resident in the UK have been repaid. The requirements are therefore disproportionate as FXBFI now poses no risk to UK consumers. Each of the Requirements should therefore be removed.*
20. FXBFI has a number of policies and procedures in place, as set out on its website. However, the Authority considers that the complainant evidence strongly suggests that FXBFI has failed to effectively implement robust controls to ensure good customer outcomes. The Authority's assessment is that the complainant evidence is consistent and compelling, and demonstrates seriously deficient business practices. FXBFI has failed to address how it is that the incidents described by the complainants could have arisen or why its policies and procedures failed to prevent them.
21. The Authority considers that the issues identified through the complainants' evidence are serious and demonstrate a consistent pattern and multiple breaches by FXBFI. In view of this evidence, the Authority considers that the exercise of its powers to impose the Requirements, in order to advance the consumer protection objective, is clearly desirable.
22. The Authority does not accept that FXBFI's compliance with the Requirements to date and FXBFI's cessation of conducting UK business mean that it is appropriate to remove the Requirements:
 - a. The Authority's concerns remain and the consumer protection objective is still engaged;
 - b. Removal of the Requirements would mean that it was open to FXBFI to recommence UK regulated activities, which in light of the evidence would not be appropriate and would pose a significant risk to UK consumers;
 - c. A small number of UK customers still need to be refunded; and
 - d. In order to ensure the ongoing protection of UK consumers, FXBFI should continue to be required to display notices on its website and trading platform stating that it, and 101investing.com, are not permitted to provide regulated financial services to UK resident consumers.