
RE-ISSUED FIRST SUPERVISORY NOTICE

To: Stargate Capital Management Limited ("SCM") and Stargate Corporate Finance Ltd ("SCF") (together "the Firms")

Of: 71 Queen Victoria Street, London, EC4V 4BE

Permission Numbers: 191763 (SCM) and 401132 (SCF)

Dated: 27 June 2017

ACTION

1. For the reasons given below and pursuant to sections 55L(2)(a) and (c) of the Financial Services and Markets Act 2000 ("the Act"), the Financial Conduct Authority ("the Authority") has decided to impose the following requirements on the Firms with effect immediately upon service of this notice on the Firms (whether in electronic or hard copy form). This notice has the effect of rescinding the First Supervisory Notice of 21 June 2017 issued to SCM and SCF from the date of this notice. The requirements are:
 - A. The Firms shall not establish any new Appointed Representative relationships.
 - B. The Firms shall not establish any new trading names.
 - C. SCF shall not permit Ownabl Limited (Reference number 767004) and

SB Capital Partners Limited (Reference number 516573) to accept new business pursuant to their Appointed Representative agreements with SCF.

- D. SCF shall within three weeks of the date of service of this notice terminate, or transfer to another Principal, the provision of services to its Appointed Representatives Ownabl Limited (Reference number 767004) and SB Capital Partners (Reference number 516573) under their respective Appointed Representative Agreements.
- E. SCM shall not permit Crowd Investments limited (Reference number 722766) and Red Ribbon Asset Management Plc (Reference number 741275) to accept new business pursuant to their Appointed Representative agreements with SCM.
- F. SCM shall, within three weeks of the date of service of this notice, terminate, or transfer to another Principal, the provision of services to its Appointed Representatives Crowd Investments Limited (Reference number 722766) and Red Ribbon Asset Management Plc (Reference number 741275) under their respective Appointed Representative Agreements.
- G. SCF shall, de register Business Edge (Reference number 764392) as an Introducer by the close of business on 30 June 2017.
- H. SCM shall:
 - i. Cease to be the investment manager of FX Perpetual and cease acting as AIFM to The Momentum Fund, save to the extent necessary to implement the Requirements in this notice;
 - ii. Suspend the acceptance of new investors and of further monies from existing investors for FX Perpetual and The Momentum Fund;
 - iii. Not add any new positions to FX Perpetual and The Momentum Fund;
 - iv. Take the necessary steps to close all open positions and hedges if relevant for The Momentum Fund by close of business on 30 June 2017;

- v. Take the necessary steps to close all FX Perpetual FX pairs trades and hedges by close of business on 30 June 2017.
- I. SCM shall cease the provision of any other services of managing investments and/or managing an unauthorised AIF, except in relation to:
 - i. Catalyst Stargate EIS Growth;
 - ii. Catalyst Stargate Green EIS;
 - iii. Concentric Team Technology EIS; and
 - iv. Trapezia EIS.
- J. All the above Requirements shall continue to have effect until the Authority has communicated otherwise to the Firms in writing.

REASONS FOR ACTION

- 2. The Requirements are imposed as it appears to the Authority that:
 - (a) The Firms are failing to satisfy the Threshold Conditions for which the Authority is responsible; and
 - (b) It is desirable to exercise the power in order to advance the Authority's consumer protection objective.
- 3. In particular, it appears to the Authority, on the basis of the facts and matters set out in this notice: (a) that the Firms are failing to satisfy the effective supervision Threshold Condition; (b) that the Firms are failing to satisfy the appropriate resources Threshold Condition because they appear to lack the necessary non-financial resources; and (c) that the Firms are failing to satisfy the suitability Threshold Condition.
- 4. The Authority has also concluded, on the basis of the facts and matters set out in this notice that, the exercise of the power to impose the Requirements is desirable in order to advance the Authority's operational objective of consumer protection (section 1C of the Act) in order to ensure an appropriate degree of protection for consumers.
- 5. Cumulatively, these failings prompt concern on the Authority's part that the Firms have exercised their power to confer exempt person status upon their Appointed Representatives but have not taken adequate steps to discharge the regulatory responsibilities triggered by exercising that power.

DEFINITIONS

6. In this notice:

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

"AIF" means alternative investment fund as defined in the Handbook;

"AIFM" means alternative investment fund manager as defined in the Handbook;

"Appointed Representative" is as defined in section 39(2) of the Act;

"the appropriate resources Threshold Condition" means the threshold condition set out in Paragraph 2D of Schedule 6 of the Act;

"the Authority" means the body corporate known as the Financial Conduct Authority;

"COND" means the Threshold Conditions part of the Handbook;

"the effective supervision Threshold Condition" means the threshold condition set out in Paragraph 2C of Schedule 6 of the Act;

"EG" means the Enforcement Guide;

"EIS" means Enterprise Investment Scheme as defined in the Handbook;

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

"ICAAP" means a firm's assessment of the adequacy of its capital and financial resources, as required by the ICAAP rules;

"Introducer" means an individual appointed by a firm, an appointed representative or, where applicable, a tied agent, to carry out either or both (a) effecting transactions; (b) distributing non-real time financial promotions as defined in the Handbook;

"the Firms" means both SCF and SCM;

"the General Prohibition" means the prohibition under section 19 of the Act by which, no person may carry on a regulated activity in the United Kingdom, or purport to do so, unless he is an authorised person, or he is an exempt person in relation to that activity;

"Mr Shah" means Mr Paresh Kumar Velji Lakhamshi Shah, Register number PKS01029;

"Principal" has the meaning as used in section 39(1) of the Act;

“the Register” means the Financial Services Register which is accessible using the following link: <https://register.fca.org.uk/>

“the Requirements” means the requirements described at paragraph 1 above;

“SCF” means Stargate Corporate Finance Ltd (FRN 401132);

“SCM” means Stargate Capital Management Limited (FRN 191763);

“the suitability Threshold Condition” means the threshold condition set out in Paragraph 2E of Schedule 6 of the Act;

“SUP” means the Supervision part of the Handbook;

“the Threshold Conditions” means the threshold conditions set out in Part 1B (Authorised persons who are not PRA-authorised persons) of Schedule 6 to the Act;

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

; and

“the Visit” means the visit by members of staff from the Authority’s Supervision (Investment Management) Department to the Firms at Mr Shah’s home address on 5 January 2017.

FACTS AND MATTERS RELIED ON

7. SCM has been authorised by the Authority to provide regulated products and services since 1 December 2001, and SCF has been authorised to do so since 17 August 2004. Mr Paresh Kumar Velji Lakhamshi Shah (“Mr Shah”) is approved to perform the significant influence controlled functions of CF1 (Director), CF3 (Chief Executive), CF10 (Compliance Oversight), CF11 (Money Laundering Reporting) and CF28 (Systems and controls) at both Firms. At SCM there are two other persons approved to perform the CF1 (Director) controlled function, and at SCF there is one other person approved to perform the CF1 (Director) controlled function.
8. The Firms each hold permissions under Part 4A of the Act to carry on, amongst other regulated activities, the following: advising on investments (except on Pension Transfers and Pension Opt Outs); arranging (bringing about) deals in investments; and making arrangements with a view to transactions in investments. SCM also holds permission to manage investments. The Firms’ client permissions include both retail and professional clients.

Supervision’s visit to and subsequent contact with the Firms

9. On 5 January 2017, staff from the Authority's Supervision (Investment Management) Department ("Supervision") visited the Firms at Mr Shah's home address ("the Visit"). During the visit Mr Shah confirmed that the Firms' place of business was not 71 Queen Victoria Street, London, EC4V 4BE (as recorded on the Authority's Register) but was Mr Shah's home address. This had been the case for some time, despite this he had not submitted a request to the Authority for the Register to be updated.
10. Mr Shah said that he was the only active director at the Firms. He said that of the two other directors at SCM, neither performed an active role: one had lived abroad for a number of years and was no longer involved with the firm; the other director only interacted with the firm every couple of months. He said that the other director at SCF (also one of the directors at SCM) was no longer involved with the firm. The Authority has not received a request from Mr Shah to update the Register to reflect the fact that he is the Firms' only active director.
11. After the Visit, Supervision met Mr Shah at the Authority's offices on 8 February 2017 and held a conference call with him on 14 March 2017. Supervision also reviewed documents that it had obtained from the Firms. As a result of these interactions and its review of the documents, Supervision identified a number of concerns; in particular, relating to the Firms' governance over its Appointed Representatives and the Firms' use of trading names.

Governance over Appointed Representatives

12. At the time of the Visit, the Firms had eight Appointed Representatives. SCM was also purporting to provide investment management services to FX Perpetual Strategies; Wealth Fortress DFMs; Momentum Fund and four EISs (Catalyst Stargate EIS Growth; Catalyst Stargate Green EIS; Concentric Team Technology EIS; and Trapezia EIS).
13. During the Visit Mr Shah was asked whether the Firms had an ICAAP in place. It transpired that no such document was in place and that Mr Shah did not know what an ICAAP was. An ICAAP dated 6 February 2017 was subsequently provided by Mr Shah to Supervision but this was inadequate and failed even to identify basic and key risks associated with the Firms' Appointed Representatives' business, such as market, credit and operational risks.

14. During the Visit, and subsequently, the Firms failed to provide any evidence that they had any meaningful governance arrangements in place to oversee their Appointed Representatives. For example, there was no evidence of:
 - Appointed Representative compliance monitoring plans
 - Appointed Representative call monitoring
 - Appointed Representative client file monitoring
 - Audits of Appointed Representatives
 - Visits by the Firms to their Appointed Representatives' places of business
 - Any requirement by, or provision to, the Firms of management information relating to their Appointed Representatives
15. Mr Shah said that he communicated with the Firms' Appointed Representatives but that any such calls or meetings were neither recorded nor otherwise documented.
16. Supervision reviewed all due diligence undertaken by the Firms in respect of their Appointed Representatives. This due diligence lacked risk assessments and was "tick-box" in nature. Due diligence conducted on several Appointed Representatives did not include a business plan. Supervision asked Mr Shah to provide documentation relating to any continuing oversight by the Firms of their Appointed Representatives but, as of the date of this notice, none has been provided.
17. On 3 February 2017, Mr Shah informed Supervision that compliance monitoring plans in respect of the Firms' Appointed Representatives were "in active progress", combined with monthly information requests and quarterly compliance reports and declarations. But as of the date of this notice Supervision had not been provided with any evidence that these arrangements were in place, and was therefore unable to assess their adequacy.
18. During the Visit, Supervision indicated to Mr Shah a number of concerns regarding the web-sites of some of the Firms' Appointed Representatives and how they were promoting themselves and their activities. Mr Shah was unable to answer a number of these questions and stated that the Firms' compliance consultant reviewed these web-sites. But Mr Shah was unable to provide any evidence that any such review had been undertaken, and has not done so since.

19. An example of incorrect information posted at the time of the Visit on one of the Firms' Appointed Representatives' web-sites included "Appointed Representative A", which purported to provide an Oil Managed PAMM Account with current claimed returns of 70% per annum and returns historically as high as 115% per annum. Appointed Representative A stated that the product was managed by an oil trader investment manager employed by SCM. Mr Shah confirmed that the oil trader referred to had left SCM in early 2014 and that there had never been an active Oil Managed PAMM Account. He stated that it had been a "conceptual idea" but had never been developed into an actual product offered by the Firms.
20. A further example in respect of Appointed Representative A's website at the time of the Visit was a statement made in respect of a property investment product where investors would receive a "25% rise in capital growth from day one". Mr Shah was unable to explain how this could be undertaken in practice.
21. These examples, together with others identified by Supervision during the Visit, give cause for concern that the websites of the Firms' Appointed Representatives had not, at the time of the Visit, been properly reviewed by the Firms' compliance consultant for some time, if at all.

Activities potentially in breach of the General Prohibition

22. During the Visit, Supervision asked Mr Shah about statements made on the website of Appointed Representative B which described itself as a trade signal provider. Certain statements appeared to suggest that Appointed Representative B was providing a principal service despite its status as an Appointed Representative. For example, stating that "If you need to come under a regulated framework to provide your service, then [Appointed Representative B] potentially has a solution for you" and that its "service enables you to provide trading signals to your clients with low latency without the need for you, the signal provider, to be regulated yourself". Mr Shah stated that he did not consider this to be inappropriate as it was being done under the Firms' "umbrella".
23. The Firms have not provided Supervision with any evidence, such as contracts, clarifying the nature of the business relationships that Appointed Representative B has entered into with the Firms themselves, or with others. This raises concerns that regulated activities may be being conducted in breach of the General Prohibition.

24. In May 2017, Supervision identified a relationship involving Appointed Representative B, SCM and Firm X which raised further concerns that regulated activities may be being conducted in breach of the General Prohibition. Firm X is neither an authorised firm under the Part 4A of the Act, nor is it an Appointed Representative of SCM. Mr Shah explained that Firm X provides research to SCM via Appointed Representative B, and that the research is used to create and offer an SCM managed trading service. But Firm X's website indicates that it provides investment strategies as well as research to SCM stating "[Firm X] provides their latest strategies & research to SCM who then in turn manage, control and place trades on your behalf ...".
25. Despite these statements on Firm X's website and Mr Shah's assertions that SCM provides management services for Firm X, SCM has not provided Supervision with any contractual agreements evidencing the basis of its relationship with Firm X despite requests from Supervision to do so. This raises further concerns that regulated activities may be being conducted in breach of the General Prohibition.
26. In addition, Mr Shah has been unable to provide any meaningful due diligence to substantiate SCM's purported oversight of Firm X's activities since its inception in April 2016. The risks to the interests of customers by this apparent failure is aggravated by potentially unrealistic promises of investment returns made on Firm X's website, including the promotion of investment products with annual performance returns of over 50%.

Activities under SCM's investment management permission

FX Perpetual

27. The FX Perpetual fund is purportedly managed by SCM and is described on SCM's website as "an absolute return systematic algorithmic FX trading strategy". It trades 25 currency pairs on an intra-day basis. It was developed by [REDACTED] a firm that is neither authorised under Part 4A of the Act, nor an Appointed Representative of SCM. [REDACTED] manages the algorithm, develops the code and provides trade signals to SCM. As of March 2017, there were 67 clients invested with total funds of circa £1.67m.
28. During the Visit, Mr Shah confirmed that he has no algorithmic or coding experience. FX Perpetual's performance calculations are undertaken by [REDACTED] and are not reviewed by SCM. Mr Shah said that he has the ability to veto trades sent by [REDACTED] but that he has not done so since taking on management investment

responsibilities in July 2015. Mr Shah said that he discussed liquidity risks, such as those posed by “Brexit”, [REDACTED] and that he has challenged the timings of hedges placed on the fund. But to date Supervision has not been provided with any documentation evidencing such discussions.

29. Enquiries have established that SCM receives a modest investment management fee of £3000 per month plus a 10% performance fee if applicable. In comparison since FX Perpetual’s inception in March 2015 it has generated in excess of £800,000 in commission rebates. [REDACTED] therefore receives the overwhelming majority of the commission rebates, passed to it by SCM, as well as an investor’s subscription fee of 5%, 25% (of a total of 35%) performance fee if applicable, and a 0.5% annual algorithmic rental fee.
30. This distribution of fees, heavily weighted in favour of [REDACTED] raises doubts as to whether SCM is genuinely performing the investment management role in respect of FX Perpetual. It indicates, alongside the circumstances described at paragraph 28 above, that [REDACTED] may be acting as the investment manager, as well as the developer and provider, of FX Perpetual.
31. During Supervision’s meeting with Mr Shah on 14 March 2017, he stated that SCM performs suitability assessments for FX Perpetual’s prospective investors. But he also said that his only consideration for the suitability of the product for the client was whether they could afford to lose their entire investment. Supervision reviewed the client files for 15 (25%) of FX Perpetual investors. None contained a suitability assessment. Thus raising concerns as to its suitability for those clients invested in this high-risk product.

FX Perpetual’s “Basket Stop Reserve” and unrealised losses

32. Supervision raised concerns with Mr Shah relating to the marketing of FX Perpetual and a feature described as a “Basket Stop Reserve” by which [REDACTED] provides an undertaking that on each annual anniversary of a client’s account, if that client has made a loss in the previous year, that client will be entitled to make a claim to [REDACTED] for reimbursement of those losses.
33. But the Basket Stop Reserve is only activated against losses generated by realised trades. Historical unrealised losses are not included for the purposes of the undertaking. For example, losses generated in January 2016 (c. £185,000), and October 2016 (c. £221,000) have not been realised but have been “held open” and fully hedged, meaning that whilst these losses cannot be recovered, they do not

trigger the Basket Stop Reserve. As a result, clients who held accounts when the losses were incurred in January 2016 have lost the ability to claim against the Basket Stop Reserve. It is unclear why SCM, as the investment manager, acting in its clients' best interests, would not crystallise the losses so as to enable a potential claim against the Basket Stop Reserve. █████ is clearly conflicted in any decision whether to do so.

34. Supervision has also established that FX Perpetual has been marketed to potential investors using performance data based on realised trade profit and loss ("P&L") alone, without inclusion of "marked-to-market" unrealised trade P&L. Clearly, had the losses described at paragraph 33 above been included this would have had a materially negative impact on FX Perpetual's published performance. In addition, until April 2017 (after which SCM implemented changes requested as a result of dialogue with Supervision), this affected reporting in client statements and the calculation of performance fees, as both were based on realised P&L only.
35. Prior to April, clients invested in FX Perpetual only became aware of the unrealised hedged losses if and when they requested the redemption of their investment. By way of example, clients who requested such a redemption in January 2017 were informed that their actual investment value would drop by c. 20% from that previously reported in their monthly statements. This was as a direct result of the differential between realised and unrealised trades.
36. It was not only existing investors who may have been prejudiced. Supervision has reviewed client agreements provided by Mr Shah which indicate that around the time of the losses generated in January 2016, the agreements were amended to require new clients to accept a proportion of the current open but unrealised losses at the point of investment. Whilst this requirement is in the client agreements, it was not prominent.
37. An example of the impact on new clients is Client A, who invested in FX Perpetual in March 2016, thereby investing after the January 2016 losses had been generated. Client A then closed this account in January 2017 thereby after the October 2016 losses had been generated. Client A's redemption calculation includes an adjustment of minus 19.8% to the final redemption figure representing their pro-rata share of these unrealised losses.

38. At the meeting on 14 March 2017, Mr Shah was asked to provide the investment rationale for keeping the positions, described at paragraph 27 above, open. He described this as a “smoothing policy”. An explanation which Supervision considers inadequate and demonstrates his inadequate understanding of the FX Perpetual product offering. The Basket Stop Reserve did not represent a smoothing strategy but appears to have been operated solely in the interests of █████ and to the detriment of SCM's clients.
39. In a letter to Supervision in March 2017, Mr Shah stated that investors “joined FX Perpetual to be informed of overall realised performance rather than position movements in each underlying currency position”. It is also the case that SCM had included in its marketing documentation wording to the effect that performance and monthly statements are only generated on realised trades. Supervision nevertheless considers that SCM's treatment of unrealised losses on FX Perpetual and the level of transparency provided to its clients falls well below that which should be expected of a regulated firm.

The Momentum Fund

40. SCM is the investment manager for the Momentum Fund which is a relatively small FX fund (assessed by asset value) but is not an algorithmic product. Whilst Supervision has not undertaken a review of the fund, as it appears that SCM is providing a similar investment management service to the Momentum Fund to that provided to FX Perpetual and █████ (see paragraphs 43 to 44 below) Supervision has concerns that similar failings may be present.

The Wealth Fortress DMFs

41. The Wealth Fortress DMFs are five managed account portfolios that are designed to provide retail investors with a choice of risk profiles from “cautious” to “adventurous”. As with FX Perpetual it was designed by █████ and invests mainly in ETFs (Exchange Traded Funds) making use of algorithms. The five portfolios include investments in property, commodities, emerging markets, and (even in the “cautious” fund) the FX Perpetual fund described above. Supervision has evidence that the Wealth Fortress DMFs may have been marketed to retail pension investors for which they may not have been suitable. Supervision has seen no evidence that SCM is in practice providing investment management services to the Wealth Fortress DMFs.

Trading names

42. At the time of the Visit, Mr Shah stated that two of the trading names listed on the Register as used by SCM, Wealth Fortress DFM and Wealth Fortress Perpetual Growth, in fact belonged to Individual A. But in emails from Mr Shah to Supervision in February, Mr Shah stated that this was incorrect and that these were trading names used solely by SCM. But whereas SCM's website has never promoted these funds, Individual A's website has until recently promoted them both. As a result Supervision is concerned that SCM may be providing inappropriate regulatory legitimacy for these trading names which in fact are used by Individual A.
43. Another trading name listed on the Register as used by SCM at the time of the Visit was [REDACTED]. Despite it purportedly being used as a trading name, [REDACTED] is registered at Companies House as an incorporated company. It therefore does not appear to be a trading name alone. Further, [REDACTED] website describes its relationship with the Firms as follows: [REDACTED] acts as an introducer and strategy provider to [SCM], which is authorised and regulated by the Financial Conduct Authority ... [SCM] acts as the principal and is the investment manager".
44. Whatever [REDACTED] true status, SCM has not been able to provide Supervision with any evidence of systems and controls applicable to [REDACTED] business, products or clients, or due diligence that SCM has conducted. Accordingly, Supervision is concerned that SCM may be providing inappropriate regulatory legitimacy to [REDACTED] business.

The Firms' current Appointed Representatives and managed funds

45. At the date of this notice, as recorded on the Register, SCF's only Appointed Representatives are Ownabl Limited and SB Capital Partners and SCM's only Appointed Representatives are Crowd Investments Limited and Red Ribbon Asset Management Plc. Business Edge (NE) Limited is an Introducer to SCF. The following funds, managed by SCM, are Enterprise Investment Schemes which are in "run-off" and no regulatory action is required; Catalyst Stargate EIS Growth; Catalyst Stargate Green EIS; Concentric Team Technology EIS; and Trapezia EIS.

Supervision engagement with the Firms

46. Since the Visit, and over the course of several months following, Supervision corresponded with Mr Shah and his representatives in an attempt to obtain relevant documentation to enable it to understand the Firms' business and the regulatory standards to which they operate. But this engagement with the Firms has not addressed Supervision's concerns. Recently, attempts were made by Supervision to agree with the Firms a voluntary requirement over their activities, but it was not possible to reach mutually acceptable terms.
47. Supervision considers that a section 166 report examining the Firms' activities should now be undertaken. And that the failings identified at the Firms justify the immediate imposition of the Requirements in advance of the report being undertaken, completed and considered by Supervision.

RELEVANT STATUTORY AND REGULATORY PROVISIONS

48. The statutory and regulatory provisions relevant to this First Supervisory Notice are set out in the Annex to this notice.

CONCLUSIONS

49. From the facts and matters described above it appears to the Authority that the Firms are failing to satisfy the effective supervision, appropriate resources and suitability Threshold Conditions having regard to all the circumstances. In particular:
 - (a) The Firms are failing to satisfy the effective supervision Threshold Condition because they have been unable to provide the Authority with adequate information to enable it to determine whether the Firms are 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;
 - (b) The Firms are failing to satisfy the appropriate resources Threshold Condition because they appear to lack the necessary non-financial resources, specifically as Mr Shah, the sole active CF1 (Director), and the CF3 (Chief Executive), CF10 (Compliance Oversight), CF11 (Money Laundering Reporting) and CF28 (Systems and controls) at both Firms, does not demonstrate the skills and experience required to properly manage the Firms' affairs.

- (c) The Firms are failing to satisfy the suitability Threshold Condition because they do not appear to be conducting their affairs in an appropriate manner, having regard in particular to the interests of consumers, and because those who manage the Firms' affairs do not appear to have adequate skills and experience, specifically: their failure to provide management information reasonably requested by Supervision to enable a proper understanding of the Firms' affairs, failure to demonstrate adequate oversight of their Appointed Representatives in particular in respect of the exercise of the Firms' investment management permissions, and a failure to demonstrate sufficient understanding of the Firms' products to ensure their suitability for their customers.
50. This failure to satisfy the Threshold Conditions justifies the imposition of the Requirements.
51. The Authority's objective of consumer protection requires the Authority to ensure an appropriate degree of protection for consumers. In light of the facts and matters explained above, the Requirements are also justified in furtherance of this objective. In particular:
- (a) Clients of the Firms may not have been, and future clients may not be, provided with a level of care that is appropriate having regard to the degree of risk involved in relation to their investments with the Firms, because of (amongst other concerns): an absence of sufficient understanding by the Firms' of their products to ensure their suitability for the Firms' customers and that they are managed in customers' best interests, and an absence of evidence of adequate customer suitability assessments by the Firms.
52. The Authority has therefore concluded that it is desirable to exercise its own initiative power to impose the Requirements with immediate effect in order to secure an appropriate degree of protection for consumers, and due to its concerns that the Firms are failing to satisfy the effective supervision, appropriate resources and suitability Threshold Conditions, and believes that the Requirements are an appropriate and proportionate means to protect against the risks posed.

PROCEDURAL MATTERS

Decision maker

53. The decision which gave rise to the obligation to give this First Supervisory Notice was made by the Regulatory Transactions Committee.

54. This First Supervisory Notice is given under section 55Y(4) and in accordance with section 55Y(5) of the Act and is being served on the Firms at their place of business as last notified to the Authority. The following statutory rights are important.

Representations

55. The persons to whom this notice is given have the right to make written and oral representations to the Authority (whether or not they refer this matter to the Tribunal). The deadline for notifying the Authority that they wish to make oral representations is 31 July 2017 or such later date as may be permitted by the Authority. The deadline for providing written representations is 31 July 2017 or such later date as may be permitted by the Authority. The address for doing so is:

The Regulatory Transactions Committee Secretariat
The Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London
E14 5HS
Email: RTCSecretariat@fca.org.uk

56. The Authority must be informed in writing of any intention to make oral representations by 31 July 2017. If a person to whom this notice is given does not notify the Authority by this date, that person will not, other than in exceptional circumstances, be able to make oral representations.

The Tribunal

57. The persons to whom this notice is given have the right to refer the matter to which this First Supervisory Notice relates to the Upper Tribunal (Tax and Chancery Chamber) ("the Tribunal"). The Tax and Chancery Chamber is the part of the Tribunal which, amongst other things, hears references arising from decisions of the Authority. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Firms have 28 days from the date on which this First Supervisory Notice is given to them to refer the matter to the Tribunal.
58. A reference to the Tribunal can be made by way of a reference notice (Form FTC3) signed by the Firms, together or individually, and filed with a copy of this First Supervisory Notice. The Tribunal's contact details are: The Upper Tribunal, Tax and Chancery Chamber, 45 Bedford Square, London WC1B 3DN (telephone: 020

7612 9700; email: FS@tribunals.gsi.gov.uk).

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

<http://formfinder.hmctsformfinder.justice.gov.uk/t400-eng.pdf>

60. The Firms should note that a copy of the reference notice (Form FTC3) must also be sent to the Authority at the same time as filing a reference with the Tribunal. A copy of the reference notice should be sent to Kathryn Baildon-Smith at the Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS.

Access to Evidence

61. Section 394 of the Act does not apply to this First Supervisory Notice.

Confidentiality and Publicity

62. The Firms should note that this 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).

63. The Firms should note that section 391 of the Act requires the Authority when the First Supervisory Notice takes effect (and this First Supervisory Notice takes effect on 27 June 2017), to publish such information about the matter as it considers appropriate.

Authority contacts

64. For more information concerning this matter generally, the Firms should contact Russell Moore at the Authority (direct line: 020 7066 4618).
65. If the Firms have any questions regarding the procedures of the Regulatory Transactions Committee, they should contact the Regulatory Transactions Committee Secretariat (direct line: 020 7066 5822).

Bob Ferguson

Chair of the Regulatory Transactions Committee

ANNEX

RELEVANT STATUTORY PROVISIONS

1. The Authority's operational objectives established in section 1(B) of the Act include the consumer protection objective. Section 1C(1) of the Act states that the consumer protection objective is: securing an appropriate degree of protection for consumers.
2. Pursuant to section 55L of the Act, where a person has applied for a Part 4A permission or the variation of a Part 4A permission, the Authority may impose on that person such requirements, taking effect on or after the giving or variation of the permission, as the Authority considers appropriate.
3. Pursuant to and in accordance with sections 55L(2) and 55L(3) of the Act the Authority may impose a new requirement, or vary a requirement imposed under section 55L(3), in relation to an authorised person with a Part 4A permission ("A") if it appears to the Authority that – (a) A is failing, or is likely to fail, to satisfy the threshold conditions for which the Authority is responsible, [...] or (c) it is desirable to exercise the power in order to advance one or more of the Authority's operational objectives.
4. The effective supervision Threshold Condition provides that a person carrying on or seeking to carry on regulated activities which do not consist of or include a PRA-regulated activity, must be capable of being effectively supervised by the Authority.
5. The appropriate resources Threshold Condition provides, 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:

"The resources of A must be appropriate in relation to the regulated activities that A carries on or seeks to carry on."
6. The matters which are relevant in determining whether A has appropriate non-financial resources include –
 - (a) The skills and experience of those who manage A's affairs; [...]
7. The suitability Threshold Condition provides, 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" [...]

8. Section 55N(1) of the Act states that a requirement may be imposed to require the person concerned to take, or refrain from taking, specified action.

RELEVANT REGULATORY PROVISIONS

9. 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.
10. EG 8.1.1 reflects the provisions of section 55L of the Act that the Authority may impose requirements on an authorised person where: (1) the person is failing or is likely to fail to satisfy the threshold conditions for which the Authority is responsible; [...] or (3) it is desirable to exercise the power in order to advance one or more of its operational objectives.
11. EG 8.2.1 states that when the Authority considers how it should deal with a concern about a firm, the Authority will have regard to its statutory objectives and the range of regulatory tools that are available to it. It 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.
12. EG 8.2.3 states that in the course of its supervision and monitoring of a firm or as part of an enforcement action, the Authority may make it clear that it expects the firm to take certain steps to meet regulatory requirements. In the vast majority of cases the Authority will seek to agree with a firm those steps the firm must take to

address the Authority's concerns. However, where the Authority considers it appropriate to do so, it will exercise its formal powers under section [...] 55L of the Act [...] to impose a requirement to ensure such requirements are met. This may include where: (1) the Authority has serious concerns about a firm, or about the way its business is being or has been conducted; [...].

13. EG 8.3.1 states that the Authority may impose [...] a requirement so that it takes effect immediately or on a specified date if it reasonably considers it necessary for the [...] requirement to take effect immediately (or on the date specified), having regard to the ground on which it is exercising its own-initiative powers.
14. EG 8.4.3 states that under its section 55L power [...], the Authority may, at any time and of its own initiative, impose on an authorised person such requirements as it considers appropriate.

Guidance concerning the relevant Threshold Conditions

15. COND 2.3.3G sets out factors which the Authority will take into consideration, amongst other things, in assessing the effective supervision Threshold Condition.
16. COND 2.3.3G(1) states that these include whether it is likely that the Authority will receive adequate information from the firm, and those persons with whom the firm has close links, to enable it to determine whether the firm is complying with the requirements and standards under the regulatory system for which the 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 on the provision of information to the Authority).
17. COND 2.4.1A reflects the provisions of the appropriate resources Threshold Condition set out in paragraph 2D of Schedule 6 to the Act.
18. COND 2.4.2G(2A) states that paragraph 1A(2) of Schedule 6 to the Act provides that "non-financial resources" of a firm for the purposes of the threshold conditions include any systems, controls, plans or policies that the firm maintains and the human resources that the firm has available.
19. COND 2.5.1A reflects the provisions of the suitability Threshold Condition set out in paragraph 2E to Schedule 6 of the Act.
20. COND 2.5.4G(2) sets out examples of the kind of general considerations to which the Authority may have regard when assessing whether a firm will satisfy, and

continue to satisfy, the suitability Threshold Condition. These include whether the firm: (a) conducts, or will conduct, its business with integrity and in compliance with proper standards; (b) has, or will have, a competent and prudent management; and (c) can demonstrate that it conducts, or will conduct, its affairs with the exercise of due skill, care and diligence.

Guidance concerning Appointed Representatives

21. Chapter 12 of SUP (SUP 12) applies to a firm which is considering appointing, has decided to appoint or has appointed an appointed representative. SUP 12.1.2G states that SUP 12 gives guidance to a firm, which is considering appointing an appointed representative, on how the provisions of section 39 of the Act (Exemption of appointed representatives) work. For example, it gives guidance on the conditions that must be satisfied for a person to be appointed as an appointed representative. It also gives guidance to a firm on the implications, for the firm itself, of appointing an appointed representative.
22. SUP 12.2.1G states that: (1) Under section 19 of the Act (The general prohibition), no person may carry on a regulated activity in the United Kingdom, or purport to do so, unless he is an authorised person, or he is an exempt person in relation to that activity. (2) A person will be an exempt person if he satisfies the conditions in section 39(1) of the Act, guidance on which is given in SUP 12.2.2 G. A person who is exempt as a result of satisfying these conditions is referred to in the Act as an appointed representative.
23. SUP 12.2.2G states that: (1) A person (other than a firm with only a limited permission) must satisfy the conditions in section 39(1) of the Act to become an appointed representative. These are that: (a) the person must not be an authorised person, that is, he must not have permission under the Act to carry on any regulated activity in his own right (section 39(1) of the Act); (b) the person must have entered into a contract with an authorised person, referred to in the Act as the 'principal', which: (i) permits or requires him to carry on business of a description prescribed in the Appointed Representatives Regulations (section 39(1)(a)(i) of the Act) (see SUP 12.2.7 G); and (ii) complies with any requirements that may be prescribed in the Appointed Representatives Regulations (section 39(1)(a)(ii) of the Act) (see SUP 12.5.2 G (1)); and (c) the principal must have accepted responsibility, in writing, for the authorised activities of the person in carrying on the whole, or part, of the business specified in the contract.