

Update: Following an application from the Firm, Requirement 1 was amended as of 24 January 2014. For details of the amended requirement, please see the FS Register.

FIRST SUPERVISORY NOTICE

Hartmann Capital Limited
15-17 Eldon Street
London
EC2M 7LD

Firm Reference Number: 192815

24 December 2013

ACTION

For the reasons listed below and pursuant to section 55L(3) of the Act, the Authority has decided to exercise its own-initiative requirement power, by imposing the following requirements on Hartmann Capital Limited (“Hartmann” or “the firm”):

1. **Requirement 1:** This requirement is for all client money that Hartmann holds pursuant to section CASS 7 of the Handbook:
 - (a) With immediate effect, Hartmann must not in any way deal with or release any client money save as provided in Requirement 2.
 - (b) For the avoidance of doubt the client money referred to in (a) includes any client money held in client bank accounts, client transactions accounts or any other accounts operated by or for Hartmann.

Requirement 2:

- (a) Subject to (b) with immediate effect, Hartmann must cease carrying on any business that involves the carrying on of any regulated activities (including not initiating any further such business) except that it may allow the settlement of transactions in non-derivative financial instruments which (i) are settling as at the time of this requirement coming into force, and (ii) for which the firm is holding client money which it has previously received for the purposes of settlement.

- (b) With immediate effect Hartman must use its best endeavours to terminate any derivative contracts to which it is a party (whether as principal or agent), but must not for these purposes enter into any new derivative contracts (including any contracts to offset or reduce exposures under open derivative contracts).

Requirement 3: Hartmann must immediately secure all books and records and preserve information and systems that relate to regulated activities carried on by it, and must retain these in a form and at a location (to be notified to the Authority in writing) such that they can be provided to the Authority promptly on its request.

REASONS FOR THE ACTION

2. On the basis of the facts and matters described below, the Authority considers that the imposition of these requirements at the initiative of the Authority is desirable in order to advance the Authority's consumer protection objective.
3. In particular the Authority is concerned to protect Hartmann's clients from a likely increase in the existing shortfall in the firm's client money accounts, in view of there being:
 - (i) no reasonable short term prospect of the firm being able to make good that shortfall, and
 - (ii) in circumstances where the firm's directors having resolved that the firm is unable to pay its debts as they fall due, have informed the FCA that they propose to use client money to fund payments prior to the hearing of a petition to wind up the firm(see facts and matters relied on below).
4. In addition, the Authority has also concluded, on the basis of the facts and matters described below, that Hartmann is failing, or is likely to fail, to satisfy the Threshold Condition 2D (appropriate resources). In the opinion of the Authority, Hartmann's financial resources are not appropriate in relation to the regulated activities it carries on, or seeks to carry on. The directors of Hartmann have resolved that the firm is unable to pay its debts as they fall due, and were resolved to apply for the firm's entry into Special Administration. This however has not transpired (see below).
5. The risk of further loss to consumers because of Hartmann's failings (including its failure to make good the client money shortfall and its proposal to use client money to fund further expenses of the firm) causes the Authority to have serious concerns about Hartmann, such that the exercise of the Authority's own-initiative power to impose Requirements 1-3, with immediate effect is an appropriate response to those concerns.
6. The Authority considers that this is an exceptionally urgent case, such that the action should be taken before a recommendation to the chairman or a deputy chairman of a senior staff committee can be made, and because an urgent decision on the proposed action is necessary to protect the interests of consumers.
7. The coming into force of this requirement will cause a primary pooling event with immediate effect for the purposes of rule CASS 7A.2.2R of the Handbook, with the consequences as set out in CASS 7A.2.4R.

DEFINITIONS

The definitions below are also used in this First Supervisory Notice:

“the Act” means the Financial Services and Markets Act 2000;

“the Authority” and “the FCA” means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority;

“client bank account”, “client money”, and client transaction account” have the same meaning as in the Handbook for the purposes of section CASS 7 of the Handbook;

“regulated activity” has the same meaning as in the Handbook;

“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 Handbook” means the Authority’s Handbook of rules and guidance.

FACTS AND MATTERS RELIED ON

8. Hartmann is an investment firm and is permitted to conduct a range of regulated activities, including dealing as principal and dealing as agent in options and commodity options. Hartmann is also an authorised payment institution. Hartmann is currently able, under its authorisation pursuant to Part 4A of the Act, to hold client money. Hartmann has informed the Authority that it should be holding in the region of £25m of client money, and holds in the region of £36m of custody assets.
9. The amount of client money that Hartmann is actually holding is insufficient to satisfy its clients’ rights to client money and it has failed to comply with the requirement under CASS 7.6.13R to ensure that this shortfall is made good. Hartmann disclosed these matters to the Authority on 16 December 2013, and represented to the Authority that it was taking actions to ensure the situation does not deteriorate further. This included the voluntary cessation of new business. At the same time, the firm informed the Authority that it had a shortfall in regulatory capital and liquidity resources.
10. The existence of an unresolved shortfall means that, on a primary pooling event under CASS 7A.2.2R, clients who are entitled to client money will not receive distributions that would fully meet their entitlements.
11. The firm confirmed to the Authority on 19 December 2013 that the amount of the client money shortfall is in the range of £1.5 million.
12. However, the Authority was informed also by Hartmann on 19 December 2013 that, notwithstanding this shortfall, it sent instructions to a bank with which it was holding client money for a withdrawal of approximately £100,000 in order to pay for its

operating expenses. On the instruction of the Authority that instruction was subsequently reversed.

13. The effect of that instruction, had it been processed by the bank, and the subsequent spending of the withdrawn money to meet the firm's operating expenses would have been to worsen the existing client money shortfall, and therefore reduce the amount of client money that would be immediately available to be distributed to clients following a primary pooling event.
14. Hartmann is in financial difficulties, has been unable to secure timely external investment, and subsequently has resolved that it cannot pay its debts as and when they fall due. The firm has informed the Authority that it has corporate funds in the region of £81,000, and short term expenses that will exceed that amount. In addition, the firm has also confirmed to the Authority that its shortfall in regulatory capital is in the region of £1.2m. Hartmann therefore does not meet the appropriate resources Threshold Condition in paragraph 2D of Schedule 6 to the Act. Hartmann is also failing to meet Principle 4 (Financial prudence), of the Principles, which states that a firm must maintain adequate financial resources.
15. On 20 December Hartmann's Board of directors convened a meeting and minuted that the firm could not pay its debts as and when they fell due and formed the view that it should enter into special administration. However on the 22 December the firm informed the FCA that its proposed insolvency practitioner felt unable to consent to being appointed the firm's Special Administrator due to lack of funds in the firm's house estate.
16. On 23 December Hartmann initially informed the FCA that its Board of Directors: Andrew Fitton, Jeremy Wray, Stavros Loizou and Roderick Collins were unable to reach unanimity on whether the firm should petition for compulsory winding up. The firm informed the FCA that on advice they were not resolved to petition for the firm's winding up and would take no further action. The firm asked the FCA to itself take action it considered appropriate to resolve the situation
17. However in a subsequent email later on in the evening of 23 December the firm, through its lawyers, Speechley Bircham LLP, informed the FCA that the directors had now resolved to apply to petition to liquidate the firm on 24 December subject to the firm's lawyers being put in funds. The firm informed the FCA that it proposed to make a series of payments, for which the firm had insufficient funds and which it proposed to fund with client money in part..
18. Based on the above facts and matters, in the FCA's view there is no reasonable prospect of the firm being able to make good the client money shortfall and in addition there is a real risk that Hartmann may, whether or not in good faith, permit client money to be released from its client bank accounts or client transaction accounts - so resulting in a greater client money shortfall.
19. Accordingly, in the interests of consumers the Authority considers that it is desirable for this to be prevented through the occurrence of a primary pooling event (as a result of the coming into force of this requirement with immediate effect), and a requirement on the firm to cease conducting regulated activities.

PROCEDURAL MATTERS

Decision maker

20. The decision which gave rise to the obligation to give this First Supervisory Notice was made by David Lawton (Director of Markets), who is a member of the Executive Regulatory Issues Committee, and the Executive Committee.
21. This First Supervisory Notice is given to Hartmann under section 55Y(4) and in accordance with section 55Y(5) of the Act, and is being served on Hartmann at the address Hartmann provided to the Authority as that of its principal place of business, and by email. The following statutory rights are important.

The Tribunal

22. Hartmann has the right to refer the matter to which this First Supervisory Notice relates to 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, Hartmann has 28 days from the date on which this First Supervisory Notice is given to it to refer the matter to the Tribunal.
23. A reference to the Tribunal can be made by way of a reference notice (Form FTC3) signed by Hartmann 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: financeandtaxappeals@tribunals.gsi.gov.uk).
24. Further details are contained in "Making a Reference to the UPPER TRIBUNAL (Tax and Chancery Chamber)" which is available from the Tribunal website:

<http://www.tribunals.gov.uk/financeandtax/FormsGuidance.htm>
25. Hartmann 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 Jane Moore at the Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS.

Representations

26. Hartmann has the right to make written and oral representations to the Authority (whether or not Hartmann refers this matter to the Tribunal). If Hartmann wishes to make written representations it must do so by 25 January 2014, or such later date as may be permitted by the Authority, and sent to:

Jane Moore
Manager, Client Assets Unit
The Financial Conduct Authority
25 The North Colonnade

Canary Wharf
London
E14 5HS

27. The Authority must be informed in writing by 18 January 2014 if Hartmann wishes to make oral representations. If the Authority is not notified by 18 January 2014, Hartmann will not, other than in exceptional circumstances, be able to make oral representations.

Publicity

28. Hartmann should note that section 391 of the Act requires the Authority, when the First Supervisory Notice takes effect (and this First Supervisory Notice takes immediate effect), to publish such information about the matter as it considers appropriate.

Contacts

29. For more information concerning this matter generally, Hartmann should contact Jane Moore at the Authority (direct line: 020 7066 9434), email: jane.moore3@fca.org.uk).
30. If Hartmann has any questions regarding the decision-making procedures used in this case, it should also contact Jane Moore (details as above).

David Lawton
Director of Markets

ANNEX TO THE FIRST SUPERVISORY NOTICE ISSUED BY THE FINANCIAL CONDUCT AUTHORITY TO HARTMANN CAPITAL LIMITED ON 23 DECEMBER 2013

RELEVANT STATUTORY PROVISIONS

1. The Authority's operational objectives established in section 1B(3) of the Act include securing an appropriate degree of consumer protection.
2. The Authority is authorised by section 55L(2)(c) and section 55L(3) to impose new requirements on an authorised person if it appears to the Authority that it is desirable to do so in order to advance one or more of the Authority's operational objectives. In addition, the Authority is authorised by section 55L(2)(a) to imposed new requirements on an authorised person if it appears to the Authority that such person is failing, or is likely to fail, to satisfy the Threshold Conditions.
3. 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.
4. Section 55Y of the Act allows such a requirement to take effect immediately if the Authority, having regard to the ground on which it is exercising its own-initiative requirement power, reasonably considers that it is necessary for the imposition of the requirement to take effect immediately.
5. Section 391 of the Act provides that when a supervisory notice takes effect, the Authority must publish such information about the matter to which the notice relates as it considers appropriate, and in such manner as the Authority considers appropriate. The Authority may not publish information under section 391 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.
6. Paragraph 2D of Part 1B of Schedule 6 to the Act sets out the appropriate resources Threshold Condition which provides that the resources of an authorised person must be appropriate in relation to the regulated activities that such person carries on or seeks to carry on.

OTHER RELEVANT REGULATORY PROVISIONS

Decision-making

7. The Authority's policy in relation to the allocation of decision making powers is set out in the Decision Procedure and Penalties Manual (DEPP), certain provisions of which are summarised below.
8. DEPP 2.5.7G provides that the Regulatory Decisions Committee will take the decision to give a supervisory notice exercising the Authority's own initiative powers if the action involves a fundamental variation or requirement. Otherwise, the decision to give the supervisory notice will be taken by FCA staff under executive procedures.

9. DEPP 2.5.7AG provides that notwithstanding DEPP 2.5.7G, FCA staff under executive procedures will be the decision maker whenever a firm agrees not to contest the FCA's exercise of its own-initiative powers including where the FCA's action involves a fundamental variation or requirement.
10. DEPP 2.5.8G provides that a fundamental variation or requirement means:
 - (a) removing a type of activity or investment from the firm's permission;
 - (b) refusing an application to include a type of activity or investment or imposing; or
 - (c) varying an assets requirement (as defined in section 55P1 of the Act (Prohibitions and restrictions)), or refusing an application to vary or cancel such a requirement.

Urgent supervisory notice cases under executive procedures

11. DEPP 4.1.1G states that all statutory notice decisions under executive procedures will be taken either by a senior staff committee or by an individual FCA staff member.
12. DEPP 4.2.1G(1) states that if FCA staff recommend that action be taken and they consider that the decision falls within the responsibility of a senior staff committee, then in general the FCA staff's recommendation will go before the senior staff committee.
13. DEPP 4.2.1G(4) states that in an exceptionally urgent statutory notice case, if in the FCA staff's opinion:
 - (a) the action should be taken before a recommendation to the chairman or a deputy chairman of the senior staff committee could be made; and
 - (b) an urgent decision on the proposed action is necessary to protect the interests of consumers

the decision may be taken by a member of the Authority's executive of at least director of division level or, in the case of a senior staff committee which reports directly to the Authority's senior executive committee, by a member of that committee.

Use of the own-initiative requirement power in urgent cases

14. EG 8.6 states that the Authority may impose a requirement so that it takes effect immediately if it reasonably considers it necessary, having regard to the ground on which it is exercising its own-initiative power.
15. EG 8.7 provides the circumstances in which the Authority will consider exercising its own initiative power as a matter of urgency, including where 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 (EG 8.7(2)).

16. EG 8.8 provides a list of situations which will give rise to such serious concerns. Specifically, EG 8.8(1) includes where information indicates a risk of loss or other adverse effects for consumers, where action is necessary to protect their interests.
17. EG 8.9 sets out the factors the Authority may consider in addition to the full circumstances of each case when it decides whether an urgent imposition or a requirement is appropriate. In particular, EG 8.9(1) states a factor is the extent of any loss, or risk of loss, or other adverse effect on consumers, and EG 8.9(5) states t a factor is the financial resources of the firm.
18. EG 8.11A provides 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.
19. SUP 7.3.4G provides that the Authority will seek to give a firm reasonable notice of an intent to vary its permission or impose a requirement and to agree with the firm an appropriate timescale. However, if the Authority considers that a delay may create a risk to any of the Authority statutory objectives, the Authority may need to act immediately using its powers under section 55L of the Act with immediate effect.

Client money shortfalls

20. CASS 7.6.13R states that when any discrepancy arises as a result of a firm's internal reconciliations, the firm must identify the reason for the discrepancy and ensure that any shortfall is paid into a client bank account by the close of business on the day that the reconciliation is performed.

Primary pooling events

21. CASS 7A.2.2R(3) provides that a primary pooling event occurs on the coming into force of a requirement for all client money held by the firm.

Principle 4

22. Principle 4 (Financial prudence) of the Principles, states that a firm must maintain adequate financial resources.

Threshold Condition

23. Guidance on the Threshold Conditions is set out in the part of the Handbook entitled Threshold Conditions (“COND”).
24. COND 2.4.1AUK, states that the resources of A must be appropriate in relation to the regulated activities that A carries on or seeks to carry on.

25. COND 2.4.1BG provides that paragraph 2D of Schedule 6 to the Act sets out the appropriate resources threshold condition for firms carrying on, or seeking to carry on regulated activities, which do not include a PRA regulated activity.
26. COND 2.4.4G(2) provides that the relevant matters to which the Authority may have regard when assessing whether a firm will satisfy, and continue to satisfy, the appropriate resources threshold condition may include whether there are any indications that the firm will not be able to meet its debts as they fall due (COND 2.4.4G(2)(b)).