
FINAL NOTICE

**M8's Rates Loans Limited
Dunmurry
Belfast
County Antrim
BT17 0GX
Northern Ireland**

05 August 2015

ACTION

1. By an application dated 29 August 2014 ('the Application') M8's Rates Loans Limited ('the Firm') applied under section 55A of the Financial Services and Markets Act 2000 ('the Act') for Part 4A permission to carry on the regulated activities of Entering into a regulated home credit agreement as the lender and Exercising or having the right to exercise the lender's rights and duties under a regulated home credit loan agreement.
2. The Application was deemed complete by the provision of further information on 17 December 2014.
3. For the reasons listed below, the Authority has refused the Application.

SUMMARY OF REASONS

4. By its Warning Notice dated 22 May 2015 ('the Warning Notice') the Authority gave notice that it proposed to refuse the Application and that the Firm was entitled to make representations to the Authority about that proposed action.
5. As no representations have been received by the Authority from the Firm within the time allowed by the Warning Notice, the default procedures in paragraph 2.3.2 of the Authority's Decision Procedure and Penalties Manual apply,

permitting the Authority to treat the matters referred to in its Warning Notice as undisputed and, accordingly, to give a Decision Notice.

6. By its Decision Notice dated 19 June 2015 ('the Decision Notice'), the Authority gave the Firm notice that it had decided to take the action described above.
7. The Firm had 28 days from the date the Decision Notice was given to refer the matter to the Upper Tribunal (formerly known as the Financial Services and Markets Tribunal). No referral was made to the Upper Tribunal within this period of time or to date.
8. Under section 390(1) of the Act, the Authority, having decided to refuse the Application and there having been no reference of that decision to the Tribunal, must give the Firm Final Notice of its refusal.

DEFINITIONS

9. The definitions below are used in this Final Notice.

'the Act' means the Financial Services and Markets Act 2000

'the Authority' means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority

FACTS AND MATTERS

10. The Firm is a limited company with one director: Mr Neil Green. The Firm has held interim permission since 1 April 2014.

Appropriate resources

11. The Firm's only credit agreement does not contain all of the information required by the Consumer Credit (Agreements) Regulations 2010 which includes, but is not limited to, the nature of the agreement, the total amount payable, and the annual percentage rate of charge (APR).
12. The Firm confirmed to the Authority by email dated 10 April 2015 that it had ceased using its credit agreement after the Authority had informed the Firm that the agreement did not meet the regulations.
13. The Firm's only written pre-contract (PRC) information is its advertising leaflet.
14. The Firm's complaints procedure states that once a complaint has been received 'the director will look into the [sic] resolving the situation.'
15. The Firm was asked for its arrears procedures in an information request but has not provided any in its response.
16. The Firm has failed to apply for an individual to hold the Money laundering reporting function (CF11) which is the function of acting in the capacity of the money laundering reporting officer (MLRO) of a firm. This is required as the Firm is subject to the requirements set down by the Money Laundering Regulations 2007.

17. In its ownership structure document, the Firm states that it has 'only 2 owners/staff'. Mr Green is the Firm's only day-to-day human resource.
18. The Firm's policy on vulnerable consumers does not clearly state how the Firm will identify these customers. The Firm's policy explains that when making a judgement on whether to lend to a new customer 'If the director thinks this person is anyway vulnerable, a loan will not be issued' and 'If any person that has received a loan be classed in any way vulnerable, the director will speak to the customer and make arrangements to close the account.'
19. On 10 March 2015 the Authority wrote to the Firm to set out the basis of the Authority's current concerns about the application.
20. On 10 April 2015 in an email the Firm told the Authority that once it had collected its remaining loans it intended to close down the business and withdraw its application.

Skills, experience and availability of Mr Green

21. Mr Green is the only individual connected to the Firm to have applied to be an approved person.
22. All of Mr Green's previous professional experience is in the field of architecture and he is currently a full-time student.
23. The Authority telephoned Mr Green on 24 November 2014 to discuss his application and informed him that assessment of his application would include having regard to his competence demonstrated through relevant training and experience. He told the Authority that he has neither.
24. The Firm's regulatory business plan also states 'The director has no prior experience in the financial sector but has worked as a professional for over 11 years in the architectural profession. The director is also very highly educated and is currently doing his 2nd university degree. The financial business venture I've started is a new experience to me. But I'm teaching myself all about the financial sector by researching and reading the relevant documents.'
25. By email dated 11 November 2014, Mr Green on behalf of the Firm, requested more time to comply with the Authority's requests for further information due to his university commitments, indicating that he would send 'as I complete them' and noting that as 'a new company only starting up...I have to complete and finalize some of the procedure documents your [sic] are requesting.'
26. The Firm's application contained a number of errors including:
 - i. Making the application as if the Firm was intending to engage an Appointed Representative. Following questions from the Authority, this element of the application was withdrawn.
 - ii. In its Compliance procedures, marking 'conflicts of interest' as 'N/A'; equating Appointed Representatives with 'company' representatives'.
 - iii. In its compliance monitoring programme, with regard to conflict of interest record keeping, it is marked 'N/A'; with regard to the fitness and propriety of individuals, mistaking Approved Persons with potential customers.

- iv. The Firm's regulatory business plan explains that it will source customers through advertising with flyers and states it 'will never be holding any financial promotions, but will comply with CONC 3 if the situation changes. The director of the company will be in charge of making sure the company complies if need be.'

27. When the Authority first informed the Firm of the issues identified in the application on 24 November 2014 Mr Green asked the Authority how he could get all the information compliant.

Suitability

28. The Firm's 'Treating Customers Fairly Plan' states:

- i. 'Customers will be given very flexible terms and plenty of time to repay the debt if so required' and
- ii. 'All new customers who seem to be having serious troubles repaying the weekly payments will not be offered new larger loans, a more flexible plan or time extension will be offered and then the debt will be written off and the customer's account closed to stop them getting into further debt.'

29. The Firm's regulatory business plan states: 'm8's rates loans has a flexible repayment policy in place which means the customer pays back what they can afford and when they can afford it.'

30. The Firm's credit agreement requires repayment within a longstop period of twelve months and, if the borrower defaults, the Firm is entitled to demand immediate repayment of the outstanding amount, plus interest.

31. The Firm has identified in its regulatory business plan that its target market are those who are 'unable to or reluctant to get a loan from the bank'.

32. The Authority's report 'Vulnerability exposed: The consumer experience of vulnerability in financial services' identified that, when vulnerable consumers' needs are not met they may suffer in a range of ways including withdrawing from the mainstream finance market.

33. The Firm's advertising raises concerns because, for example:

- i. It states that the Firm is 'Licenced [sic] & regulated by both' the FCA and the OFT, and includes both logos;
- ii. It does not provide a representative APR example;
- iii. It only explains the benefits of the product to the consumer.

34. The OFT ceased to exist on 01 April 2014

IMPACT ON THE THRESHOLD CONDITIONS

35. The regulatory provisions relevant to this Final Notice are referred to in Annex A.

36. The Authority cannot ensure that the Firm will satisfy, and continue to satisfy, the following threshold conditions:

Threshold Condition 2D (Appropriate Resources)

- i. By virtue of the Firm's insufficient policies and procedures, and its connection with Mr Green who manages the Firm's affairs, and his current lack of skills and experience, the Firm has failed to demonstrate that it has appropriate non-financial resources in relation to the regulated activities it seeks to carry on.
- ii. Policies and procedures provided by the Firm with its application do not meet the standards expected of home collected credit lenders and/or fail to acknowledge relevant legal and regulatory requirements and standards. These resources therefore lack sufficient quality for a regulated business of this kind.
- iii. In addition, inappropriate policies and procedures raise concerns about whether the Firm is treating customers fairly and therefore whether it is fit and proper.

Threshold Condition 2E (Suitability)

- iv. By virtue of its connection with Mr Green who manages the Firm's affairs, and his current lack of skills and experience, the Firm has failed to demonstrate that it is ready, willing and organised to comply with the standards and requirements of the regulatory system and has failed to demonstrate that it is fit and proper.
 - v. Mr Green has not demonstrated that he has sufficient time or understanding to comply with the relevant requirements at the point of authorisation or on an ongoing basis. For example, the Firm's advertising falls short of the relevant standards.
 - vi. The Authority considers that the Firm's failure to demonstrate its compliance with relevant regulatory and other legal standards indicates that:
 - vii. The Firm's management lacks adequate skills and experience to understand what is required of a regulated firm engaging in these activities.
 - viii. The Firm is not paying due regard to the interests of its customers as required by Principle 6 of the Principles for Businesses.
 - ix. The Firm is not paying due regard to the information needs of its customers as required by Principle 7 of the Principles for Businesses.
37. The Firm's indication that it intends to collect its outstanding debts, close its business and then withdraw its application suggests it does not intend to continue to carry out regulated activities on an ongoing basis.
38. On the basis of the facts and matters described above, the Authority has concluded that the Firm will not satisfy, and continue to satisfy, the threshold conditions in relation to all of the regulated activities for which the Firm would have permission if the application was granted.

IMPORTANT NOTICES

39. This Final Notice is given under section 390 (1) of the Act.

Publication

40. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Notice relates. Under those provisions, the Authority must publish such information about the matter to which this Notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to you or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
41. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Authority contacts

For more information concerning this matter generally, contact Mike Baker, Manager, Debt Department, Credit Authorisations Division at the Authority (direct line: 020 7066 1026 / email: mike.baker@fca.org.uk).

Nicholas Mears
Chair of the Regulatory Transactions Committee

ANNEX A – REGULATORY PROVISIONS RELEVANT TO THIS FINAL NOTICE

Relevant Statutory Provisions

1. Section 55A(1) of the Act provides for an application for permission to carry on one or more regulated activities to be made to the appropriate regulator. Section 55A(2) defines the 'appropriate regulator' for different applications.
2. Section 55B(3) of the Act provides that, in giving or varying permission, imposing or varying a requirement, or giving consent, under any provision of Part 4A of the Act, each regulator must ensure that the person concerned will satisfy, and continue to satisfy, in relation to all of the regulated activities for which the person has or will have permission, the threshold conditions for which that regulator is responsible.
3. The threshold conditions are set out in Schedule 6 to the Act. In brief, the threshold conditions relate to:
 - (1) Threshold condition 2B: Location of offices
 - (2) Threshold condition 2C: Effective supervision
 - (3) Threshold condition 2D: Appropriate resources
 - (4) Threshold condition 2E: Suitability
 - (5) Threshold condition 2F: Business model
4. Regulation 3 of the Consumer Credit (Agreements) Regulations 2010 explains the requirements for the form and content of regulated consumer credit agreements.
5. Regulation 3(2) of the Consumer Credit (Disclosure of Information) Regulations 2010 provides that in good time before the agreement is made, the creditor must disclose to the debtor, in the manner set out in regulation 8, the pre-contract credit information. The pre-contract credit information is set out in regulation 3(4).

Relevant provisions of the Authority's Handbook

6. In exercising its powers in relation to the granting of a Part 4A permission, the Authority must have regard to guidance published in the Authority Handbook, including the part titled Threshold Conditions (COND). The main considerations in relation to the action specified are set out below.

Principles for Businesses

7. PRIN 1.1.4G states that, in substance, the Principles express the main dimensions of the "fit and proper" standard set for firms in threshold condition 5 (Suitability), although they do not derive their authority from that standard or exhaust its implications. Being ready, willing and organised to abide by the Principles is therefore a critical factor in applications for Part 4A permission, and breaching the Principles may call into question whether a firm with Part 4A permission is still fit and proper.
8. Under PRIN 2.1.1R, Principle 6 states that a firm must pay due regard to the interests of its customers and treat them fairly.

9. Under PRIN 2.1.1R, Principle 7 states that a firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

Threshold conditions in general

10. COND 1.2.1G states that COND gives guidance on the threshold conditions. The Authority's threshold conditions represent the minimum conditions for which the Authority is responsible, which a firm is required to satisfy, and continue to satisfy, in order to be given and to retain Part 4A permission.
11. COND 1.3.2G(2) provides that, in relation to threshold conditions 2D to 2F, the Authority will consider whether a firm is ready, willing and organised to comply on a continuing basis with the requirements and standards under the regulatory system which will apply to the firm if it is granted Part 4A permission.
12. Under COND 1.3.3AG, in determining the weight to be given to any relevant matter, the Authority will consider its significance in relation to the regulated activities for which the firm has, or will have, permission, in the context of its ability to supervise the firm adequately, having regard to the Authority's statutory objectives. In this context, a series of matters may be significant when taken together, even though each of them in isolation might not give serious cause for concern.
13. COND 1.3.3BG provides that, in determining whether the firm will satisfy, and continue to satisfy, the Authority's threshold conditions, the Authority will have regard to all relevant matters, whether arising in the United Kingdom or elsewhere.
14. COND 1.3.3CG provides that, when assessing the Authority's threshold conditions, the Authority may have regard to any person appearing to be, or likely to be, in a relevant relationship with the firm, in accordance with section 55R of the Act (Persons connected with an applicant). For example, a firm's controllers, its directors or partners, other persons with close links to the firm (see COND 2.3), and other persons that exert influence on the firm which might pose a risk to the firm's satisfaction of the Authority's threshold conditions, would be in a relevant relationship with the firm.

Threshold condition 2D: Appropriate Resources

15. COND 2.4.2G(2) states that the Authority will interpret the term 'appropriate' as meaning sufficient in terms of quantity, quality and availability, and 'resources' as including all financial resources (though only in the case of firms not carrying on, or seeking to carry on, a PRA-regulated activity), non-financial resources and means of managing its resources; for example, capital, provisions against liabilities, holdings of or access to cash and other liquid assets, human resources and effective means by which to manage risks.
16. COND 2.4.2G(3) explains that high level systems and control requirements are in SYSC. The Authority will consider whether the firm is ready, willing and organised to comply with these and other applicable systems and controls requirements when assessing if it has appropriate non-financial resources for the purpose of the threshold condition set out in paragraph 2D to Schedule 6 of the Act.
17. COND 2.4.4G(2)(d) states that relevant matters to which the Authority may have regard when assessing whether a firm will satisfy, and continue to satisfy, this

threshold condition may include but are not limited to whether the firm has taken reasonable steps to identify and measure any risks of regulatory concern that it may encounter in conducting its business and has installed appropriate systems and controls and appointed appropriate human resources to measure them prudently at all times.

Threshold condition 2E: Suitability

18. COND 2.5.2G(2) states that the Authority will also take into consideration anything that could influence a firm's continuing ability to satisfy the threshold conditions set out in paragraph 2E of Schedule 6 to the Act. Examples include the firm's position within a UK or international group, information provided by overseas regulators about the firm, and the firm's plans to seek to vary its Part 4A permission to carry on additional regulated activities once it has been granted that permission.
19. COND 2.5.3G(1) states that the emphasis of the threshold condition set out in paragraph 2E of Schedule 6 to the Act is on the suitability of the firm itself. The suitability of each person who performs a controlled function will be assessed by the Authority and/or the PRA, as appropriate, under the approved persons regime (see SUP 10 (Approved persons) and FIT). In certain circumstances, however, the Authority may consider that the firm is not suitable because of doubts over the individual or collective suitability of persons connected with the firm.
20. COND 2.5.4G(2) states that 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 threshold condition set out in paragraph 2E of Schedule 6 to the Act include, but are not limited to, whether the firm:
 - (1) conducts, or will conduct, its business with integrity and in compliance with proper standards;
 - (2) has, or will have, a competent and prudent management; and
 - (3) can demonstrate that it conducts, or will conduct, its affairs with the exercise of due skill, care and diligence.
21. Under COND 2.5.6G, when assessing whether a firm will satisfy, and continue to satisfy, threshold condition 2E, the Authority may have regard to whether:
 - (1) the firm is ready, willing and organised to comply with the requirements and standards under the regulatory system. (COND 2.5.6G(1))
 - (2) the firm has made arrangements to put in place an adequate system of internal control to comply with regulatory requirements. (COND 2.5.6G(1A))
 - (3) the firm has put in place procedures which are reasonably designed to ensure its employees and approved persons are aware of, and compliant with, regulatory requirements, and to determine whether its employees are acting in a way compatible with adhering to those standards, and its approved persons are adhering to those standards. (COND 2.5.6G(7))
 - (4) the governing body of the firm is made up of individuals with an appropriate range of skills and experience to understand, operate and manage the firm's regulated activities. (COND 2.5.6G(10))

- (5) the firm has in place appropriate systems and controls against financial crime, including, for example, money laundering (COND 2.5.6G(17))

Consumer Credit sourcebook (CONC)

22. CONC 3.3.5G(1) states a firm should ensure that each communication and each financial promotion is accurate and, in particular, should not emphasise any potential benefits of a product or service without also giving a fair and prominent indication of any relevant risks.
23. CONC 4.2.5R(1)(a) provides that before making a regulated credit agreement the firm must provide the customer with an adequate explanation of
- (1) the features of the agreement which may make the credit to be provided under the agreement unsuitable for particular types of use
 - (2) how much the customer will have to pay periodically and, where the amount can be determined, in total under the agreement
 - (3) the features of the agreement which may operate in a manner which would have a significant adverse effect on the customer in a way which the customer is unlikely to foresee
 - (4) the principal consequences for the customer arising from a failure to make payments under the agreement at the times required by the agreement
 - (5) the effect of the exercise of any right to withdraw from the agreement and how and when this right may be exercised
24. CONC 4.2.5R(1)(b) provides that before making a regulated credit agreement the firm must advise the customer
- (1) to consider the information which is required to be disclosed under section 55 of the CCA; and
 - (2) where the information is disclosed in person, that the customer is able to take it away
25. CONC 7.2.1R states that a firm must establish and implement clear, effective and appropriate policies and procedures for:
- (1) dealing with customers whose accounts fall into arrears;
 - (2) the fair and appropriate treatment of customers, who the firm understands or reasonably suspects to be particularly vulnerable.

Dispute Resolution: Complaints (DISP)

26. Under DISP 1.3.1R(1), effective and transparent procedures for the reasonable and prompt handling of complaints must be established, implemented and maintained by a respondent.
27. Under DISP 1.4.1R, once a complaint has been received by a respondent, it must investigate the complaint competently, diligently and impartially, obtaining additional information as necessary.

28. Under DISP 1.6.1R, on receipt of a complaint, a respondent must:
 - (1) send the complainant a prompt written acknowledgement providing early reassurance that it has received the complaint and is dealing with it; and
 - (2) ensure the complainant is kept informed thereafter of the progress of the measures being taken for the complaint's resolution.
29. Under DISP 1.6.2R(1), the respondent must, by the end of eight weeks after its receipt of the complaint, send the complainant a 'final response'.