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## FINAL NOTICE

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**Mr Aaron Cooper t/a Crosswords  
Attleborough  
Norfolk**

18 February 2016

### **ACTION**

1. By an application dated 31 December 2014 ("the Application") Mr Aaron Cooper trading as Crosswords ("Crosswords") 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 limited permission lending and debt adjusting.
2. The Application is incomplete.
3. For the reasons listed below, the Authority has refused the Application.

### **SUMMARY OF REASONS**

4. By its Warning Notice dated 15 December 2015 ("the Warning Notice") the Authority gave notice that it proposed to refuse the Application and that Crosswords was entitled to make representations to the Authority about that proposed action.

5. As no representations have been received by the Authority from Crosswords 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 13 January 2016 ("the Decision Notice"), the Authority gave Crosswords notice that it had decided to take the action described above.
7. Crosswords 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 Crosswords Final Notice of its refusal.
9. The Authority decided to refuse the Application and to give this Final Notice as Crosswords has failed to provide the information required by the Authority and, in the absence of the information sought, the Authority cannot ensure that Crosswords will satisfy, and continue to satisfy, the threshold conditions set out in Schedule 6 of the Act.

## **DEFINITIONS**

10. 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

"the RTC" means the Authority's Regulatory Transactions Committee.

"the Tribunal" means the Upper Tribunal (Tax & Chancery Chamber).

"Crosswords" refers to the trading name of Mr Aaron Cooper.

## **FACTS AND MATTERS**

11. The Application was received on 31 December 2014.
12. Further information was requested from Crosswords under section 55U(5) of the Act. Details of all the communications between the Authority and Crosswords are set out below:
13. On 14 May 2015, Crosswords was asked to provide the following information in support of this application by 1 June 2015:
  - (1) confirmation that the summary of the phone conversation from the previous email was correct;

- (2) confirmation that Crosswords wished to amend its application from limited permission lending and debt adjusting to full permission debt adjusting and debt counselling with the ability to hold client money;
- (3) confirmation that Crosswords would pay the top-up fee of £900 in order to transfer from limited permission to full permission;
- (4) regulatory business plan;
- (5) opening balance sheet;
- (6) 12-month forecast closing balance sheet;
- (7) monthly cash flow forecast;
- (8) 12-month monthly profit and loss forecast;
- (9) compliance monitoring programme; and
- (10) Mr Cooper's CV.

14. On 18 June 2015, Crosswords provided the following information:

- (1) regulatory business plan;
- (2) opening balance sheet;
- (3) 12-month forecast closing balance sheet;
- (4) monthly cash flow forecast;
- (5) 12-month monthly profit and loss forecast; and
- (6) Mr Cooper's CV.

15. On 21 July 2015 Crosswords was asked to provide the following information in support of this application by 11 August 2015:

- (1) confirmation that the summary of the telephone conversation from the email dated 14 May 2015 was correct;
- (2) confirmation that Crosswords wished to amend its application from limited permission lending and debt adjusting to full permission debt adjusting and debt counselling with the ability to hold client money;
- (3) confirmation that Crosswords would pay the top-up fee of £900 to transfer from limited permission to full permission;
- (4) completed DMP Management Information (MI) spreadsheet;
- (5) business continuity and disaster recovery procedures;
- (6) compliance procedures;
- (7) TCF self-assessment/audit;

- (8) procedures to counter the risk of financial crime;
  - (9) samples of letters sent to consumers;
  - (10) client bank account acknowledgement letter;
  - (11) details of Crosswords' bank accounts, including account name, account number, sort code, current balance, and bank statements covering the last 30 days;
  - (12) details of the bank accounts where money is received from clients, including account name, account number, sort code, current balance and bank statements covering the last 30 days;
  - (13) systems and controls in place over its handling of client money;
  - (14) MI on complaints for the past 3 years;
  - (15) compliance monitoring programme; and
  - (16) all other policies, procedures, or supporting documents relevant to the business.
16. After two weeks, the Authority had still received no response to their request for information.
17. On 14 August 2015, the Authority wrote to Crosswords via e-mail, informing it that a failure to provide the outstanding information would result in the application being determined based upon the information received to date and that this might result in a recommendation to the FCA's RTC that it issue Crosswords with a Warning Notice proposing to refuse the Application.
18. On 19 August 2015 the Authority received a telephone call from Crosswords explaining Mr Cooper had been on holiday and requested some more time. The Authority explained that an email had been sent on 14 August 2015 with a new deadline.
19. On 20 August 2015, Crosswords emailed the Authority stating it had not received the email sent on 14 August 2015. The Authority responded the same day, forwarding Crosswords a copy of that email. No response was received to the email by the stated deadline of 28 August 2015 (i.e. within 14 days).
20. On 7 September 2015, the Authority wrote to Crosswords, noting the lack of a response to its previous email of 14 August and reiterating that a failure to provide the outstanding information would result in the application being determined based upon the information received to date. The letter again noted that a failure to reply might result in a recommendation to the FCA's RTC that it issue Crosswords with a Warning Notice proposing to refuse the Application. No response was received to this letter by the stated deadline of 21 September 2015 (i.e. within 14 days).
21. On 21 September 2015, the Authority received a telephone call from Crosswords. Crosswords explained that, as a small business winding down, it did not think it would be able to provide the information requested and therefore wanted to know what the options were regarding the Application. The Authority explained that if the information was not provided it would ultimately lead to the Application being

refused. The Authority also explained the firm had the option to withdraw the Application. Crosswords asked what time frame it would have if it chose to withdraw to wind down its business. This was to ensure that the firm's customers were not burdened by the winding down of the business. The Authority explained that it would continue with the non-responder process and outlined the timescales involved in the non-responder process.

22. On 22 September 2015, the Authority wrote to Crosswords, noting the lack of a response to its previous letter of 7 September 2015 and reiterating that a failure to provide the outstanding information would result in the application being determined based upon the information received to date. The letter again noted that this might result in a recommendation to the FCA's RTC that it issue Crosswords with a Warning Notice proposing to refuse the application. No response was received to this letter by the stated deadline of 7 October 2015 (i.e. within 14 days).
23. On 13 October 2015, the Authority called Crosswords and discussed the options available to the firm. This included the option to either finish or sell the book of DMPs. Crosswords explained that selling its book of DMPs was not a viable option for its customers due to the charges involved. In addition, Crosswords stated that it was winding down the business.

#### **IMPACT ON THRESHOLD CONDITIONS**

24. The regulatory provisions relevant to this Final Notice are referred to in Annex A.
25. Crosswords has failed to respond to three separate requests for the provision of information considered, by the Authority, to be necessary to allow the Application to be determined. These requests were made over an eleven week period; each request included a statement to the effect that the recipient must contact the Authority or face a Warning Notice.
26. The Authority must therefore determine the Application based upon the information received to date, in circumstances where its requests for information have not been met. Having reviewed that information, the Authority cannot ensure that the applicant satisfies, and will continue to satisfy, the threshold conditions.
27. Authorised firms (and those seeking authorisation) are expected to engage with the Authority in an open and cooperative way. The failure to provide the requested information raises concerns that Crosswords would do so if the Application were to be granted.
28. The failure to provide the information raises concerns as to whether the applicant:
  - i. can be effectively supervised by the Authority as required by threshold condition 2C;
  - ii. has appropriate resources, given the applicant's failure to provide the Authority with the requested information as required by threshold condition 2D; and
  - iii. will conduct its business with integrity and in compliance with proper standards as required by threshold condition 2E.

29. Crosswords has not satisfied the Authority that it is a fit and proper person having regard to all the circumstances including the nature of the regulated activity it seeks to carry on.
30. On the basis of the facts and matters described above, in particular the failure to provide the information required by the Authority, and in the absence of the information sought, the Authority has concluded that Crosswords will not satisfy, and continue to satisfy, the threshold conditions in relation to all of the regulated activities for which Crosswords would have permission if the application was granted.

### **IMPORTANT NOTICES**

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

### **Publication**

32. 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.
33. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

### **Authority contacts**

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

**David Fisher**  
**on behalf 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 of 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

### **Relevant provisions of the Authority’s Handbook**

4. In exercising its powers in relation to the granting of 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*

5. PRIN 2.1.1R, Principle 11 states that a firm must deal with its regulators in an open and co-operative way, and must disclose to the appropriate regulator appropriately anything relating to the firm of which that regulator would reasonably expect notice.

#### *Threshold Conditions in general*

6. 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.
7. COND 1.3.3AG provides that, 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.

8. COND 1.3.3BG provides that, in determining whether the firm will satisfy, and continue to satisfy, the Authority threshold conditions, the Authority will have regard to all relevant matters, whether arising in the United Kingdom or elsewhere.
9. 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.

#### **Threshold Condition 2C: Effective Supervision**

10. COND 2.3.3G states that, in assessing the threshold condition set out in paragraph 2C of Schedule 6 to the Act, factors which the Authority will take into consideration include, among other things, whether it is likely that the Authority will receive adequate information from the firm to determine whether it 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 part of the Authority Handbook titled Supervision regarding the provision of information to the Authority.

#### **Threshold Condition 2D: Appropriate Resources**

11. 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.
12. COND 2.4.2G (2A) provides that, "non-financial resources" of the firm include human resources it has available.
13. COND 2.4.2G (3) states 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 conditions set out in threshold condition 2D.

#### **Threshold condition 2E: Suitability**

14. 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 paragraphs 2E and 3D 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.

15. COND 2.5.4G (2) (c) G 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, threshold condition 2E include, but are not limited to, whether the firm can demonstrate that it conducts, or will conduct, its business with integrity and in compliance with proper standards.
16. COND 2.5.6G provides that examples of the kind of particular considerations to which the Authority may have regard when assessing whether a firm will satisfy, and continue to satisfy, this threshold condition include, but are not limited to, whether:
  - (1) the firm has been open and co-operative in all its dealings with the Authority and any other regulatory body (see Principle 11 (Relations with regulators)) and is ready, willing and organised to comply with the requirements and standards under the regulatory system (such as the detailed requirements of SYSC and, in relation to a firm not carrying on, or seeking to carry on, a PRA-regulated activity only, the Prudential Standards part of the Authority's Handbook) in addition to other legal, regulatory and professional obligations; the relevant requirements and standards will depend on the circumstances of each case, including the regulated activities which the firm has permission, or is seeking permission, to carry on.