
FINAL NOTICE

ABACUS MANAGEMENT LTD
Lester House
21 Broad Street
Bury
Lancashire
BL9 0DA

20 August 2021

ACTION

1. By an application dated 31 July 2019 ("the Application"), Abacus Management Ltd ("Abacus" or "the Applicant") applied under section 55A of the Act for Part 4A permission to carry on the regulated activities of:
 - a. agreeing to carry on a regulated activity;
 - b. seeking out, referrals and identification of claims or potential claims (personal injury claim; financial services or financial product claim; housing disrepair claim; claim for a specified benefit; criminal injury claim; employment related claim);
 - c. advice, investigation or representation in relation to a financial services or financial product claim
2. The Application is incomplete.
3. For the reasons set out below, The Authority has decided to refuse the Application.

SUMMARY OF REASONS

4. By its Warning Notice dated 16 June 2021, the Authority gave notice that it proposed to refuse the Application and that Abacus was entitled to make representations to the Authority about that proposed action.
5. As no representations have been received by the Authority from Abacus 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. Abacus has failed to respond to requests for the provision of information considered by the Authority to be necessary to allow the Application to be determined. The last request included a statement to the effect that Abacus must contact the Authority within 10 business days, or the Authority would recommend to the Authority's Regulatory Transactions Committee ("RTC") that Abacus receive a Warning Notice. No response was received.
7. 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 Abacus satisfies, and will continue to satisfy, the threshold conditions.
8. 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 during the authorisation process raises concerns that Abacus would fail to do so if the Application were to be granted.
9. The failure to provide the information raises concerns as to whether Abacus:
 - a. can be effectively supervised by the Authority as required by threshold condition 2C; and
 - b. has appropriate financial and non-financial resources, given Abacus's failure to provide the Authority with the requested information as required by threshold condition 2D

DEFINITIONS

10. The definitions below are used in this Warning Notice.

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

"the Application" means the application referred to in paragraph 1 above;

"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 RDC" means the Authority's Regulatory Decisions Committee;

“SUP” means the Supervision section of the Authority’s handbook;

“SYSC” means the Senior Management Arrangements, Systems and Controls section of the Authority’s handbook; and

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

FACTS AND MATTERS

Background

11. Claims management companies that operate exclusively in the financial products sector were required to apply in ‘application period 1’ i.e. between 1 April and 31 May 2019.
12. Abacus, which the Authority understands operates exclusively in the financial products sector, applied for authorisation on 31 July 2019.
13. The director of the firm, Ms Zenib Hameed (the ‘Director’), applied to perform the SMF29 Function.
14. From the date of the firm’s application to February 2020, the Authority and the firm had been corresponding mainly in relation to the landing slot during the which the firm should have applied to the FCA for authorisation. The Authority arranged a visit to the firm on 19 February 2020. On 18 February 2020 the Director cancelled the visit as she had to attend a hospital appointment with her brother. The Authority rescheduled the visit but cancelled it on 13 March 2020 due to the pandemic. From March 2020 through to the date of this paper, the Director has continually failed to either provide or not substantively respond to requests for information and documents in relation to the firm. The Director has continually maintained that she has been unable to do so as she has been working as a nurse for the NHS, caring for her brother on a full time basis (albeit stating that this did not impact on her ability to manage the firm) and the impact of the pandemic has made keeping the business going difficult (for example, in relation to being able to keep the office open for staff, and the challenges of travelling to and from the office).
15. In addition, throughout the application process, the Authority tried to engage the Director and speak to her to understand the firm’s business activities and assess the competency of the Director to fulfil the SMF29 function for the firm. This included arranging an interview with the Director on 6 May 2021, which the Director cancelled on the day of the interview. Throughout April and May 2021, the FCA had repeatedly requested that the Director call the Authority at a time of her choosing (including, if more convenient for her, the weekend) to understand the firm’s general business activities, trading status and operations. The Director responded intermittently to emails but did not return calls to the Authority.

Information Requests

16. The application form asks for the firm to provide the Authority with various financial documents including a copy of the firm's latest end of year accounts, opening balance sheet, forecast closing balance sheet, monthly cash flow forecast and monthly profit and loss forecast to enable the Authority to calculate whether the firm is meeting its prudential requirements.
17. The firm sent in the following documents with its application: an opening balance sheet, a cashflow document, a profit and loss document and another balance sheet. These documents did not provide the Authority with a coherent picture of the firm's finances. For example, the firm entered the FCA perimeter with temporary permission, having previously been authorised under the CMR to trade since 30 March 2017 whereupon it should have commenced trading. However, the balance sheet as at 30 September 2018 suggests that the firm had undertaken no commercial activities since authorisation. In fact, the balance sheet describes the firm as 'dormant' for the year ending 30 September 2018. Further, it is not clear how the mentioned balance sheet, which has £100 of assets, can be reconciled with the detailed balance sheet since that balance sheet seems to detail total assets in excess of £100,000. In the business plan that was provided with the application, the only reference to the balance sheet was that the company had a £10,000 investment from the Director from savings, with no finance outstanding. Since the financial documents are not explained, it is also not clear to the Authority whether these are statements representing historic fact or future forecast.
18. On 2 December 2019, the Authority sent an information request to the firm asking it to provide a worked calculation detailing how it meets the prudential requirements with reference to the applicable rules by 16 December 2019, as well as information on the firm's business plan, fee charging and financial promotions. On 19 December 2019 the firm responded and stated that "we are a class 2 firm and the prudential resources requirement for us is one sixth of our overhead's expenditure in the last financial year. I have injected more capital to the company to ensure I meet the requirement." Whilst the firm was able to identify that it is a class 2 firm and that it would have to hold reserves of one sixth of the overheads expenditure, it failed to show the Authority the calculation it had performed to determine its overheads requirement and therefore what its prudential resources requirement would be.
19. On 13 March 2020, the Authority cancelled a proposed second visit due to the pandemic. On the same day, the Authority requested the same information on the firm's wind down plan, financial resource, non-financial resources, the active claim ledger and recordings in relation to case files; this was to be provided by 27 March 2020. This was not received.
20. On 6 May 2020 a request for information was made using the Authority's formal powers under s.165 FSMA for similar information requested on 13 March; this was to be provided by 20 May 2020. The Director responded on 21 May and stated that the impact of the pandemic meant she or her staff were unable to provide the requested information as the office was closed, including access to the requested information. The Director emailed again on 10 June 2020 and said that due to the lockdown restrictions and her employment as a nurse she was unable to provide a response, but would endeavour to provide the information by 24 June 2020 following two weeks of annual leave from her role as a nurse. On 25 June 2020, the Director emailed noting that she was unable to provide the requested information but would do so on 26 July 2020. This was not received.
21. On 16 July 2020, the Authority asked for similar information requested on 13 March

2020; to be provided by 30 July 2020. That communication also set out the attempts to obtain information from the firm unsuccessfully in the period January 2020 to June 2020. In response the firm submitted various financial statements, but these were duplicates of what had already been submitted with the original application and were considered inadequate for the reasons mentioned above.

22. On 7 August 2020, the Authority requested information about the firm's records management upon discovering that the Director had been dealing with clients via telephone and email in the evenings; to be provided by 21 August 2020. The Authority asked the firm to produce all call recordings from January 2020 and provide proof that the equipment being used to communicate with the firm belongs to the firm. The rules and guidance on record keeping under CMCOB 2.3.2R, CMCOB 2.3.3G and CMCOB 2.3.4R were brought to the firm's attention in the request. The firm replied on 24 August 2020 and said that it would obtain the information from its systems and a third party.
23. In reply, on 24 August 2020, the Authority requested further information about the firm's complaints log to evidence the complaints had been dealt with, copies of emails to clients and information as to how the firm was resourced; to be provided by 31 August 2020. On 8 September 2020, the firm replied and stated that it was unable to send over the information because it was waiting for a third party and that it would be able to send the information over by the Friday of that week. That self-imposed deadline was never met. On 14 September 2020 the firm stated that it was awaiting information from a third party to respond to the records management queries from the Authority (but did attach information on FOS complaints).
24. On 21 September 2020, the Authority again requested information on how the firm was being managed, and for evidence that the firm was meeting its prudential requirements; to be provided by 25 September 2020. This information was not provided by the deadline.
25. On 26 March 2021, the Authority spoke with the Director to request an interview to better understand the firm's application and to introduce a new case officer. The Director agreed to an interview in principle. An email followed to arrange the interview in order to discuss the status of the client book, the operating status of the firm, the firm's business plan, the firm's systems and controls, and the firm's financial position. This was to be provided by 2 April 2021, but no response arrived within the given deadline.
26. On 6 April 2021, the Authority emailed the firm with a reminder of the request sent on 26 March 2021. The Director was asked to respond as soon as possible, and in any event, by close of business on 7 April 2021. On 7 April 2021 the Director replied to confirm availability on 6 May 2021 or 7 May 2021 for an interview. The Authority replied on the same day to preliminarily confirm the date of the interview as 6 May 2021 and to request a short call to discuss the possibility that the interview could be brought forward in time. The Director was asked to call the case officer when convenient. The Authority followed this up with two phone calls to the Director and the firm which were not answered; voicemails were left. On 11 April 2021 the Director emailed to confirm her availability on 6 May 2021 only.
27. On 12 April 2021, the Authority emailed the Director to again request a short call to understand the firm's trading activities and to arrange an earlier interview with the Director; to be provided by 19 April 2021. The following documents were requested: the firm's latest set of internal management accounts, the firm's most

recent verified accounts to assist with its application for authorisation and an update on the status of the firm's client book. A separate request was made to confirm when the (overdue) 2019 and 2020 CMC Regulatory Returns (CMC 001) would be submitted. The firm did not respond.

28. On 16 April 2021, the Authority sent the Director a MS Teams calendar request for the FCA Interview on 6 May 2021. The firm did not respond.
29. On 21 April 2021, the Authority emailed the Director a reminder of the previous emails. Attached to that email was a letter advising the firm of the implications for the firm's application for authorisation should it not respond to the Authority's requests promptly. That letter was also sent to the address the firm provided on application, which was returned to sender. The Director was again asked to call the case officer as soon as possible. The firm did not respond. The Authority followed this up with two phone calls to the Director and the firm, with voicemails left, which the firm did not respond to. The attached letter was also sent via recorded delivery to the firm's registered office address, but the letter was returned as sender gone away. The letter was inadvertently not sent to the firm's principal place of business, but it had been sent both by email and to the firm's registered office.
30. On 30 April 2021, the Authority emailed the firm with a reminder of the requests made in previous emails. The Director was also reminded of the agreed interview on 6 May 2021 and was sent the agenda. The Director was asked to confirm the number the Director would be dialling from, the name of any attending legal advisors and to arrange a test call (to ensure the software that would be used to record the interview would work as planned.). This was to be provided by 5 May 2021. The Director was also asked to call the case officer as soon as possible. On 6 May 2021, the day of the agreed interview, the Director emailed to say that she was unable to attend the meeting. The Director said that she had been working for the NHS as a nurse since April 2020; that she was intending to reduce her working hours from the end of May; that when she "last spoke to the FCA in September 2020" some staff had been "let go" and "some activities are on hold"; that the firm "had 25 clients awaiting payment; and that the firm is "temporarily closed" and was aiming to "fully re-open" by 21 June 2021, subject to the Government's pandemic guidance. None of the previously requested information was provided.
31. We have had not further correspondence from the firm.
32. The Authority has not been able to gather general information on the firm's business arrangements and how the firm complies with the FCA's Handbook as the firm has failed to respond substantively to communications from the Authority. Based on the materials provided, The Authority has also been unable to determine whether the firm is meeting its prudential requirements, and whether it is solvent.

IMPACT ON THRESHOLD CONDITIONS

33. The Authority considers that, having regard to all the circumstances, it cannot be satisfied that the firm will satisfy, and will continue to satisfy the threshold conditions for which the Authority is responsible as required by s55B(3) of FSMA. In particular, the Authority does not consider the threshold conditions of 'Effective Supervision', and 'Appropriate Resources' to have been met.

Effective Supervision

34. The Authority has requested information which it considers vital to the assessment of Abacus' application. Abacus has failed to provide information on several occasions despite multiple requests and there are still critical pieces of information which remain outstanding as at the date of this paper.
35. In the course of correspondence, and in response to requests for information or to attend an interview, the Director has relied variously on the pandemic, her duties as a nurse and carer as reasons to explain why she has been unable to provide the materials requested, or attend interviews at the case team's request.
36. The Authority recognises that these factors will impact on the firm's ability to supply information to an extent. However, they cannot explain the firm's failures in their entirety, many of which have been outstanding since 2019.
37. There have been occasions where the Director has agreed, in principle to provide the materials which the Authority has requested, and on deadlines which are convenient to her. The implication of volunteering an alternative deadline to respond to the Authority' request is that the Director believed she was capable of meeting it, notwithstanding the effect of the pandemic or her duties variously as a nurse or carer. In any event, even these self-imposed deadlines have not been met and, as alluded to below, there are materials which have still not been submitted.
38. The information which has previously been requested and remains outstanding is as follows:
 - a) Evidence the firm is meeting the prudential requirements
 - b) A statement explaining how the firm will satisfy the Authority that it will be able to meet the Effective Supervision Threshold Conditions
 - c) Evidence of calls made and emails sent to clients from January 2020 to August 2020
37. The materials requested are critical to enable the Authority to make an assessment about whether the firm is meeting the Threshold Conditions. As the information has never been supplied, the Authority has been unable to conduct its assessment in relation to the firm's financial position.
38. The firm has also not engaged or responded to the Authority's repeated requests for a conversation about its trading and operational status.
39. It is the Authority's view that the firm's lack of constructive engagement is indicative of the firm's inability to meet the 'Effective Supervision' threshold condition. A firm that seeks Part 4A authorisation should be ready, willing and organised to comply with the requirements of the regulatory system under which it will be operating. In the Authority' view, the conduct displayed by the firm clearly shows that it is not ready, willing and organised.

Appropriate Resources

Financial Resources

40. For Abacus to meet the "Appropriate Resources" threshold condition, the firm must also be able to demonstrate that it has adequate financial resources. As the firm has not provided sufficient information on its finances to assure the Authority that the firm has adequate financial resources, the Authority cannot be satisfied that the firm meets the appropriate financial resources element of this Threshold Condition.

Non-financial resources

41. In order for Abacus to meet the "Appropriate Resources" threshold condition, the firm must also be able to demonstrate that its human resources are adequate and appropriate. The Authority remains concerned about the adequacy and appropriateness of the firm's human resources. There is still a considerable quantity of materials that the Authority has requested which as at the date of the paper remain outstanding. The principal contact at the firm who was responsible for arranging delivery of these materials is the Director. The narrative above shows that the Director has failed to supply the materials, or, supplied incorrect or incomplete materials which suggests that she is either not properly in control of the business or she is unaware of her obligations to the regulator.

IMPORTANT NOTICES

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

Authority contacts

44. For more information concerning this matter generally, contact Tina Archer, Manager, Claims Management Companies Department at the Authority (direct line: 020 7066 9188 / email: tina.archer@fca.org.uk).

**[leave blank]
on behalf of the Authority**

ANNEX A – REGULATORY PROVISIONS RELEVANT TO THIS WARNING 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 a Part 4A permission, the Authority must have regard to guidance published in the Authority’s Handbook, including the part entitled Threshold Conditions (“COND”). The main considerations in relation to the action specified are set out below.
5. COND 1.3.2G(2) states 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.
6. 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.
7. 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.

Threshold Condition 2C: Effective Supervision

8. 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 rules in SUP on the provision of information to the Authority.

Threshold condition 2D: Appropriate Resources

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.
10. COND 2.4.2G(2A) provides that, 'non-financial resources' of the firm include human resources it has available.
11. 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

12. 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.
13. 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.
14. 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 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.