



Financial Conduct Authority

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FINAL NOTICE

**Mr Adam Harris trading as BM Motors
Manor Farm
Woodlands Lane
Stoke D'abernon
KT11 3PY**

16 August 2016

ACTION

1. By way of an application dated 7 April 2015 ("the Application") Mr Adam Harris trading as BM Motors ("Mr Harris") applied under section 55A of the Act for Part 4A permission to carry on the regulated activity of limited permission lending.
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 16 June 2016 ("the Warning Notice") the Authority gave notice that it proposed to refuse the Application and that Mr Harris was entitled to make representations to the Authority about that proposed action.
5. As no representations have been received by the Authority from Mr Harris 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 12 July 2016 ("the Decision Notice") the Authority gave Mr Harris notice that it had decided to take the action described above.
7. Mr Harris 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 Mr Harris Final Notice of its refusal.
9. The Authority decided to refuse the Application and to give this Final Notice as Mr Harris has failed to provide the information required by the Authority and, in the absence of the information sought, the Authority cannot ensure that Mr Harris will satisfy, and continue to satisfy, the threshold conditions set out in Schedule 6 of the Act.
10. Mr Harris failed to respond to three separate requests for the provision of information considered, by CAD, to be necessary to allow the Application to be determined.
11. These requests were made on 10 July, 22 July and 17 August 2015 and, despite eight total requests, three of which were formal chasers, sent between 16 August and 16 September 2015, this information remained outstanding.
12. The Authority therefore determined the Application based upon the information received to date, in circumstances where its requests for information had not been met. Having reviewed that information, the Authority could not be sure that Mr Harris satisfied, and would continue to satisfy, the threshold conditions.
13. Authorised firms (and those seeking authorisation) are expected to engage with the Authority in an open and cooperative way. The failure to provide the information raised concerns that Mr Harris would not do so if the Application were to be granted.
14. The failure to provide the information raised concerns as to whether Mr Harris:
 - (1) could be effectively supervised by the Authority as required by threshold condition 2C (Effective Supervision);
 - (2) had appropriate human resources, given his failure to provide the Authority with the information as required by threshold condition 2D (Appropriate Resources); and
 - (3) would conduct his business with integrity and in compliance with proper standards as required by threshold condition 2E (Suitability).

DEFINITIONS

15. 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

“CAD” means the Credit Authorisations Division.

FACTS AND MATTERS

16. The Application was received on 7 April 2015.

17. Further information was requested from Mr Harris under section 55U(5) of the Act. Details of all the communications between the Authority and Mr Harris are set out below.

- (1) On 2 July 2015 the Authority spoke by telephone with Mr Harris for further clarification of his proposed regulated activities and the permissions he would require. During this call, Mr Harris stated that he does not lend to customers but instead introduces them to brokers or to other lenders. The Authority stated that this could constitute credit broking rather than lending activity. During the telephone conversation Mr Harris also stated that his projected income figure provided in the Application included car sales. The Authority explained that this should not be included in the projected income figure and stated that it would send an email to Mr Harris setting out a description of what should be included in that figure, which Mr Harris could then update as necessary.
- (2) On 10 July 2015, the Authority sent Mr Harris that email requesting further information as to the permissions he requires for his business and his revised projected income. The Authority provided a deadline of 17 July 2015. Mr Harris did not respond to this email.
- (3) On 21 July 2015, the Authority unsuccessfully attempted to contact Mr Harris by telephone. The Authority left a voicemail message that day erroneously asking for a response to the Authority's email by 20 July 2015. Notwithstanding that small error, there was no reply from Mr Harris.
- (4) On 22 July 2015, the Authority sent a further email to Mr Harris requesting the information, and also queried whether Mr Harris might need additional permissions for his part-exchange activities. The Authority provided a deadline of 27 July 2015 for Mr Harris to respond. Mr Harris did not respond to this email.
- (5) On 17 August 2015, the Authority sent an email to Mr Harris requesting the information, and providing a deadline of 24 August 2015 for Mr Harris to respond. Mr Harris did not respond to this email.
- (6) After 9 weeks, the Authority had still received no response to its request for the information.

- (7) On 16 September 2015, the Authority sent an email to Mr Harris informing him 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 Authority's Regulatory Transactions Committee ("RTC") that it issue Mr Harris with a Warning Notice proposing to refuse the Application. No response was received to this letter by the stated deadline of 30 September 2015 (i.e. within 14 days).
- (8) On 30 September 2015, the Authority telephoned Mr Harris but he did not answer. The Authority left him a voicemail message noting the lack of a response and, informing him that the Application was no longer being processed and that he would need to contact the Authority if he wanted to be authorised.
- (9) On 1 October 2015, the Authority wrote to Mr Harris, noting the lack of a response to its email of 16 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 a failure to reply might result in a recommendation to the RTC that it issue Mr Harris with a Warning Notice proposing to refuse the Application.
- (10) The Authority's 1 October 2015 letter was not delivered to Mr Harris. Royal Mail cited "refused" as the reason it was unable to deliver the letter.
- (11) The Authority self-evidently did not receive a response to this letter by the stated deadline of 15 October 2015 (i.e. within 14 days).
- (12) On 16 October 2015, the Authority wrote to Mr Harris, noting the lack of a response to, inter alia, its previous email of 16 September 2015 and letter of 1 October 2015 and reiterated 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 RTC that it issue Mr Harris with a Warning Notice proposing to refuse the Application.
- (13) The 16 October 2015 letter was not delivered to Mr Harris. Royal Mail cited "not called for" as the reason it was unable to deliver the letter.
- (14) No response was received to the 16 October 2015 letter by the stated deadline of 30 October 2015 (i.e. within 14 days).
- (15) From 2 July 2015 the Authority did not receive a response to any of the communications set out above requesting the information. The information provided by Mr Harris in the Application was insufficient to enable the Authority to determine the Application.
- (16) By its Warning Notice dated 16 June 2016 the Authority gave notice that it proposed to refuse the Application and that Mr Harris was entitled to make representations to the Authority about that proposed action.
- (17) No response was received to the 16 June 2016 Warning Notice by the stated deadline of 11 July 2016 (i.e. within 25 days).

- (18) By its Decision Notice dated 12 July 2016 the Authority gave notice that it proposed to refuse the Application and that Mr Harris was entitled to make representations to the Authority about that proposed action.
18. No response was received to the 12 July 2016 Decision Notice by the stated deadline of 10 August 2016 (i.e. within 28 days).
19. The Authority received no response to any of the communications set out above.

IMPACT ON THRESHOLD CONDITIONS

20. The regulatory provisions relevant to this Final Notice are referred to in Annex A.
21. Mr Harris failed to respond to eight separate requests for the provision of information considered, by the Authority, to be necessary to allow the Application to be determined. Three of these requests were made over a 4 week period (16 September – 16 October 2015); the initial request was sent by email whilst the second and third requests were sent both by email and Special Delivery. Each of those three requests included a statement to the effect that if Mr Harris continued to fail to provide the requested information, CAD would recommend to the RTC that it issue Mr Harris with a Warning Notice proposing to refuse the application.
22. The Authority therefore determined the Application based upon the information received to date, in circumstances where its requests for information had not been met. Having reviewed that information, the Authority could not be sure that Mr Harris satisfied, and would continue to satisfy, the threshold conditions.
23. Authorised firms (and those seeking authorisation) are expected to engage with the Authority in an open and cooperative way. The failure to provide the information raised concerns that Mr Harris would not do so if the Application were to be granted.
24. The failure to provide the information raised concerns as to whether Mr Harris:
- (1) could be effectively supervised by the Authority as required by threshold condition 2C (Effective Supervision). Mr Harris' failure to provide the Authority with the information called into question whether the Authority would be able to obtain (on an on-going basis) sufficient information about his activities such that the Authority would be able to effectively supervise him;
 - (2) had appropriate human resources, given Mr Harris' failure to provide the Authority with the information as required by threshold condition 2D (Appropriate Resources); and
 - (3) would conduct his business with integrity and in compliance with proper standards as required by threshold condition 2E (Suitability). The failure by Mr Harris to supply the information meant that he was not being open and co-operative with the Authority or demonstrating that he was ready, willing and organised to comply in his dealings with the Authority.

25. On the basis of the facts and matters described above, in particular the failure to provide the information sought, the Authority has concluded that it cannot ensure that Mr Harris will satisfy, and continue to satisfy, the threshold conditions in relation to all of the regulated activities for which Mr Harris would have permission if the application was granted.

IMPORTANT NOTICES

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

Publication

27. 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.

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

Authority contacts

29. For more information concerning this matter generally, contact Kate Pitt, Manager, Credit Authorisations Division at the Authority (direct line: 020 7066 0714 / email: kate.pitt@fca.org.uk).

Lucy Castledine
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 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.

Threshold condition 2D: Adequate Resources

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 2.4.2G(2) states that the FCA 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 2E: Suitability

7. COND 2.5.2G(2) states that the FCA 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.

8. COND 1.3.3BG provides that, in determining whether the firm will satisfy, and continue to satisfy, the FCA threshold conditions, the FCA will have regard to all relevant matters, whether arising in the United Kingdom or elsewhere.
9. COND 1.3.3CG provides that, when assessing the FCA threshold conditions, the FCA 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 FCA threshold conditions, would be in a relevant relationship with the firm.
10. COND 2.5.6G provides that examples of the kind of particular considerations to which the FCA 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 FCA and is ready, willing and organised to comply with the requirements and standards under the regulatory system in addition to other legal, regulatory and professional obligations.

Threshold condition 2F: Business Model

11. COND 2.7.7G states that, in assessing whether the threshold conditions set out in paragraphs 2F and 3E of Schedule 6 to the Act are satisfied, the FCA may consider all matters that might affect the design and execution of a firm's business model, taking into account the nature, scale and complexity of a firm's business.
12. COND 2.7.8G states that, in deciding how they will satisfy and continue to satisfy the threshold conditions set out in paragraphs 2F and 3E of Schedule 6 to the Act, firms should consider matters including (but not limited to) the following:
 - (1) the assumptions underlying the firm's business model and justification for it;
 - (2) the rationale for the business the firm proposes to do or continues to do, its competitive advantage, viability and the longer-term profitability of the business;
 - (3) the needs of and risks to consumers;
 - (4) the expectations of stakeholders, for example, shareholders and regulators;
 - (5) the products and services being offered and product strategy;

- (6) the governance and controls of the firm and of any member of its group (if appropriate);
- (7) the growth strategy and any risks arising from it;
- (8) any diversification strategies; and
- (9) the impact of the external macroeconomic and business environment.