
FINAL NOTICE

To:

American Pick Up Trucks Limited

3-5 Clark Way

Hyde

Cheshire

SK14 2AU

Date: 24 September 2008

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") has taken the following action:

1. ACTION

1.1 By an application received by the FSA on 11 June 2007 ("the Application") American Pick Up Trucks Limited ("APT") applied under section 40 of the Financial Services and Markets Act 2000 ("the Act") for Part IV permission to carry on the regulated activities of:

- (a) Advising on non-investment insurance contracts;
- (b) Arranging (bringing about) deals in non-investment insurance contracts;
- (c) Making arrangements with a view to transactions in non-investment insurance contracts; and
- (d) Agreeing to carry on a regulated activity.

- 1.2 For the reasons listed below and pursuant to section 52(2) of the Act, the FSA has refused the Application.

2. REASONS FOR THE ACTION

- 2.1 By its Warning Notice dated 4 June 2008 (the "Warning Notice"), the FSA gave notice that it proposed to take the action described above and APT was given the opportunity to make representations to the FSA about that proposed action.
- 2.2 As no representations were received by the FSA from APT within the time allowed by the Warning Notice, the default procedures in paragraph 2.3.2 of the FSA's Decision Procedure and Penalties manual permitted the facts and matters described in the Warning Notice to be regarded as undisputed. By its Decision Notice dated 25 July 2008 ("the Decision Notice"), the FSA gave notice that it had decided to take the action described above.
- 2.3 Under section 133(1) of the Act, APT had 28 days from the date the Decision Notice was given to refer the matter to the Financial Services and Markets Tribunal ("the Tribunal"). No referral was made to the Tribunal within this period of time or to date.
- 2.4 Under section 390(1) of the Act, the FSA, having decided to refuse the Application and there having been no reference of that decision to the Tribunal, must give APT this Final Notice of its refusal.
- 2.5 The FSA decided to refuse the Application and to give this Final Notice as it cannot ensure that APT satisfies and will continue to satisfy the threshold conditions set out in Schedule 6 to the Act (the threshold conditions).
- 2.6 By a Final Notice addressed to both APT and Mr Matthew Griffiths ("Mr Griffiths") dated 24 September 2008, having concluded that it is not satisfied that Mr Griffiths is fit and proper to perform CF8 (apportionment and oversight function), the FSA has refused APT's application for Mr Griffiths' approval. Mr Griffiths is the sole director and shareholder of APT and is responsible for the day to day activities and running of APT. As he will not be approved, there will be no one at APT who is approved to carry out controlled functions. In these circumstances, APT will be failing to satisfy the threshold conditions set out in Schedule 6 of the Act (the threshold conditions) in that:
- (1) APT's resources will not, in the opinion of the FSA, be adequate in relation to the regulated activities it seeks to carry on (threshold condition 4: adequate resources); and
 - (2) APT has not satisfied the FSA that it is a fit and proper person having regard to all the circumstances including the need to ensure that its affairs are conducted soundly and prudently (threshold condition 5: suitability).

Relevant Statutory Provisions

- 2.7 Section 41(2) of the Act requires the FSA, in giving a Part IV permission, to ensure that the person concerned will satisfy, and continue to satisfy, the threshold conditions in relation to all of the regulated activities for which he will have permission.

2.8 In particular, Schedule 6 of the Act states that:

- (1) The resources of the applicant must, in the opinion of the FSA, be adequate in relation to the regulated activities that it seeks to carry on, or carries on (Threshold condition 4 - 'Adequate Resources'); and
- (2) The applicant must satisfy the FSA that it is fit and proper person having regard to all the circumstances, including its connection with any person; the nature of any regulated activity that it carries on or seeks to carry on; and the need to ensure that its affairs are conducted soundly and prudently (Threshold condition 5 - 'Suitability').

Relevant Guidance

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

2.10 COND 1.3.2G(2) states that in relation to threshold conditions 4 and 5, the FSA 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 IV permission.

Threshold condition 4: Adequate Resources

2.11 COND 2.4.2G(1) states that threshold condition 4 requires the FSA to ensure that a firm has adequate resources in relation to the specific regulated activity which it seeks to carry on.

2.12 COND 2.4.2G(2) provides that, in this context, the FSA will interpret the term “adequate” as meaning sufficient in terms of quantity, quality and availability and “resources” as including all financial resources, 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.

2.13 COND 2.4.3G(1) states that, when assessing this threshold condition, the FSA may have regard to any person appearing to it to be, or likely to be, in a relevant relationship with the firm, in accordance with section 49 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 threshold conditions and would, therefore, be in a relevant relationship with the firm.

Threshold condition 5: Suitability

2.14 COND 2.5.3G(1) states that the emphasis of this threshold condition is on the suitability of the firm itself. The suitability of each person who performs a controlled function will be assessed by the FSA under the approved persons regime. In certain

circumstances, however, the FSA may consider that the firm is not suitable because of doubts over the individual or collective suitability of persons connected with the firm.

- 2.15 COND 2.5.3G(2) states that when assessing this threshold condition in relation to a firm, the FSA may have regard to any person appearing to it to be, or likely to be, in a relevant relationship with the firm, as permitted by section 49 of the Act (Persons connected with an applicant) (see COND 2.4.3 G).
- 2.16 COND 2.5.6G(1) allows the FSA, in determining whether a firm will satisfy, and continue to satisfy, threshold condition 5 in respect of conducting its business in compliance with proper standards, to have regard to relevant matters including whether the firm is ready, willing and organised to comply with the requirements and standards under the regulatory system.

Facts and Matters Relied Upon

Background to the Application

- 2.17. APT is a private limited company, incorporated on 17 October 2003. Its sole director is Mr Griffiths who is also 100% controller. APT is a motor dealer, specialising in the sale of American trucks.

Mr Griffiths' County Court Judgement ("CCJ")

- 2.18. As part of the Application, APT applied for approval of Mr Griffiths to perform the controlled function CF8 (*apportionment and oversight function*) as well as having responsibility for insurance mediation (*RIM*).
- 2.19. The FSA's investigations into the Application revealed that a CCJ of £29,858 had been registered against Mr Griffiths on 7 May 2007. This was registered after Mr Griffiths had signed his Form A applying to perform the above-mentioned controlled functions.
- 2.20. On 12 July 2007, APT emailed the FSA confirming details of the CCJ and that Mr Griffiths was in the process of arranging the settlement of the outstanding amount.
- 2.21. In a telephone conversation on 26 July 2007, the FSA explained to APT that the Application could not be granted until Mr Griffiths had demonstrated that he was in a financial position to settle the outstanding CCJ. This was due to the size of the CCJ registered against him as well as the significance of Mr Griffiths' role in APT.
- 2.22. The FSA subsequently called APT on 7 August 2007, 7 September 2007, 28 September 2007 and 1 October 2007. On each occasion, APT indicated that Mr Griffiths was in the process of settling the outstanding CCJ and that a copy of the Certificate of Satisfaction would be provided to evidence this.
- 2.23. On 26 November 2007, APT called the FSA explaining that Mr Griffiths had decided to contest the CCJ. According to APT, this was not to dispute the fact that money was owed, but to contest the actual amount owed.
- 2.24. In order to try and resolve the matter, the FSA emailed APT on 4 December 2007 requesting a statement of personal assets and liabilities for Mr Griffiths. This was in

order to illustrate whether Mr Griffiths was in a financial position to pay the outstanding amount.

Failure to provide further information requested by the FSA

- 2.25. The FSA called APT on 4 January 2008, 8 January 2008 and 15 January 2008 in order to repeat its request for Mr Griffiths' statement of personal assets and liabilities. On each occasion, APT advised that the information would be forthcoming shortly, however it was never received.
- 2.26. On 30 January 2008, the FSA again called APT to request the outstanding information. APT was advised that if the requested information was not provided shortly then the Application would have to be considered as it was and that, owing to the FSA's concerns and as the Application was incomplete, the recommendation would be to refuse Part IV permission.
- 2.27. Having still not received the outstanding information, the FSA emailed APT on 4 February 2008 asking that this be provided within five working days (by 11 February 2008). The email also indicated that preparation for a refusal of the Application would commence should the FSA fail to receive a satisfactory response by the given deadline.
- 2.28. On 6 March 2008, and having received no response at all to its email of 4 February 2008, the FSA sent a letter to APT (by Royal Mail special delivery and email). The letter noted that, should the outstanding information not be provided by the 20 March 2008, the FSA would commence its refusal process in respect of APT's application. Still no response was received from APT.
- 2.29. Therefore, on 9 April 2008 the FSA sent a final letter to APT (by Royal Mail special delivery) advising that if the outstanding information was not provided within 10 days (by 19 April 2008), then APT would receive a Warning Notice. No response to this letter has been received to date.

Assessment against the threshold conditions

- 2.30. The conclusion that Mr Griffiths is not a fit and proper person to perform the controlled functions applied for, and the resulting refusal of his application, means that APT will not have adequate human resources in relation to the regulated activities it seeks to carry on leaving it in breach of threshold condition 4.
- 2.31. With Mr Griffiths not being approved, APT is unable to satisfy the FSA that it will satisfy Threshold Condition 5 because APT has not satisfied the FSA that it is fit and proper having regard to all circumstances, including its connection with Mr Griffiths and the overall need to ensure that its affairs are conducted soundly and prudently.
- 2.32. Further, APT not cooperating with the FSA's repeated requests for information combined with its inability to demonstrate Mr Griffiths' own fitness and propriety lead the FSA to conclude that APT is not ready, willing or organised to comply with the regulatory requirements and standards and is, therefore, unable to satisfy threshold condition 5.

3. CONCLUSION

- 3.1 In light of the facts and matters described above and pursuant to section 41(2) of the Act, the FSA has concluded that it cannot ensure that APT will satisfy, and continue to satisfy, the threshold conditions in relation to the regulated activities for which APT would have permission if the Application was granted.

4. IMPORTANT NOTICES

- 4.1 This Final Notice is given pursuant to Section 390(1) of the Act.

Publication

- 4.2 Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Final Notice relates. Under those provisions, the FSA must publish such information about the matter to which the Final Notice relates as the FSA considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to APT or prejudicial to the interests of consumers.

- 4.3 The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA Contact

- 4.4 For more information concerning this matter generally, you should contact Denise Sbraga, Permissions Department, at the FSA (direct line: 020 7066 4870 / fax: 020 7066 9703).

G N Sagar
Chairman, Regulatory Transactions Committee