
FINAL NOTICE

To: Automotive Capital Management Limited

Of: Building 46B, Wrest Park, Silsoe, Bedford, Bedfordshire MK45 4HS

FRN: 776327

Dated: 21 October 2022

ACTION

1. For the reasons set out in this Final Notice, the Authority hereby takes the following action against Auto Capital.
2. The Authority issued to Auto Capital the Decision Notice which notified it that for the reasons given below and pursuant to section 55J of the Act, the Authority had decided to cancel Auto Capital's Part 4A permission.
3. Auto Capital has not referred the matter to the Tribunal within 28 days of the date on which the Decision Notice was issued to it.
4. Accordingly, the Authority has today cancelled Auto Capital's Part 4A permission.

DEFINITIONS

5. The definitions below are used in this Final Notice:
"the Act" means the Financial Services and Markets Act 2000;

“the appropriate resources Threshold Condition” means the threshold condition set out in paragraph 2D of Schedule 6 to the Act;

“the Authority” means the Financial Conduct Authority;

“Auto Capital” means Automotive Capital Management Limited trading as Auto Capital;

“Auto Capital’s Part 4A permission” means the permission granted by the Authority to Auto Capital pursuant to Part 4A of the Act;

“CiC Notification” means a notice for changes in control under section 178 of the Act;

“COND” means the Threshold Conditions part of the Handbook;

“the Decision Notice” means the Decision Notice issued to Auto Capital dated 9 September 2022;

“DEPP” means the Authority’s Decision Procedure and Penalties manual;

“EDM” means the Executive Decision Maker of the Authority (see further under Procedural Matters below);

“EG” means the Authority’s Enforcement Guide;

“Form A” means the application for approval to perform senior management functions;

“the Handbook” means the Authority’s Handbook of rules and guidance;

“the Principles” means the Authority’s Principles for Business;

“the suitability Threshold Condition” means the threshold condition set out in paragraph 2E of Schedule 6 to the Act;

“the Threshold Conditions” means the threshold conditions set out in Schedule 6 to the Act;

“the Tribunal” means the Upper Tribunal (Tax and Chancery Chamber); and

“the Warning Notice” means the warning notice given to Auto Capital dated 12 August 2022.

FACTS AND MATTERS

6. Auto Capital was authorised by the Authority on 25 April 2017 to conduct consumer credit activities.
7. On 1 December 2019, Auto Capital’s sole approved person ceased to be a controller and had previously resigned as a director of Auto Capital, following the sale of Auto Capital to a third party. As a result, Auto Capital’s sole approved person has ceased to have any involvement with Auto Capital, and there are no other individuals at Auto Capital approved to perform the senior management functions relevant to the regulated activities that Auto Capital carries on or seeks to carry on.

8. Auto Capital has failed to co-operate with the Authority in that it has failed to respond adequately, or at all, to the Authority's repeated requests that Auto Capital completes and submits a CiC Notification and Form A, to seek approval to appoint an appropriate individual to perform the senior management function relevant to the regulated activities that Auto Capital carries on or seeks to carry on.
9. No representations having been received by the Authority from Auto Capital within the time allowed by the Warning Notice, the default procedures in DEPP 2.3.2G of the Authority's Decision Procedure and Penalties manual permit the allegations/matters described in the Warning Notice, and repeated in the Decision Notice, to be regarded as undisputed.

FAILINGS

10. The statutory regulatory provisions relevant to this Final Notice are set out in the Annex.
11. From the facts and matters described above, the Authority, having regard to its operational objectives, which include protecting and enhancing the integrity of the UK financial system and protection of consumers, considers that:
 - a) by failing to respond to the Authority's repeated requests relating to submission of a CiC Notification and a Form A, Auto Capital is failing to comply with Principle 11 in that Auto Capital has failed to deal with the Authority in an open and co-operative way and to disclose to the Authority appropriately anything relating to Auto Capital of which the Authority would reasonably expect notice. Auto Capital is therefore not a fit and proper person having regard to all the circumstances because it has failed to satisfy the Authority that its business is being, or will be, managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner and Auto Capital is therefore failing to satisfy the suitability Threshold Condition; and
 - b) by failing to seek approval from the Authority to appoint an appropriate individual to perform the relevant senior management function, Auto Capital's non-financial resources are not sufficient to enable Auto Capital to comply with requirements imposed or likely to be imposed on it by the Authority. Therefore, Auto Capital nonfinancial resources are not appropriate in relation to regulated activities that it carries on or seeks to carry on and it is failing to satisfy the appropriate resources Threshold Condition.
12. Accordingly, having regard to the Authority's operational objectives, the Authority has cancelled Auto Capital's Part 4A permission.

PROCEDURAL MATTERS

13. This Final Notice is given to Auto Capital in accordance with section 390(1) of the Act.

DECISION MAKER

14. The decision which gave rise to the obligation to give this Final Notice was made by an executive decision maker of the Authority.

Publicity

15. The Authority must publish such information about the matter to which this Final 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 Auto Capital or prejudicial to the interest of consumers.
16. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Authority Contact

17. For more information concerning this matter generally, please contact Tania Dratcu at the Authority (direct line: 020 7066 6764).

Anna Couzens
Enforcement and Market Oversight Division

ANNEX

RELEVANT STATUTORY PROVISIONS

1. The Authority's operational objectives established in section 1B of the Act include protecting and enhancing the integrity of the UK financial system and securing an appropriate degree of protection for consumers.
2. The Authority is authorised by section 55J of the Act to cancel an authorised persons' Part 4A permission, where it appears to the Authority that such person is failing to satisfy the Threshold Conditions.
3. The suitability Threshold Condition provides, in relation to a person ("A") carrying on or seeking to carry on regulated activities which do not consist of or include a PRA-regulated activity, that:

"A must be a fit and proper person having regard to all the circumstances, including –
[...]

(f) whether A's business is being, or is to be, managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner."

4. The appropriate resources Threshold Condition provides, in relation to a person ("A") carrying on or seeking to carry on regulated activities which do not consist of or include a PRA-regulated activity, that:

"The resources of A must be appropriate in relation to the regulated activities that A carries on or seeks to carry on.

[...]

(4) The matters which are relevant in determining whether A has appropriate nonfinancial resources include-

[...]

(a) whether A's non-financial resources are sufficient to enable A to comply with –

(i) requirements imposed or likely to be imposed on A by [the Authority] in the course of the exercise of its functions [...]"

RELEVANT HANDBOOK PROVISIONS

5. In exercising its powers to cancel a firm's Part 4A permission, the Authority must have regard to guidance published in the Handbook and in regulatory guides, such as EG. The relevant main considerations in relation to the action specified above are set out below.

Relevant Principle

6. Principle 11 requires a firm to deal with its regulators in an open and co-operative way, and to disclose to the Authority appropriately anything relating to the firm of which the Authority would reasonably expect notice

Guidance concerning the Threshold Conditions

7. Guidance on the relevant Threshold Condition is set out in COND.

COND 2.4 – Appropriate resources: Paragraph 2D of Schedule 6 to the Act

8. COND 2.4.1AUK reproduces the relevant statutory provision that the resources of a person concerned must be appropriate in relation to the regulated activities that A carries on or seeks to carry on, and that the matters which are relevant in determining whether A has appropriate non-financial resources include whether A's non-financial resources are sufficient to enable A to comply with the requirements imposed or likely to be imposed on A by the Authority in the course of the exercise of its functions.

COND 2.5 – Suitability: Paragraph 2E of Schedule 6 to the Act

9. COND 2.5.1AUK reproduces the relevant statutory provision that a person concerned must be a fit and proper person having regard to all the circumstances, including, amongst other things, the need to ensure that its business is being, or is to be, managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner and whether those who manage A's affairs have adequate skills and experience and act with probity.
10. COND 2.5.1BG confirms that paragraph 2E of Schedule 6 to the Act sets out the suitability Threshold Condition for firms carrying on, or seeking to carry on, regulated activities which do not consist of or include a PRA-regulated activity.
11. COND 2.5.2G states that the Authority will take into consideration anything that could influence a firm's continuing ability to satisfy the suitability Threshold Condition.
12. COND 2.5.6G gives 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, the suitability Threshold Condition including, but not limited to, whether:
 - the firm has been open and co-operative in all its dealings with the Authority and is ready, willing and organised to comply with the requirements and standards under the regulatory system (COND 2.5.6G(1)); or
 - the firm has contravened, amongst other things, any provisions of the regulatory system, which includes the Principles and other rules (COND 2.5.6G(4)).

OTHER RELEVANT REGULATORY PROVISIONS

13. The Authority's policy in relation to its enforcement powers is set out in EG, certain provisions of which are summarised below.

Cancelling a firm's Part 4A permissions on the Authority's own initiative

14. EG 8.1.1(1) provides that the Authority may use its own initiative power to vary or cancel the permission of an authorised person under section 55J of the Act, where the person is failing or is likely to fail to satisfy the Threshold Condition for which the Authority is responsible.

15. EG 8.5.1(1) states that the Authority will consider cancelling a firm's Part 4A permission using its own initiative power contained in section 55J of the Act in circumstances where the Authority has very serious concerns about the firm, or the way its business is or has been conducted.
16. EG 8.5.2 provides examples of the types of circumstances in which the Authority may cancel a firm's Part 4A permission. These include failure to provide the Authority with valid contact details or failure to maintain the details provided, such that the Authority is unable to communicate with the firm (EG 8.5.2(6)), and repeated failures to comply with rules and requirements (EG 8.5.2(7)).