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## FINAL NOTICE

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**Awesome3 Limited  
12 Hertford Court  
Warwick Road  
Canterbury  
Kent  
CT1 1RJ**

**19 March 2020**

### **ACTION**

1. By an application dated 29 January 2019 (the "Application") Awesome3 Limited ("Awesome3") applied under Regulation 13 of the Payment Services Regulations 2017 (the "PSRs") for registration as a small payment institution ("SPI").
2. For the reasons set out below, the Authority has refused the Application because Awesome3 does not meet the conditions for registration as an SPI contained in Regulation 14 of the PSRs.

### **SUMMARY OF REASONS**

3. For the reasons set out below, the Authority considers that Awesome3 does not meet the conditions for registration as an SPI set out in Regulation 14 of the PSRs; in particular, the Authority considers that Awesome3 does not meet the conditions set out in Regulations 14(7) and 14(10). These conditions respectively provide that the applicant must satisfy the Authority that its directors possess appropriate knowledge and experience to provide payment services, and that the applicant's head office, registered office or place of residence must be in the United Kingdom.
4. Awesome3 is owned by Angela Nkomo ("Mrs Nkomo"), who appears to be the firm's controller and is one of its two directors. The other director is Sanelisiwe Ndlovu

("Ms Ndlovu"). Mrs Nkomo also submitted and signed the Application on behalf of Awesome3.

5. In summary, the Authority considers that the conditions set out in Regulations 14(7) and 14(10) of the PSRs are not met for the following reasons:
  - i. Awesome3 does not satisfy the condition set out in Regulation 14(7) because the individual who is proposed to be the UK-resident director responsible for oversight of day-to-day operations, Ms Ndlovu, does not possess the appropriate knowledge and experience to oversee payment services activities.
  - ii. Awesome3 does not meet the condition set out in Regulation 14(10) because of the overseas domicile of one of the firm's two directors, Mrs Nkomo, who also appears to be the firm's controller. The Authority therefore considers that it is unlikely that in practice any material business decisions will be taken in the UK.
6. For these reasons, Awesome3 has not met the conditions for registration in Regulations 14(7) and 14(10) and the Authority has decided to refuse the Application.
7. By its Warning Notice dated 14 November 2019 (the "Warning Notice") the Authority gave notice that it proposed to refuse the Application and that Awesome3 was entitled to make representations to the Authority about that proposed action. Awesome3 made various written representations which the Authority took into account.
8. By reason of its Decision Notice ("the Decision Notice") dated 6 February 2020, the Authority gave Awesome3 notice that it had decided to refuse the Application.
9. Awesome3 had 28 days from the date the Decision Notice was given to refer the matter to the Upper Tribunal. No referral was made to the Upper Tribunal within this period of time or to date.
10. Under section 390(1) of the Act (which applies by reason of paragraph 10 of Schedule 6, Part 1 of the PSRs 2017), the Authority, having decided to refuse the Application and there having been no reference of that decision to the Tribunal, must give to Awesome3 this Final Notice of its refusal.

## **DEFINITIONS**

11. The definitions below are used in this Final Notice.

"the Act" means the Financial Services and Markets Act 2000 (as modified and applied by the PSRs)

"the Application" means the application by Awesome3 dated 29 January 2019 for registration as a small payment institution

"the Approach Document" means the December 2018 version of the document published on the Authority's website at the time of the Application, titled "Payment Services and Electronic Money – Our Approach", which describes the Authority's role under the PSRs and the Electronic Money Regulations 2011

"the Authority" means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority

"Awesome3" means the applicant firm, Awesome3 Limited

"Mrs Nkomo" means Mrs Angela Nkomo

"Ms Ndlovu" means Ms Sanelisiwe Ndlovu

"MtR" means the letter from the Authority to Mrs Nkomo dated 9 July 2019 which stated that it was minded to refuse the Application

"MtR Response" means Awesome3's response dated 15 July 2019 to the Authority's MtR

"the PSRs" means the Payment Services Regulations 2017

"the RTC" means the Regulatory Transactions Committee of the Authority

"the RDC" means the Regulatory Decisions Committee of the Authority (see further under Procedural Matters below)

"SPI" means small payment institution as defined in the PSRs 2017

"the Tribunal" means the Upper Tribunal (Tax and Chancery Chamber)

"the Warning Notice" means the warning notice given to Awesome3 dated 14 November 2019

"the Decision Notice" means the decision notice given to Awesome3 dated 6 February 2020

Details of the regulations and the Authority's guidance relevant to this Notice are set out in Annex A.

## **FACTS AND MATTERS**

12. Awesome3 was incorporated on 22 January 2019. It appears to be owned and controlled by Mrs Angela Nkomo who is a director. Ms Sanelisiwe Ndlovu is also a director of Awesome3 and was appointed on 25 March 2019.
13. Awesome3 applied for registration as an SPI on 29 January 2019. The Application contained an application form, a PSD Individual form and curriculum vitae for Mrs Nkomo. Mrs Nkomo was and remains Awesome3's primary contact in respect of the Application and signed the accompanying declaration.
14. Mrs Nkomo is permanently resident of, and intends to continue to be located in, South Africa. The Authority raised this as a concern with Mrs Nkomo in light of the requirement set out in Regulation 14(10) of the PSRs that SPIs have their head office, registered office or place of residence in the UK. On 9 April 2019, Mrs Nkomo submitted additional documents for consideration as part of the Application. These included a PSD Individual Form for Ms Ndlovu. Notwithstanding Ms Ndlovu's UK citizenship and residency, the additional information submitted revealed her professional background to be in nursing and no evidence of relevant previous experience in payment services was provided. The Authority therefore was not satisfied that Ms Ndlovu possessed appropriate knowledge and experience to provide payment services, as is required by Regulation 14(7) of the PSRs.
15. This concern was communicated by the Authority to Mrs Nkomo on 12 April 2019.

16. Mrs Nkomo responded on 15 April 2019. She stated that the money remittance service was incidental to the business and may never materialise in any event, and that she had expected the authorisation decision to be put on hold until Awesome3 intended to undertake such a service. She also indicated that she would consider withdrawing the Application but enquired whether a refund of the Application fee would be issued in these circumstances.
17. The Authority responded on the same day. It explained that, as is stated on the Authority's website and in the Approach Document, application fees are non-refundable. Mrs Nkomo replied that as no refund would be issued, she would not withdraw the Application.
18. On 9 July 2019, the MtR was sent to Awesome3. The MtR explained that, as a result of its concern that Awesome3 was not meeting the conditions set out in Regulations 14(7) and 14(10) of the PSRs, the Authority was minded to recommend that the Application be refused.
19. Mrs Nkomo provided Awesome3's response to the MtR on 15 July 2019. The MtR Response repeated that the money remittance service may not materialise, conceded that Ms Ndlovu does not have "*a financial training background and experience in internal controls relating to financial services*" and offered to address the gaps in Ms Ndlovu's knowledge of payment services by her completing a short course on anti-money laundering. Mrs Nkomo requested that the Application be held in abeyance in the meantime.
20. The Authority responded on 17 July 2019, stating that the proposed training of Ms Ndlovu would not address the shortcomings set out in its MtR and that it would not be possible to 'hold' the Application, as applicant firms are expected to be ready, willing, and organised to carry on regulated activities before applying to the Authority. To carry out the money remittance activity, the Authority would expect those responsible for the payment services of the firm to have appropriate knowledge and experience of making payments, including Know Your Customer and Anti-Money Laundering checks, through the appropriate use of due diligence tools. The Authority would also expect an appropriate level of understanding of relevant legislation governing the activity of money remittance.
21. Mrs Nkomo responded to the Authority on 19 July 2019, stating on behalf of Awesome3 that the Application would not be withdrawn.

## **THE AUTHORITY'S CONCERNS WITH THE APPLICATION**

22. The regulatory provisions relevant to this Final Notice are referred to in Annex A.
23. Pursuant to Regulation 14(1) of the PSRs, the Authority may refuse an application for registration as an SPI only if any of the conditions set out in paragraphs (2) to (11) of Regulation 14 are not met. The Authority is of the view that Awesome3 does not meet the conditions set out in Regulations 14(7) and 14(10) for the reasons set out below.

### *Regulation 14(10) - Location of Mind and Management of the Applicant*

24. The PSRs require applicants applying for registration as an SPI to have their head office, registered office or place of residence based in the UK. The Approach Document further expands on this requirement, stating that the key issue in

identifying the head office of a firm is the location of its central management and control. According to the Approach Document, that is the location of the directors and other senior managers who make key decisions on the firm's direction and material management decisions on a day-to-day basis.

25. In its original submission on 29 January 2019, Awesome3 provided only one PSD Individual Form, which was for Mrs Nkomo, who appears to be the sole owner and controller of Awesome3. Mrs Nkomo is a South African citizen and a permanent resident in South Africa. This did not meet the requirement for a firm's central management and control to be based in the UK and was addressed in the Authority's correspondence with Awesome3.
26. In response to these concerns, an additional PSD Individual Form was submitted, for Ms Ndlovu. Whilst Ms Ndlovu is a UK citizen and is resident in the UK, this does not allay the Authority's concern that the majority of material management decisions will be taken by Mrs Nkomo in South Africa.
27. Mrs Nkomo appears to be the owner and controller of Awesome3, was the original applicant and continues to be the main contact for all correspondence with the Authority. The Authority considers that it is unlikely that in practice any material business decisions will be taken in the UK by Ms Ndlovu.
28. Further, the UK-based director, Ms Ndlovu, who was appointed to address this issue, clearly lacks the relevant knowledge and experience required to provide payment services, which further heightens the Authority's concern that the key management decisions will be taken by Mrs Nkomo in South Africa.

*Regulation 14(7) – Lack of Knowledge and Experience of Payment Services*

29. In considering an application for registration as an SPI, the Authority must be satisfied that the applicant firm's directors possess the appropriate knowledge and experience to provide payment services.
30. Ms Ndlovu has been put forward by Awesome3 for consideration as its UK-based director, to meet the head office requirement set out in Regulation 14(10) of the PSRs. The PSD Individual Form for Ms Ndlovu stated that Ms Ndlovu's key duties and responsibilities would be *"day to day management of operations of the company in the UK; marketing the services of the business to clients in the UK; client management; liaison with authorities and regulators in the UK; and compliance and risk management"*.
31. The Authority considers that Ms Ndlovu does not have the relevant experience, qualifications or knowledge required to provide payment services. Ms Ndlovu has a nursing background and her employment during the previous five years had been as a nurse. No evidence has been provided of any previous experience or knowledge of payment services activities nor of any experience or qualifications that would provide Ms Ndlovu with relevant transferable skills on which she can draw to perform her role. After these concerns were explained in the MtR, Mrs Nkomo conceded in the MtR Response that Ms Ndlovu lacked the *"requisite knowledge, experience and skills required by the SPR 2017"* [sic] and proposed to have Ms Ndlovu attend a *"short course on anti-money laundering"* to address her knowledge gap. The Authority considers that this does not address the issues raised as Ms Ndlovu would still lack the required experience in carrying out payment services or similar activities. A copy of Ms Ndlovu's curriculum vitae obtained later by the Authority confirms this.

32. The Authority is also concerned by Awesome3's responses in relation to the status of its service to provide money remittance and repeated requests for the Application decision to be put on hold until such time as it intends to undertake this service. This strongly suggests that Awesome3 is not yet ready, willing and organised to carry out regulated activities.

## **CONCLUSION**

33. For the reasons set out above, the Authority has concluded, having regard to all of the circumstances, that Awesome3 does not meet the conditions for registration as an SPI, and so has refused the Application.

## **REPRESENTATIONS**

34. Annex B contains a brief summary of the key representations made by Awesome3 and how they have been dealt with. In making the decision which gave rise to the obligation to give this Notice, the Authority has taken into account all of the representations made by Awesome3, whether or not set out in Annex B.

## **IMPORTANT NOTICES**

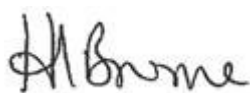
35. This Final Notice is given to Awesome3 Limited under section 390(1) of the Act (as applied by paragraph 10 of Schedule 6, Part 1 of the PSRs 2017).

### **Publication**

36. By reason of paragraph 10 of Schedule 6, Part 1 of the PSRs 2017, 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 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 Awesome3 or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
37. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

### **Authority Contact**

38. For more information concerning this matter generally, contact James O'Connell, Senior Manager, Retail Authorisations Department at the Authority (direct line: 020 7066 0328 / email: james.oconnell@fca.org.uk).



**Hilary Bourne**  
**On behalf of the Regulatory Transactions Committee**

## **ANNEX A -REGULATORY PROVISIONS RELEVANT TO THIS FINAL NOTICE**

### **Relevant Statutory Provisions**

#### ***The Payment Services Regulations 2017***

1. Regulation 9 (as applied by regulation 14 for registration as an SPI) provides that if the Authority “proposes to refuse an application or to impose a requirement it must give the applicant a warning notice”.
2. Regulation 13(1) requires an application for registration as a SPI must contain, or be accompanied by, such information as the Authority may reasonably require.
3. Regulation 14(1) states that the Authority may refuse to register an applicant as a SPI only if any of the conditions set out in paragraphs (2) to (11) is not met.
4. Regulation 14(7) states that *“the applicant must satisfy the Authority that:*
  - a. where the applicant is a body corporate, the directors;*
  - b. the persons responsible for the management of the institution; and*
  - c. where relevant, the persons responsible for the management of payment services,*

*are of good repute and possess appropriate knowledge and experience to provide payment services”.*
5. Regulation 14(10) states that “The applicant’s head office, registered office or place of residence, as the case may be, must be in the United Kingdom”.
6. Schedule 6, Part 1 (10) states that Part 26 of the Act applies save for the modifications detailed.

### **Relevant Guidance**

#### ***The Approach Document***

7. In exercising its powers in relation to the approval of an application for registration as a small payment institution, the Authority must have regard to guidance published in the Authority’s ‘Our approach’ document, including the section titled ‘Authorisation and registration’. The version of the ‘Our approach’ document at the date of the application was published in December 2018.
8. The paragraphs relevant to the refusal of the Application are set out below.
9. Paragraph 3.128 sets out guidance on Regulation 14(7). This paragraph states that in its assessment of whether a director is of good repute, the Authority will consider the factors relating to fitness and propriety set out in paragraphs 3.101 to 3.109.
10. Paragraph 3.109 states that in determining an individual’s competence, capability and experience, the Authority would consider whether the individual has the:
  - a. knowledge
  - b. experience

c. training

to be able to perform the activity of payment services.

11. Paragraphs 3.130 states that SPI applicants must have their head office, registered office, or place of residence in the UK. Paragraph 3.132 states that when considering the location of the head office of an applicant, the Authority will take the approach set out in paragraph's 3.49 to 3.53 in respect of an applicant to be an authorised firm.
12. Paragraph 3.51 notes that the PSRs do not define what is meant by a firm's 'head office'. It states that this is not necessarily where the firm's place of incorporation or the place where its business is wholly or mainly carried on. It states that although each application is judged on a case-by-case basis, the key issue is identifying the location of a firm's central management and control. This is explained to mean:
  - o The directors and other senior management, who make decisions relating to the firm's central direction, and material day-to-day management decisions; and
  - o The central administrative functions of the firm (e.g. central compliance, internal audit).



## ANNEX B – REPRESENTATIONS

1. *Awesome3's representations (in italics), and the Authority's conclusions in respect of them, are set out below.*

### Location of Awesome3's head office

2. *Mrs Nkomo is not the sole owner and controller of Awesome3 as Ms Ndlovu holds 50% controlling equity in the firm. Whilst Awesome3 acknowledges that the Companies House website shows that Mrs Nkomo is the only shareholder and person with significant control, Mrs Ndlovu was tasked to update the details when she became a director in March 2019, and it is possible she forgot to do so.*
3. *Although Mrs Nkomo incorporated Awesome3 and submitted the Application to the Authority on 29 January 2019, it was Ms Ndlovu who identified the opportunity in the UK. Mrs Nkomo would not have been able to identify this opportunity as she is not ordinarily resident in the UK.*
4. *It was always Awesome3's plan that Ms Ndlovu would come on board as co-driver and the main driver of the operations of the business. Mrs Nkomo carried out the administrative function of setting up the business and researching applicable UK law as she holds relevant qualifications and has considerable experience in the finance industry.*
5. *Awesome3's business model is that Ms Ndlovu would market the business in the UK, carrying out all client interface work by herself, with unfettered power to contract with clients as she deemed fit.*
6. *Accordingly, it is incorrect for the Authority to assert that the location of Awesome3's mind and management is not in the UK.*
7. *Although the Authority received a PSD Individual Form and a Controller Form for Ms Ndlovu, Awesome3 has not provided any additional evidence to support its statement that Ms Ndlovu holds 50% controlling equity in the firm. According to the Companies House website, Mrs Nkomo owns 75% or more of shares and voting rights in Awesome3, with the right to appoint and remove directors, whilst Ms Ndlovu is stated to have significant influence or control. On the basis of all the evidence it has seen, it appears to the Authority that Mrs Nkomo is the owner and controller of Awesome3.*
8. *The Authority notes that the explanation regarding Ms Ndlovu's role in identifying the business opportunity was not provided at any point by Awesome3 in its correspondence with the Authority regarding the Application. Further, Mrs Nkomo submitted the Application on 29 January 2019, has remained the Authority's sole contact throughout the application process and Ms Ndlovu was only appointed as a director following concerns raised by the Authority in respect of Mrs Nkomo's residence in South Africa. These matters lead the Authority to conclude that it is likely that Mrs Nkomo will take the key management decisions relating to the business, and that Awesome3's central management and control, and therefore its head office, will be outside the UK.*

### Ms Ndlovu's knowledge and experience

9. *For the reason given in paragraph 11 below, Ms Ndlovu would not be operating any payment service, and so does not require payment services experience and skills to contract with her UK clients.*
10. The Authority notes that Awesome3 has not challenged the Authority's conclusion that Ms Ndlovu does not possess the relevant knowledge and experience to carry on payment services. The Authority's views on Awesome3's submission that it would not be carrying on any payment service are set out in paragraphs 14 to 17 below.

### The Application was a mistake

11. *Awesome3 does not intend to pursue an activity which would fall within the definition of payment services in the PSRs. Although money remittance would occur as part of Awesome3's business model, this would not constitute a payment service since the funds would not be transferred by Awesome3 on behalf of its clients in the UK. Instead, Awesome3 would transfer its own funds, using swift bank transfers on its behalf.*
12. *The Application was therefore a bona fide mistake, which Mrs Nkomo has already admitted and apologised for to the Authority. It was submitted mistakenly due to Awesome3's initial limited understanding of the PSRs.*
13. *Accordingly, there is no valid application for the Authority to consider, which means there is no decision for the Authority to make. In accordance with the principle of fairness, to resolve this matter the Authority should set aside the Application and refund the application fee, less a deduction of a percentage of the fee as a penalty for the unnecessary application.*
14. In its application form, Awesome3 described the services it planned to offer. These included, although as an incidental activity to the main services provided, 'the remittance of funds on behalf of clients' and the scenario where Awesome3 would have 'to perform swift transfers to beneficiaries' bank accounts in South Africa or Botswana'. Although, in correspondence following the Application, Awesome3 explained that the money remittance service might not materialise, it did not state that its initial description of the services it planned to offer was incorrect. It was not until after the Warning Notice was issued (and in fact after it had provided its initial written representations on the Warning Notice), that Awesome3 provided the explanation that it did not in fact intend to remit funds on behalf of clients.
15. Although the Authority accepts that the new description of Awesome3's activities raises the possibility that the activities proposed may not fall within the definition of payment services in the PSRs, the Authority would need to receive further information regarding the flow of funds and the nature of the services to be offered in order to be able to determine whether money remittance or other payment services would be offered. Further, given that Awesome3's position had previously always been that any funds transferred would be 'on behalf of clients', the Authority remains concerned that the proposed activity could fall within the scope of the PSRs as originally stated.
16. The Authority expects applicants to be ready, willing and organised before making an application for authorisation or registration. As part of this, applicants should make their own determination of the scope of their activities before making an application. It is not the Authority's role to provide advice to applicants regarding

the scope of the PSRs; applicants should review all available guidance, seeking out independent legal or compliance advice where necessary. The Authority therefore considers that Awesome3 should have made more detailed enquiries regarding the scope of its activities before submitting the Application.

17. In respect of Awesome3's submission that there is no valid application for the Authority to consider, the Authority notes that it has provided Awesome3 with multiple opportunities to withdraw the Application and that Awesome3 has refused to do so. Awesome3 has been informed on several occasions that the application fee is not refundable, either fully or in part. This is in accordance with statements on the Authority's website and in the Approach Document, which make it clear that the application fee is not refundable other than in certain limited circumstances (which do not apply here).

#### Timing of Application decision

18. *The Warning Notice was issued approximately 10 months after Awesome3 submitted the Application. Awesome3 has suffered prejudice due to the delay in the Authority arriving at a decision regarding the Application. For example, Awesome3 has had to suspend executing its planned business activities due to a lack of clarity on the Authority's attitude towards such planned business activities.*
19. The Authority considers that its position in respect of Awesome3's planned business activities, as set out in the Application, has been clear and consistent throughout the application process. It also notes that Awesome3 has stated that any money remittance might not materialise and would be incidental to its business, so it considers it unlikely that Awesome3 would have suffered any prejudice whilst waiting for the Authority to determine the Application. If Awesome3 wishes to make a formal complaint in respect of this matter, it may do so using the Complaints Scheme established under the Financial Services Act 2012.