



Financial Conduct Authority

25 The North Colonnade
Canary Wharf
London
E14 5HS

Tel: +44 (0)20 7066 1000
Fax: +44 (0)20 7066 1099
www.fca.org.uk

FINAL NOTICE

Big Green Company (Energy) Limited
Bentley House
Newby Road Industrial Estate
Newby Road
Hazel Grove
Stockport
Greater Manchester
SK7 5DA

Dated: 14 October 2016

ACTION

1. By an application dated 30 September 2016 Big Green Company (Energy) Ltd ("BGC") applied under section 55A of the Act for Part 4A permission to carry on the regulated activities of agreeing to carry on a regulated activity and Credit Broking.
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 8 July 2016 the Authority gave notice that it proposed to refuse the Application and that BGC was entitled to make representations to the Authority about that proposed action.
5. As no representations have been received by the Authority from BGC 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 17 August 2016 the Authority gave BGC notice that it had decided to take the action described above.
7. BGC 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 BGC Final Notice of its refusal.
9. The Authority decided to refuse the Application and to give this Final Notice as BGC has failed to provide the information required by the Authority and, in the absence of the information sought, the Authority cannot ensure that BGC will satisfy, and continue to satisfy, the threshold conditions set out in Schedule 6 of the Act.
10. BGC failed to provide the Authority with the further information it requested to assist it in determining the Application. The Authority sent BGC one e-mail and two separate letters over a period of 6 weeks. Each request included a statement to the effect that the recipient must contact the Authority or be issued with a Warning Notice. These requests were sent after BGC failed to respond to an initial request sent via email on 2 December 2016.
11. 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 raised concerns that BGC would not do so if the Application had been granted.
12. The failure to provide the information raised concerns as to whether BGC:
 - (1) Could be effectively supervised by the Authority as required by threshold condition 2C;
 - (2) Had appropriate human resources, given the applicant's failure to provide the Authority with the requested information as required by threshold condition 2D; and
 - (3) Would conduct its business with integrity and in compliance with proper standards as required by threshold condition 2E.

DEFINITIONS

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

14. "the Act" means the Financial Services and Markets Act 2000.
15. "the Application" means the application referred to in paragraph 1 above.
16. "the Authority" means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority.
17. "CAD" means Credit Authorisations Division.
18. "the Decision Notice" means the Decision Notice dated 17 August 2016 given to the applicant by the Authority.
19. "the RTC" means the Authority's Regulatory Transactions Committee.
20. "the Tribunal" means the Upper Tribunal (Tax & Chancery Chamber).
21. "the Warning Notice" means the Warning Notice dated 8 July 2016 given to the applicant by the Authority.

FACTS AND MATTERS

22. The Application was received by the Authority on 30 September 2015. BGC had Interim Permission ("IP") 644155 which allowed it to carry out the regulated activity of credit broking.
23. Further information was requested from BGC. Details of all the communications between the Authority and BGC are set out below:
 - (1) On 2 December 2015, BGC were asked to provide the following information in support of this application by 18 December 2015:
 - Opening balance sheet;
 - Forecast closing balance sheet;
 - Monthly cash flow forecast;
 - Monthly profit and loss forecast;
 - The firm's business plan;
 - To complete the relevant Controlled Functions forms;
 - Confirmation as to whether BGC is a Green Deal Provider or Lender;
 - In addition, BGC was asked to provide more information and answer questions around their business, credit broking activities, policies/procedures, compliance, projected annual income, limitation and appointed representatives.
 - (2) On 5 January 2016, CAD wrote to BGC by email informing them that they had not received a response to the emails dated 2 and 9 December 2015 and CAD have been unsuccessful in getting through to the firm's telephone number provided. CAD requested that a response be provided by the stated deadline of 7 January 2016.

- (3) After two weeks CAD had still received no response to their request for the information.
- (4) On 2 February 2016 CAD telephoned BGC but the number was not in service.
- (5) On 2 February 2016 CAD wrote to BGC by email informing it 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 RTC that it issue BGC with a Warning Notice proposing to refuse the Application. No response was received to this letter by the stated deadline of 16 February 2016.
- (6) On 16 February 2016 CAD wrote to BGC, noting the lack of a response to its previous letter of 2 February 2016 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 Authority's RTC that it issue BGC with a Warning Notice proposing to refuse the Application. This letter was signed by "BENNISON" on 17 February 2016. No response was received to this letter by the stated deadline of 1 March 2016.
- (7) On 3 March 2016 CAD wrote to BGC, noting the lack of a response to its previous letters of 2 & 16 February 2016 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 this might result in a recommendation to the Authority's RTC that it issue BGC with a Warning Notice proposing to refuse the Application. This letter was signed by "M. MORRIS" on 8 March 2016. No response was received to this letter by the stated deadline of 17 March 2016

24. The Authority received no response to any of the communications set out above.

IMPACT ON THRESHOLD CONDITIONS

25. The regulatory provisions relevant to this Final Notice are referred to in Annex A.

26. BGC failed to respond to four separate requests for the provision of information considered, by the Authority, to be necessary to allow the Application to be determined. These requests were made over a 6 week period; each request included a statement to the effect that the recipient must contact the Authority or face a Warning Notice.

27. 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 BGC satisfied, and would continue to satisfy, the threshold conditions.

28. 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 raises concerns that BGC would not do so if the Application were to be granted.

29. 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 BGC will satisfy, and continue to satisfy, the threshold conditions in relation to all of the regulated activities for which BGC would have permission if the Application was granted.

IMPORTANT NOTICES

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

Publication

31. 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.
32. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Authority contacts

33. For more information concerning this matter generally, contact Marina Lancaster, Manager, Credit Authorisations at the Authority (direct line: 020 7066 65250/ email: marina.lancaster@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.
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.

8. 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.

Threshold condition 2C: Effective supervision

9. COND 2.3.3G provides that, in assessing the threshold conditions set out in paragraph 2C of Schedule 6 to FSMA, factors which the FCA will take into consideration include, among other things, whether:

- (1) it is likely that the FCA will receive adequate information from the firm, and those persons with whom the firm has close links, to enable it to determine whether the firm is complying with the requirements and standards under the regulatory system for which the FCA 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 FCA;

Threshold condition 2D: Adequate Resources

10. 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

11. 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
12. 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
13. 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:

- (1) 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.