
FINAL NOTICE

Danmirr Capital Limited
170 Church Road
Mitcham
Surrey
CR4 3BW

31 August 2016

ACTION

1. By an application dated 10 April 2015 ("the Application"), Danmirr Capital Ltd ("DCL") applied under section 55A of the Act for Part 4A permission to carry on the regulated activities of credit broking, debt adjusting and debt counselling.
2. The Application is incomplete.
3. DCL has not responded to the Authority's repeated requests for further information.
4. For the reasons listed below, the Authority has refused the Application.

SUMMARY OF REASONS

5. By its Warning Notice dated 15 June 2016 the Authority gave notice that it proposed to refuse the Application and that DCL was entitled to make representations to the Authority about that proposed action.

6. As no representations have been received by the Authority from DCL 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.
7. By its Decision notice dated 12 July 2016 ("the Decision Notice"), the Authority gave DCL notice that it had decided to take the action described above.
8. DCL 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.
9. 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 DCL Final Notice of its refusal.
10. The Authority decided to refuse the Application and to give this Final Notice as DCL has failed to provide the information required by the Authority and, in the absence of the information sought, the Authority cannot ensure that DCL will satisfy, and continue to satisfy, the threshold conditions set out in Schedule 6 of the Act.
11. DCL 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 16 week period; each request included a statement to the effect that the recipient must contact the Authority or face a Warning Notice.
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 the applicant 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 co-operative way. The failure to provide the requested information raised concerns that DCL would not do so if the Application were to be granted.
14. The failure to provide the information raised concerns as to whether the applicant:
 - (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

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

FACTS AND MATTERS

16. The Application was received on 10 April 2015.

17. Further information was requested from DCL. Details of all the communications between the Authority and DCL are set out below.

- (1) On 27 January 2016 DCL was asked to provide the following information in support of the Application.
- To state whether DCL was aware of the new credit broking and fees rules that came into effect on 2 January 2015 and to confirm that DCL therefore complied with CONC 3.7 and CONC 4.4
 - To set out the products which DCL offered
 - To specify those financial institutions which were on DCL’s panel of lenders
 - To confirm the fees charged at any stage for the service provided and to give an outline of the same
 - To confirm the way in which DCL made customers aware of the fees charged
 - To clarify the manner in which DCL ensured the prominence of commissions chargeable did not affect its overall decision to recommend a certain product over another
 - To clarify the manner in which DCL ensured that a product they recommended was not unsuitable for a customer
 - To confirm the means by which customers were made aware on the DCL website of the limitations of the service and the existence of commission charges
 - To confirm that the DCL website adequately-reflects the services provided and met the relevant broking/financial promotion rules

- (2) On 3 March 2016 DCL was asked to provide the following supplementary information in support of the Application:
 - To produce a response to the questions raised on 27 January 2016 before the following week
 - To confirm that DCL would be required to complete and submit a supplementary form for an in-progress credit application
- (3) The Authority chased DCL for a response by an email dated 9 February 2016 and through telephone contact on 16 & 17 February 2016.
- (4) On 23 February 2016 the Authority wrote to DCL 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 RTC that it issue DCL with a Warning Notice proposing to refuse the Application. No response was received to this letter by the stated deadline of 8 March 2016 (i.e. within 14 days).
- (5) On 3 March 2016 telephone contact was made with DCL in which a reply was promised by the following week.
- (6) On 16 March 2016 the Authority wrote to DCL, noting the lack of a response to its previous letters of 23 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 RTC that it issue DCL with a Warning Notice proposing to refuse the Application. No response was received to this letter by the stated deadline of 23 March 2016 (i.e. within seven days).
- (7) On 29 March 2016 telephone contact was made with DCL in which a reply was promised at the latest by the following week.
- (8) On 14 April 2016 the Authority wrote to DCL by Special Delivery and email, noting the lack of a response to its previous letters of 23 February 2016 and 6 March 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 RTC that it issue DCL with a Warning Notice proposing to refuse the application. No response was received to this letter by the stated deadline of 28 April 2016 (i.e. within 14 days).
- (9) On 3 May 2016 the Authority wrote to DCL by Special Delivery and email, noting the lack of a response to its previous letters of 23 February 2016, 16 March 2016 and 14 April 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 RTC that it issue DCL with a Warning Notice proposing to refuse the application. No response was received to this letter by the stated deadline of 17 May 2016 (i.e. within 14 days).

- (10) On 5 May 2016 telephone contact was made with DCL in which a reply was promised by the stipulated date (17 May) on the letter.
2. The Authority received no response to any of the communications set out above.
3. If DCL had replied to the queries set out above, the Authority would have sought further information as to seeking agreement on the wording of limitations to its debt permissions.

IMPACT ON THRESHOLD CONDITIONS

4. The regulatory provisions relevant to this Final Notice are referred to in Annex A.
5. DCL 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 16 week period; each request included a statement to the effect that the recipient must contact the Authority or face a Warning Notice.
6. 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 the applicant satisfied, and would continue to satisfy, the threshold conditions.
7. 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 DCL would not do so if the Application were to be granted.
8. The failure to provide the information raised concerns as to whether the applicant:
 - (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.
9. 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 DCL will satisfy, and continue to satisfy, the threshold conditions in relation to all of the regulated activities for which DCL would have permission if the application was granted.

IMPORTANT NOTICES

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

Publication

11. 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.
12. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Authority contacts

13. 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).

Mark Nicol
Chair 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 2C: Effective Supervision

5. COND 2.3.3G states that, in assessing the threshold condition set out in paragraph 2C of Schedule 6 to the Act, factors which the Authority will take into consideration include, among other things, whether it is likely that the Authority will receive adequate information from the firm to determine whether it is complying with the requirements and standards under the regulatory system for which the Authority 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 Authority).

Threshold condition 2D: Appropriate Resources

6. 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.

7. 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.
8. COND 2.4.2G (3) states that high level systems and control requirements are in SYSC. The Authority will consider whether the firm is ready, willing and organised to comply with these and other applicable systems and controls requirements when assessing if it has appropriate non-financial resources for the purpose of the threshold conditions set out in threshold condition 2D.

Threshold condition 2E: Suitability

9. 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.
10. 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.
11. COND 2.5.6G provides that 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, 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.