
FINAL NOTICE

EMEA Exchange Limited
3rd Floor
6 Ingestre Place
London
W1F 0JJ

20 February 2018

ACTION

- 1 By an application dated *22 June 2017* ("the Application") *EMEA Exchange Limited* ("EMEA") applied under Regulation 12 of the Payment Services Regulations 2009 ("the PSRs") for registration as a small payment institution and to perform the following payment services:
 - (1) *Money Remittance*
- 2 For the reasons listed below and pursuant to Regulation 12 of the PSRs, the Authority has refused the Application.

SUMMARY OF REASONS

- 3 By its Warning Notice dated 6 December 2017 ("the Warning Notice") issued pursuant to Regulation 9(7) of the PSRs (as modified by Regulation 14), the Authority gave notice that it proposed to refuse the Application and that EMEA was entitled to make representations to the Authority about that proposed action.
- 4 As no representations have been received by the Authority from EMEA 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.
- 5 By its Decision Notice dated 5 January 2018 ("the Decision Notice"), the Authority gave EMEA notice that it had decided to take the action described above.
- 6 EMEA 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.
- 7 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 EMEA Final Notice of its refusal.
- 8 The Authority decided to refuse the Application and to give this Final Notice as, on the basis of the facts and matters described below, the Authority has concluded that it cannot ensure that *EMEA* satisfies and will continue to satisfy the 'Conditions for registration as a small payment institution' set out in Regulation 13 of the PSRs.

DEFINITIONS

- 9 The definitions below are used in this Final Notice.

"the PSRs" means the Payment Services Regulations 2009

"PSD" means the Payment Services Directive (2007/64/EC)

"PSD Agent" means a person who acts on behalf of an authorised payment institution or a small payment institution in the provision of payment services

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

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

"the Application" means the application submitted by EMEA on 22 June 2017

"Mr Nwike" means Mr Martin Nwike, a director and 66.67% controller of EMEA

FACTS AND MATTERS

- 10 EMEA's Application for Registration as a Small Payment Institution, made under the PSRs, was received by the Authority on 18 July 2017.
- 11 During the review of the application, several background checks on Mr Nwike revealed that he did not disclose on his PSD Individual form some facts that he should have disclosed.
 - i. Mr Nwike was a Director of a firm called EMEA Trade Limited. This firm traded as a PSD Agent from June 2016 to January 2017. It was struck off the register at Companies House on 27 December 2016.
 - ii. EMEA Trade Limited previously applied for registration as a Small Payment Institution under application reference 0001313643 on 31 March 2016. The case officer, Judit Kocsis, indicated that Mr Nwike did not appear to meet the conditions of registration, after which EMEA Trade Limited, on 4 May 2016 at the request of Mr Nwike, withdrew its application.
- 12 The Authority sent an email to Mr Nwike on 6 September 2017, requesting that Mr Nwike review the disclosures submitted with his application.
- 13 Mr Nwike sent the Authority an email on 8 September, confirming that all the information was accurate.
- 14 A Minded to Refuse letter was sent to EMEA on 17 October 2017.
- 15 Mr Nwike sent his response to the Authority's letter by email on 25 October 2017. Within his response, Mr Nwike disputes the reasons for refusal set out in the Authority's letter of 17 October 2017.

CONCLUSIONS

- 16 Pursuant to Regulation 13(1) of the PSRs the Authority may refuse an application for registration as a small payment institution only if any of the conditions in paragraphs (2) – (6) of Regulation 13 are not met. The Regulations and Authority guidance relevant to this Warning Notice are referred to in Annex A.
- 17 The Authority is of the view that Regulation(s) 13(4A) and 13(4B) are not met, for the reasons set out below.
- 18 The Authority places considerable importance on receiving accurate and complete information. Mr Nwike has failed to disclose material facts in the application form which would have been relevant to the assessment of the application form.
- 19 In particular, the Authority considers that the non-disclosure of the previously withdrawn application means that the Authority cannot be satisfied that Mr Nwike completed the form honestly, a fact which is relevant to the assessment of Mr Nwike's fitness and reputation. In addition, Mr Nwike failed to tell the FCA that EMEA Trade Limited had been struck off the register at Companies House. He also told the FCA, in his email of 25 October 2017, that EMEA Trade Limited had never traded, when in his application form he had clearly stated that it had traded as a PSD Agent. As such, the Authority cannot be satisfied that Mr Nwike has corresponded with it openly and honestly.

20 The Authority considers that non-disclosure of these facts and the circumstances in which the failure to disclose occurred, means that the applicant has not satisfied the Authority that Mr Nwike is a fit and proper person or of good repute as required by regulation 13(4A) and regulation 13(4B).

IMPORTANT NOTICES

21 This Final Notice is given to EMEA pursuant to Schedule 5 Part 1 (7) of the PSRs (which incorporates section 390(1) of the Act).

Publication

22 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 EMEA or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

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

Authority contacts

24 For more information concerning this matter generally, contact David Blocksidge, Manager, Retail Authorisations at the Authority (direct line: 020 7066 2524/ email: david.blocksidge@fca.org.uk).

David Fisher
Chair of the Regulatory Transactions Committee

ANNEX A – REGULATORY PROVISIONS RELEVANT TO THIS FINAL NOTICE

Relevant Statutory Provisions

The Payment Services Regulations 2009

- 1 Regulation 9(2) of the PSRs (as applied by regulation 14 to applications for registration as an SPI) provides that the Authority may determine an incomplete application if it considers it appropriate to do so, and it must in any event determine any such application within 12 months beginning with the date on which it received the application.
- 2 Regulation 12(1) requires an application for registration as a small payment institution to contain, or be accompanied by, the information required by the Authority.
- 3 Regulation 12(4) states that at any time after receiving an application and before determining it, the Authority may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.
- 4 Regulation 13(1) states that the Authority may refuse to register an applicant as a small payment institution only if any of the conditions set out in paragraphs (2) to (6) are not met.
- 5 Regulation 13(4A) states that where the applicant is a partnership, an unincorporated association or a body corporate, the applicant must satisfy the Authority that any persons having a qualifying holding in it are fit and proper persons having regard to the need to ensure the sound and prudent conduct of the affairs of a small payment institution.
- 6 Regulation 13(4B) 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.
- 7 Schedule 5, Part 1 (7) states that Part 26 of the Act applies with the modifications detailed.

The Act (i.e. the Financial Services and Markets Act 2000)

- 8 Part 26 section 390(1) states that if the Authority has given a person a Decision Notice and the matter was not referred to a Tribunal within the time required by the Tribunal Procedure Rules, the Authority must give the person concerned a Final Notice.
- 9 Part 26 section 391(4) states that the Authority must publish such information about the matter to which a Final Notice relates as it considers appropriate.

10 Part 26 section 391(6) states that the Authority may not publish information if publication would, in its opinion, be unfair to the person with respect to whom the action was taken or prejudicial to the interests of consumers.

11 Part 26 section 391(7) states that information is to be published in such a manner as the Authority considers appropriate.

Relevant Guidance

"The Authority's role under the Payment Services Regulations 2009 – Our approach"

12 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 current at the date of the application was dated June 2013.

13 The paragraphs relevant to the refusal of the Application are set out below.

14 Paragraph 3.94: We may refuse to register an applicant as a small payment institution where any of the following conditions is not met:

- The projected average monthly payment transactions to be carried out by the applicant (including by agents on its behalf) must not exceed €3 million.
- None of the individuals responsible for the management or operation of the business has been convicted of offences relating to money laundering or terrorist financing or other financial crimes.
- Where the applicant is a partnership, an unincorporated association or a body corporate, the applicant must satisfy us that any persons having a qualifying holding in it are fit and proper persons, having regard to the need to ensure the sound and prudent conduct of the affairs of a small PI.
- The applicant must satisfy us that its directors and/or any persons responsible for the management of the small PI, and where relevant the persons responsible for the management of its payment services, are of good repute and possess appropriate knowledge and experience to provide payment services.
- Where the applicant is a body corporate that has close links with another person ('CL') the applicant must satisfy us that those links are not likely to prevent our effective supervision of the applicant. If it appears to us that the CL is subject to the laws, regulations or administrative provisions of a territory outside of the EEA, the applicant must satisfy us that neither those foreign laws/provisions, would prevent our effective supervision of the applicant.
- The applicant's head office, registered office or place of residence, as the case may be, must be in the UK. This means that the applicant's head office and, if it has one, registered office must be in the UK. If the applicant is a natural person their place of residence must be in the UK.
- The applicant must comply with the registration requirements of the MLR, where those requirements apply to it.

- 15 Paragraph 3.104: states that the applicant must satisfy us that any persons having a qualifying holding in it are fit and proper persons having regard to the need to ensure the sound and prudent conduct of the affairs of the small PI. This comprises two elements: first, the applicant will need to assess whether any persons (or entities) have a qualifying holding in it and notify us of the identity of such persons; secondly, we will undertake an assessment of the fitness and propriety of any such persons (or entities).
- 16 Paragraph 3.110: states that The term 'fit and proper', which is used in regulation 13(4A), incorporates the following essential factors:
- a. honesty, integrity and reputation;
 - b. competence and capability; and
 - c. financial soundness
- of the person with a qualifying holding taking into account the need to ensure the sound and prudent management of a small PI.
- 17 Paragraph 3.111: which gives examples of the facts the Authority would consider when assessing the fitness and propriety of a controller.
- 18 Paragraph 3.118: which states that the Authority will assess the fitness and propriety of an individual on the information provided in the application form and other information available to us from our own and external sources. We may ask for more information if required. We attach considerable importance to the completeness and accuracy of the PSD Individual form. If the applicant is in any doubt about whether or not any information is relevant, it should be included.
- 19 Paragraph 3.119: which states the Authority consider the term 'of good repute' to include the essential factors relating to fitness and propriety set out above in relation to controllers.
- 20 Paragraph 3.124: which states The factors that we will have regard to when making the fit and proper assessment are:
- a. honesty, integrity and reputation;
 - b. competence and capability; and
 - c. financial soundness.
- 21 Paragraph 3.126: which states the factors that the Authority would consider in the assessment of the fitness and propriety of a PSD Individual.
- 22 Paragraph 3.129: which states If a firm is not sure whether something may have an impact on an individual's fitness and propriety, the information should be disclosed. The non-disclosure of material facts is taken very seriously by us as it is seen as evidence of current dishonesty. If in doubt, disclose.
- 23 Paragraphs 3.130 and 3.131: which states that in determining an individual's competence, capability and experience, we will have regard to whether the individual has the knowledge, experience and training to be able to provide payment services.

The level of experience, knowledge and training should be proportionate to the nature, complexity and scale of risk inherent in the business activity of the firm.

- 24 Paragraph 3.150: which states that the Authority can refuse an application when the information and evidence provided does not satisfy the requirements of the PSRs. When this happens we are required to give the applicant a warning notice setting out the reason for refusing the application and allowing 28 days to make a representation on the decision.