



Financial Conduct Authority

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FINAL NOTICE

The Encore Trading Company Limited
Broadipark
Parracombe
Barnstaple
Devon EX31 4PR

16 January 2017

ACTION

1. By an application dated 16 June 2015, The Encore Trading Company Ltd ("Encore Trading") applied under section 55A of the Act for Part 4A permission to carry on the regulated activities of credit broking and debt counselling.
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 the Authority gave notice that it proposed to refuse the Application and that Encore Trading was entitled to make representations to the Authority about that proposed action.
5. As no representations have been received by the Authority from Encore Trading 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 the Authority gave Encore Trading notice that it had decided to take the action described above.

7. Encore Trading had 28 days from the date the Decision Notice was given to refer the matter to the Tribunal (formerly known as the Financial Services and Markets Tribunal). No referral was made to the 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 Encore Trading Final Notice of its refusal.
9. The Authority decided to refuse the Application and to give this Final Notice as Encore Trading has failed to provide the information required by the Authority and, in the absence of the information sought, the Authority cannot ensure that Encore Trading will satisfy, and continue to satisfy, the threshold conditions set out in Schedule 6 of the Act.
10. For the reasons set out herein the Authority cannot ensure that Encore Trading will satisfy, and continue to satisfy, the threshold conditions set out in Schedule 6 of the Act.
11. Encore Trading has failed to respond to three 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 40 week period; the latter two requests included a statement to the effect that the recipient must contact the Authority or face a Warning Notice.
12. The Authority has therefore determined the Application based upon the information received to date, in circumstances where its requests for information have not been met. Having reviewed that information, the Authority cannot be sure that the applicant satisfies, and will continue to satisfy, the threshold conditions.
13. 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 Encore Trading would not do so if the Application were to be granted.
14. The failure to provide the information raises concerns as to whether Encore Trading:
 - a. can be effectively supervised by the Authority as required by threshold condition 2C;
 - b. has appropriate human resources, given the applicant's failure to provide the Authority with the requested information as required by threshold condition 2D; and
 - c. will 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"/"FSMA" means the Financial Services and Markets Act 2000.

"the Application" means the application referred to in paragraph one above.

"AR" means Appointed Representative, a firm or person who runs regulated activities and acts as an agent for a firm directly authorised by the Financial Conduct Authority.

"Authorisations" means the Authority's Authorisations Division.

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

"PRA" means the Prudential Regulation Authority.

"the RTC" means the Authority's Regulatory Transactions Committee.

"SUP" means the chapter in the Authority's Handbook entitled 'Supervision Manual'.

"SYSC" means the chapter in the Authority's Handbook entitled 'Senior Management Arrangement, Systems and Controls'.

"the Decision Notice" means the decision notice dated 11 November 2016 given to Encore Trading by the Authority.

"the Transitional Order" means the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2013 (SI 2013/1881).

"the Tribunal" means the Upper Tribunal (Tax & Chancery Chamber).

"the Warning Notice" means the warning notice dated 3 October 2016 given to the applicant by the Authority.

FACTS AND MATTERS

16. The Application was received by the Authority on 16 June 2015.

17. Further information was requested from Encore Trading under section 55U(5) of the Act.

18. Details of all of the relevant communications between the Authority and Encore Trading are set out below:

- a. On 1 October 2015, Encore Trading was asked to provide the following information in support of the Application by 7 October 2015:
 - i) confirmation of whether Encore Trading still carried out the FSMA activities for which it was previously authorised under its AR relationship;
 - ii) business plan;

- iii) Compliance Monitoring Programme document;
 - iv) organisational chart;
 - v) opening balance sheet (for the year 2015);
 - vi) forecast closing balance sheet (for the next 12 months);
 - vii) monthly cash flow forecast (for the next 12 months);
 - viii) monthly profit and loss forecast (for the next 12 months); and
 - ix) latest end of year accounts (to 30 April 2015).
- b. After 33 weeks the Authority had received no response to its request for information.
 - c. On 20 May 2016 Authorisations wrote to Encore Trading, informing it that the Authority may determine an incomplete application if it considers it appropriate to do so and that this would result in a recommendation to the RTC that it give Encore Trading a Warning Notice proposing to refuse the Application. No response was received to this letter by the stated deadline of 3 June 2016 (i.e. within 14 days).
 - d. On 7 June 2016 Authorisations wrote to Encore Trading, noting the lack of a response to its previous letter of 20 May 2016. The letter again noted that a failure to reply would result in a recommendation to the RTC that it give Encore Trading a Warning Notice proposing to refuse the Application. No response was received to this letter by the stated deadline of 20 June 2016 (i.e. within 13 days).
 - e. On 22 June 2016 Authorisations wrote to Encore Trading, noting the lack of a response to its previous letter of 7 June 2016 and reiterating that a failure to provide the outstanding information would result in the application being determined as it currently stood. The letter again noted that this would result in a recommendation to the RTC that it give Encore Trading a Warning Notice proposing to refuse the application. No response was received to this letter by the stated deadline of 6 July 2016 (i.e. within 14 days).

IMPACT ON THRESHOLD CONDITIONS

- 19. The regulatory provisions relevant to this Final Notice are referred to in Annex A.
- 20. Encore Trading has failed to respond to three 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 40 week period; each request included a statement to the effect that the recipient must contact the Authority or face a Warning Notice.

21. The Authority must therefore determine the Application based upon the information received to date, in circumstances where its requests for information have not been met. Having reviewed that information, the Authority cannot ensure that the applicant satisfies, and will continue to satisfy, the threshold conditions.
22. 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 Encore Trading would do so if the Application were to be granted.
23. The failure to provide the information raises concerns as to whether the applicant:
- i. can be effectively supervised by the Authority as required by threshold condition 2C;
 - ii. has appropriate human resources, given the applicant's failure to provide the Authority with the requested information as required by threshold condition 2D; and
 - iii. will conduct its business with integrity and in compliance with proper standards as required by threshold condition 2E.
24. 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 Encore Trading will satisfy, and continue to satisfy, the threshold conditions in relation to all of the regulated activities for which Encore Trading would have permission if the application was granted.

IMPORTANT NOTICES

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

Publication

26. 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.
27. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Authority contacts

28. For more information concerning this matter generally, contact *Kate Pitt*, Manager, Authorisations Division at the Authority (direct line: 020 7066 0714 /email: Kate.Pitt@fca.org.uk).

Hilary Bourne
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

Threshold Conditions - COND

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.

General Guidance

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 FCA threshold conditions, the FCA will have regard to all relevant matters, whether arising in the United Kingdom or elsewhere.

Threshold condition 2C: Effective Supervision

8. COND 2.3.3G states that, when the FCA is assessing threshold condition 2C, factors which the FCA will take into consideration include, among other things, whether:

- (1) 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 FCA).

Threshold condition 2D: Appropriate Resources

9. 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. COND 2.4.4G(3) states that high level systems and control requirements are in SYSC. The FCA 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

10. COND 2.5.2G(2) states that the FCA 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.

11. COND 2.5.4G(2)(c) 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.

12. 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.