

FINAL NOTICE

FLOENERGY LTD

19 April 2023

ACTION

1. By an application dated 6 October 2022 ("the Application"), Floenergy Ltd ("Floenergy") applied under section 55A of the Act for Part 4A permission to carry on the regulated activities of:
 - a. agreeing to carry on a regulated activity;
 - b. limited permission credit broking
2. The Application is incomplete.
3. For the reasons listed below, the Authority has refused the Application.

SUMMARY OF REASONS

4. Floenergy has failed to respond to requests for the provision of information considered by the Authority to be necessary to allow the Application to be determined.
5. The last request included a statement to the effect that Floenergy must contact the Authority within 10 business days, or the Authority would issue Floenergy with a Warning Notice.
6. As no representations were received by the Authority from Floenergy 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 applied, 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 15 March 2023 the Authority gave Floenergy notice that it had decided to take the action described above.
8. Floenergy 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.

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 Floenergy Final Notice of its refusal.
10. 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 Floenergy satisfies, and will continue to satisfy, the threshold conditions.
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 raises concerns that Floenergy would fail to do so if the Application were to be granted.
12. The failure to provide the information raises concerns as to whether Floenergy:
 - a. can be effectively supervised by the Authority as required by threshold condition 2C;
 - b. has appropriate human resources, given Floenergy'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

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

"the Act" means the Financial Services and Markets Act 2000;

"the Application" means the application referred to in paragraph 1 above;

"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 Executive Decision Maker" means the member of the Authority's staff acting under executive procedures as described in Chapter 4 of the Decision Procedure and Penalties Manual in the Authority's Handbook.

"SUP" means the Supervision section of the Authority's handbook;

"SYSC" means the Senior Management Arrangements, Systems and Controls section of the Authority's handbook; and

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

FACTS AND MATTERS

14. The Application was received by the Authority on 6 October 2022.
15. Further information was requested from Floenergy under section 55U(5) of the Act.

16. Specifically, the Authority requested information in support of the Application, surrounding the Applicant's financial resources.
17. Floenergy failed to provide the outstanding information, despite requests being made on eight separate occasions; six via written request and two via telephone request.
18. On 18 January 2023, the Authority sent a letter to Floenergy by way of email. This same letter was then sent by recorded delivery a day later on 19 January 2023. The letter noted the lack of response to its requests for information and informed Floenergy that a failure to provide the information would result in the Application being determined based upon the information received to date and that this might result in the Authority issuing Floenergy with a Warning Notice proposing to refuse the Application.
19. Floenergy failed to provide the outstanding information by the stated deadline for response.

IMPACT ON THRESHOLD CONDITIONS

20. Floenergy has failed to respond to eight separate requests for the provision of information considered by the Authority to be necessary to allow the Application to be determined. The final request gave Floenergy 10 business days to respond, and included a statement to the effect that Floenergy must contact the Authority, or the Authority would issue Floenergy with a Warning Notice.
21. By its Warning Notice the Authority gave notice that it proposed to refuse the Application and that Floenergy was entitled to make representations to the Authority about that proposed action. No representations were made by Floenergy.
22. As no representations were received by the Authority from Floenergy 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 applied, permitting the Authority to treat the matters referred to in its Warning Notice as undisputed and, accordingly, to give a Decision Notice.
23. Floenergy 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.
24. 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 Floenergy Final Notice of its refusal.
25. 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 Floenergy satisfies, and will continue to satisfy, the threshold conditions.
26. 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 Floenergy would fail to do so if the Application were to be granted.
27. The failure to provide the information raises concerns as to whether Floenergy:

- a. can be effectively supervised by the Authority as required by threshold condition 2C;
- b. has appropriate human resources, given Floenergy'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.

28. On the basis of the facts and matters described above, the Authority cannot ensure that Floenergy will satisfy, and continue to satisfy, the threshold conditions in relation to all of the regulated activities for which Floenergy would have permission if the application was granted and accordingly has decided to refuse the application.

IMPORTANT NOTICES

29. This Final Notice is given under section 390 of the Act.

PUBLICATION

30. 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.

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

AUTHORITY CONTACTS

32. For more information concerning this matter generally, contact Sarah Whittington-Spivey, Manager, Credit & Lending department at the Authority (direct line: 020 7066 5949 / email: sarah.whittington-spivey@fca.org.uk).

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’s Handbook, including the part entitled 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.

Threshold Condition 2C: Effective Supervision

8. 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

9. 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.
10. COND 2.4.2G(2A) provides that, 'non-financial resources' of the firm include human resources it has available.
11. 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

12. 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.
13. 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.
14. 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 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.