



Financial Conduct Authority

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FINAL NOTICE

**GM Contracts Limited
Aldrich House
Vicarage Farm Road
Peterborough
Cambridgeshire
PE1 5TP**

14 February 2017

ACTION

1. By way of an application dated 29 February 2016 GM Contracts Limited ("GMC") applied under section 55A of the Act for Part 4A permission to carry on the regulated activity of 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 the Authority gave notice that it proposed to refuse the Application and that GMC was entitled to make representations to the Authority about that proposed action.
5. As no representations have been received by the Authority from GMC 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 GMC notice that it had decided to take the action described above.
7. GMC 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 GMC Final Notice of its refusal.
9. The Authority decided to refuse the Application and to give this Final Notice as GMC has failed to provide the information required by the Authority and, in the absence of the information sought, the Authority cannot ensure that GMC will satisfy, and continue to satisfy, the threshold conditions set out in Schedule 6 of the Act.
10. GMC has failed to respond to three separate requests for the provision of the Information considered, by the Authority, to be necessary to allow the Application to be determined. These requests were made over a six week period; each request included a statement to the effect that GMC must contact the Authority or face a Warning Notice.
11. The Authority has therefore determined the Application based upon the information received to date, in circumstances where its requests for the Information have not been met. Having reviewed that information, the Authority cannot be sure that GMC satisfies, and will continue to satisfy, the threshold conditions.
12. Authorised firms (and those seeking authorisation) are expected to engage with the Authority in an open and cooperative way. The failure to provide the Information raises concerns that GMC would not do so if the Application were to be granted.
13. The failure to provide the Information raises concerns as to whether GMC:
 - (1) can be effectively supervised by the Authority as required by threshold condition 2C;
 - (2) has appropriate human resources, given GMC's failure to provide the Authority with the information as required by threshold condition 2D; and
 - (3) will conduct its business with integrity and in compliance with proper standards as required by the threshold condition 2E.

DEFINITIONS

14. 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 one 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

"CCJ" means County Court Judgement

"the Decision Notice" means the decision notice dated 20 December 2016 given to GMC by the Authority

"Mr Guina" means Mr Adam Guina, a director of GMC

"the Information" means the information the Authority requested GMC provide in support of the Application on 19 July 2016

"the PRA" means the Prudential Regulatory Authority

"the RDC" means the Authority's Regulatory Decisions Committee

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

"SUP" means the Supervision chapter of the Authority's handbook

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

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

"the Warning Notice" means the warning notice dated 11 November 2016 given to GMC by the Authority

FACTS AND MATTERS

15. The Application was received by the Authority on 29 February 2016.

16. Further information was requested from GMC under section 55U(5) of the Act.

17. Details of all the relevant communications between the Authority and GMC are set out below

18. On 19 July 2016, GMC was requested, by way of an email sent to Mr Guina, to provide the following information by 2 August 2016 (i.e. within 14 days) in support of the Application:

- (1) Regulatory Business Plan;
- (2) latest end of year accounts;
- (3) confirmation of GMC's annual income from consumer credit activities;
- (4) confirmation that the CCJ disclosed in the Application had been cancelled or satisfied; and
- (5) clarification of an inconsistency arising from the applicant's response to a question in Form A.

19. On 1 August 2016, the Authority attempted to contact GMC using a telephone number submitted with the Application. The directors of GMC were unavailable and the person the Authority spoke to (who identified himself as Scott) attempted to contact Mr Guina. The Authority was advised to send the email it previously sent GMC on 19 July 2016 to an alternative email address. The Authority was informed that this email would be passed to Mr Guina. The Authority informed Scott of the required response date of 2 August 2016 which was sent out in the email. By 2 August 2016 no response had been received.
20. On 10 August 2016, the Authority contacted GMC using a telephone number submitted with the Application. The Authority was told by GMC's receptionist that Mr Guina was out of the office and unavailable. The receptionist acknowledged the Authority's email of 19 July 2016 and stated that she would leave a message for Mr Guina to contact the Authority. The Authority reiterated the need for a written response.
21. Four weeks after the original email request of 19 July 2016 the Authority had still received no substantive response to its request for the Information.
22. On 15 August 2016, the Authority wrote to GMC by way of email informing it that a failure to provide the Information would result in the Application being determined based upon the information received to date and this might result in a recommendation to the RTC that it issue GMC with a Warning Notice proposing to refuse the Application. No response was received to this email by the stated deadline of 30 August 2016 (i.e. within 15 days).
23. On 1 September 2016, the Authority wrote to the addresses provided with the Application, noting the lack of a response to its previous correspondence of 19 July, 1 August and 15 August 2016, and reiterated that a failure to provide the Information would result in the Application being determined based upon the information received to date. These letters again noted that a failure to reply might result in a recommendation to the RTC that it issue GMC with a Warning Notice proposing to refuse the Application. No response was received to this letter by the stated deadline of 15 September 2016 (i.e. within 14 days).
24. On 8 September 2016, the Authority contacted GMC using a telephone number submitted with the Application. GMC's receptionist advised that Mr Guina was out of the office and unavailable but would return that afternoon. The Authority provided its contact telephone number and was advised that Mr Guina would call the Authority that afternoon. The Authority did not receive a call from GMC or Mr Guina in response to this call.
25. On 14 September 2016, the Authority contacted GMC using a telephone number submitted with the Application. GMC's receptionist stated that she had sent Mr Guina reminders to contact the Authority since the previous call of 8 September 2016. The receptionist confirmed that she had the Authority's contact number from that call and would remind Mr Guina to contact the Authority as soon as possible. The Authority did not receive a call from GMC or Mr Guina in response to this call.
26. On 16 September 2016, the Authority wrote to the addressees provided with the Application, noting the lack of a response to its previous correspondence of 19 July, 1 August, 15 August and 1 September 2016, and reiterated that a failure to provide the 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 GMC with a Warning Notice proposing the Application. No response was received to this letter by the stated deadline of 30 September 2016 (i.e. within 14 days).

27. On 20 September 2016, the Authority sent GMC by way of email the letter it sent on 16 September 2016.
28. On 26 September 2016, The Authority attempted to telephone GMC using a telephone number provided within the Application but the call was answered by the firm's answering machine. The Authority left a message confirming GMC must respond to the correspondence sent 16 September 2016 by 30 September 2016.
29. On 30 September 2016, the Authority telephoned GMC using a telephone number provided with the Application and spoke to Mr Guina who acknowledged the Authority's correspondence. Mr Guina gave an explanation as to why no response had been made to the Authority's requests for the Information. Mr Guina told the Authority he was preparing a response and it would be sent by 7 October 2016. No response was received to this call by the agreed deadline of 7 October 2016.
30. The Authority received no response to any of the communications set out above.
31. If GMC had replied to the queries set out above, the Authority would have sought further information as to assess GMC's application.

IMPACT ON THRESHOLD CONDITIONS

32. The regulatory provisions relevant to this Final Notice are referred to in Annex A.
33. GMC has failed to respond to three separate requests for the provision of the Information considered, by the Authority, to be necessary to allow the Application to be determined. These requests were made over a six week period; each request included a statement to the effect that GMC must contact the Authority or face a Warning Notice.
34. The Authority has therefore determined the Application based upon the information received to date, in circumstances where its requests for the Information have not been met. Having reviewed that information, the Authority cannot ensure that GMC satisfies, and will continue to satisfy, the threshold conditions.
35. Authorised firms (and those seeking authorisation) are expected to engage with the Authority in an open and cooperative way. The failure to provide the information raises concerns that GMC would fail to do so if the Application was granted.
36. The failure to provide the Information raises concerns as to whether GMC:
 - (1) can be effectively supervised by the Authority as required by threshold condition 2C;
 - (2) has the appropriate human resources, given GMC's failure to provide the Authority with the Information as required by the threshold condition 2D; and
 - (3) will conduct its business with integrity and in compliance with proper standards as required by threshold condition 2E.

IMPORTANT NOTICES

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

Publication

38. 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.

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

Authority contacts

40. For more information concerning this matter generally, contact Darren Moxom, Manager, Lending and Intermediaries Department at the Authority (direct line: 020 7066 8810 / email: Darren.Moxom@fca.org.uk).

David Fisher
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 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 1.3.3CG provides that, when assessing the Authority’s threshold conditions, the Authority may have regard to any person appearing to be, or likely to be, in a relevant relationship with the firm, in accordance with section 55R of FSMA (Persons connected with an applicant). For example, a firm’s controllers, its directors or partners, other

persons with close links to the firm (COND 2.3), and other persons that exert influence on the firm which might pose a risk to the firm's satisfaction of the Authority's threshold conditions would be in a relevant relationship with the firm.

Threshold Condition 2C: Effective Supervision

9. 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

10. 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.
11. COND 2.4.2G(2A) provides that 'non-financial resources' of the firm include human resources it has available.
12. 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

13. 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.
14. 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.
15. 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, the 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.