
FINAL NOTICE

**Ismail Ayubi
Kalnan (UK) Ltd
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Date: **24 August 2011**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London, E14 5HS (“the FSA”) has taken the following action:

1. ACTION

- 1.1. By an application received by the FSA on 14 May 2010 (“the Application”) Kalnan (UK) Ltd (“Kalnan”) applied under Regulation 12 of the Payment Services Regulations 2009 (“the PSRs”) for registration as a small payment institution and to perform the money remittance payment services.
- 1.2. The Application is incomplete.
- 1.3. For the reasons listed below and pursuant to Regulation 9(2) of the PSRs, the FSA has refused the Application.

2. REASONS FOR ACTION

- 2.1. By its Warning Notice dated 10 June (“the Warning Notice”), issued pursuant to Regulation 9(7) of the PSRs, the FSA gave notice that it proposed to refuse the Application and that Kalnan was entitled to make representations to the FSA about that proposed action.
- 2.2. As no representations were received from Kalnan by the FSA within the time allowed by the Warning Notice, the default procedures in paragraph 2.3.2 of the FSA's Decision Procedure and Penalties manual apply, permitting the FSA to treat the matters referred

to in its Warning Notice as undisputed. By its Decision Notice dated 14 July ("the Decision Notice"), the FSA gave Kalnan notice that it had decided to refuse the application.

- 2.3. Under Regulation 9(9) of the PSRs Kalnan had the right to refer the matter to the Upper Tribunal (formerly known as the Financial Services and Markets Tribunal). No reference was made to the Upper Tribunal within the time allowed by the Decision Notice or to date.

Summary

- 2.4. On the basis of the facts and matters described below, the FSA has concluded that Kalnan does not satisfy, and will continue not to satisfy, the 'Conditions for registration as a small payment institution' set out in Regulation 13 of the PSRs because of Kalnan's failure to respond to the FSA and provide the necessary information requested, to enable the FSA to determine the Application.

Relevant Statutory Provisions

The Payment Services Regulations 2009

- 2.5. Regulation 12(1) requires an application for registration as a small payment institution to contain, or be accompanied by, such information as the FSA may reasonably require.
- 2.6. Regulation 12(4) states that at any time after receiving an application and before determining it, the FSA may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.
- 2.7. Regulation 13(1) states that the FSA 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.
- 2.8. One of those conditions, set out in Regulation 13(2), is that the application must comply with the requirements of, and any requirements imposed under, regulation 12.
- 2.9. Regulation 9(2) states that the FSA may determine an incomplete application if it considers it appropriate to do so.

Relevant Guidance

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

- 2.10. In exercising its powers in relation to the approval of an application for registration as a small payment institution, the FSA must have regard to guidance published in the FSA's 'Our approach' document, including the section titled 'Authorisation and registration'.
- 2.11. The paragraphs relevant to the proposal to refuse the Application are set out below.
- 2.12. **Paragraph 3.97:** the FSA has to make a decision on a complete application within three months of receiving it. An application is complete when the FSA has received all

the information and evidence needed for it to make a decision. The FSA will let the applicant know if it needs more information.

- 2.13. **Paragraph 3.98:** in the case of an incomplete application, the FSA must make a decision within 12 months of receipt. However, if that date is reached and discussions with an applicant have not resulted in the FSA receiving all the information it needs to make its decision, it is likely that the incomplete application will result in a refusal. This is because it is unlikely that the FSA will have been able to satisfy itself that the applicant has met the authorisation/registration requirements.
- 2.14. **Paragraph 3.105:** the FSA can refuse an application when the information and evidence provided does not satisfy the requirements of the PSRs. When this happens the FSA is 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.

Facts and Matters Relied Upon

- 2.15. The Application was received on 14 May 2010.
- 2.16. The FSA made a request for further information from Kalnan on 9 July 2010 in order to enable it to determine the Application, but received no response from Kalnan.
- 2.17. Details of all the communications between the FSA's Authorisations Division and Kalnan are set out below:
- (a) On 9 July 2010 Kalnan was emailed questions resulting from the application, requesting confirmation of Kalnan's registration with HMRC under the Money Laundering Regulations, as well as information as to the safeguarding of funds. A telephone number for the firm was also sought. Further, a query was raised in relation to the suggestion in the Application that Kalnan was exempt from the Financial Ombudsman Service.
 - (b) On 29 December 2010 Kalnan was sent an additional email setting out that there was missing information and outlining that, in the absence of a full response to the email or subsequent attempts to contact Kalnan, the FSA would be minded to refuse Kalnan's application and issue a Warning Notice. A copy of the email dated 9 July 2010 was attached.
 - (c) On 9 March 2011, a letter was sent to Kalnan by special delivery to the address provided to the FSA in Kalnan's application. The letter stated that the information requested on 9 July 2010 remained outstanding in respect of the application and that without a full response the FSA will be minded to refuse Kalnan's application, in the absence of the information required in order to determine the application. The FSA received no response.
 - (d) On 23 March 2011, a further email was sent, again outlining the information that was missing and that without a full response the FSA would be minded to refuse Kalnan's application and issue a Warning Notice on the grounds that it had failed to provide the information needed for the FSA to determine the application. The FSA received no response.

3. CONCLUSIONS

- 3.1. Pursuant to Regulation 13(1) the FSA 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 FSA is of the view that Regulations 13(1) and 13(2) are not met.
- 3.2. Regulation 13(1) states that the FSA 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.
- 3.3. Regulation 13(2) states that the application must comply with the requirements of, and any requirements imposed under, Regulation 12.
- 3.4. Regulation 12(1) requires an application for registration as a small payment institution to contain, or be accompanied by, such information as the FSA may reasonably require.
- 3.5. On the basis of the facts and matters described above, the FSA has therefore concluded that Kalnan does not satisfy, and will continue not to satisfy, the ‘Conditions for authorisation as a payment institution’ (Regulation 13) in relation to all of the payment services for which Kalnan would have permission if the application was granted.

4. DECISION MAKER

- 4.1. The decision which gave rise to the obligation to give this Final Notice was made by Lucy McClements, Head of Department in the Authorisations Division on behalf of the Regulatory Transactions Committee ("RTC"), in accordance with the provisions on "non-responder" cases as set out in the terms of reference of that Committee.

5. IMPORTANT NOTICES

- 5.1. Schedule 5, paragraph 7 of the PSRs applies certain provisions of the Financial Services and Markets Act ("the Act"). This Final Notice is therefore issued pursuant to paragraph 7 of Schedule 5 of the PSRs and section 390(1) of the Act.

Publication

- 5.2. Pursuant to paragraph 7 of Schedule 5 of the PSRs, 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 FSA must publish such information about the matter to which the Final Notice relates as the FSA considers appropriate, and in such manner as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to Kalnan or prejudicial to the interests of consumers.
- 5.3. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

- 5.4. For more information concerning this matter generally, please contact Jonathan Bromberger, Manager, non-FSMA Team at the FSA (direct line 020 7066 9080 / email: jonathan.bromberger@fsa.gov.uk)

Lucy McClements
on behalf of the Regulatory Transactions Committee