



Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London
E14 5HS

Tel: +44 (0)20 7066 1000
Fax: +44 (0)20 7066 1099
www.fca.org.uk

FINAL NOTICE

Marlin Commercial Limited
Enterprise House
202-206 Linthorpe Road
Middlesbrough
TS1 3QW

16 June 2017

ACTION

1. By an application dated 27 October 2015 Marlin Commercial Limited ("MCL") applied under section 55A of the Act for Part 4A permission to carry on the regulated activity of credit broking.
2. MCL as part of the Application also applied to be registered to act as an arranger of consumer buy to let regulated mortgage contracts.
3. The Application is incomplete.
4. For the reasons listed below, the Authority has refused the Application.

SUMMARY OF REASONS

5. By its Warning Notice the Authority gave notice that it proposed to refuse the Application and that MCL was entitled to make representations to the Authority about that proposed action.

6. As no representations have been received by the Authority from MCL 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.
7. By its Decision Notice, the Authority gave MCL notice that it had decided to take the action described above.
8. MCL had 28 days from the date the Decision Notice was given to refer the matter to the Tribunal. No referral was made to the 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 MCL Final Notice of its refusal.
10. The Authority has decided to refuse the Application and to give this Final Notice as MCL has failed to provide the information required by the Authority and, in the absence of the information sought, the Authority cannot ensure that MCL will satisfy, and continue to satisfy, the threshold conditions set out in Schedule 6 of the Act.
11. MCL has failed to respond to four 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 12 week period; the last three requests included a statement to the effect that MCL must contact the Authority or the Authority would recommend to the RTC that they receive 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 ensure that MCL 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 MCL would fail to do so if the Application were to be granted.
14. The failure to provide the information raises concerns as to whether MCL:
 - i. can be effectively supervised by the Authority as required by threshold condition 2C;
 - ii. has appropriate human resources, given MCL'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.

DEFINITIONS

15. 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.

"the CCJs" means three County Court Judgments for debts totalling £24,774 that remained outstanding against MCL's only director.

"the Decision Notice" means the decision notice dated 4 May 2017 given to MCL by the Authority.

"the PRA" means the Prudential Regulation 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 29 March 2017 given to MCL by the Authority.

FACTS AND MATTERS

16. The Application on behalf of MCL (along with a Part V CF1 (Director) approval application for the sole director) was received by the Authority on 27 October 2015.

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

18. Details of all the relevant communications between the Authority and MCL are set out below.

19. On 23 November 2016 the Authority wrote to MCL by way of email and letter using contact details provided with the Application, and requested that the firm provide the following information by 2 December 2016 in support of the Application:

- i. MCL's Regulatory Business Plan;
- ii. regarding the sole director's outstanding CCJs:

- a. an explanation as to how he had addressed, or was addressing, the repayment of the CCJs;
 - b. confirmation as to when they would be repaid; and
 - c. confirmation as to whether he had any additional outstanding CCJ's.
 - iii. the date that the sole director returned to the UK from Spain.
20. On 13 December 2016 the Authority attempted to contact MCL using a telephone number provided with the Application. The call was not answered and a message was left requesting MCL provide the outstanding information and contact the Authority to discuss the Application.
21. On 14 December 2016 the Authority attempted to contact MCL using telephone numbers provided with the Application. The calls were not answered and a message was left requesting MCL provide the outstanding information and contact the Authority to discuss the Application.
22. Three weeks after the original request of 23 November 2016, the Authority had not received a response to its request for further information.
23. On 15 December 2016 the Authority wrote to MCL by way of email and letter using the contact details provided with the Application informing it that a failure to provide the outstanding information would result in the Application being determined based upon the information received to date and that this would result in a recommendation to the RTC that it give MCL a Warning Notice proposing to refuse the Application. No response was received to this correspondence by the stated deadline of 30 December 2016 (i.e. within fifteen days).
24. On 3 January 2017 the Authority wrote to MCL by way of email and letter using the contact details provided with the Application, noting the lack of a response to its previous correspondence of 23 November and 15 December 2016 and reiterating that a failure to provide the outstanding information would result in the Application being determined based upon the information received to date. This correspondence again noted that a failure to provide the outstanding information would result in a recommendation to the RTC that it give MCL a Warning Notice proposing to refuse the Application. No response was received to this letter by the stated deadline of 17 January 2017 (i.e. within fourteen days).
25. On 16 January 2017 MCL's only director contacted the Authority by way of telephone wherein he:
- i. explained that he had returned to the UK;
 - ii. stated that MCL was still working on its business plan; and
 - iii. requested an extension of two weeks to provide the outstanding information.

The Authority made MCL aware that it would be in contact to provide a new deadline.

26. On 18 January 2017 the Authority wrote to MCL by way of email and letter using the contact details provided with the Application and noted the lack of a response to its previous correspondence of 23 November, 15 December 2016 and 3 January 2017 and reiterated that a failure to provide the outstanding information would result in the Application being determined based upon the information received to date. This correspondence again noted that a failure to provide the outstanding information would result in a recommendation to the RTC that it give MCL a Warning Notice proposing to refuse the Application. No response was received to this correspondence by the stated deadline of 1 February 2017 (i.e. within fourteen days).
27. On 24 January 2017 the Authority wrote to MCL by way of email to remind it that the information requested remained outstanding and it should be provided by 1 February 2017. This communication also made it clear that a failure to provide the outstanding information would result in a recommendation to the RTC that it give MCL a Warning Notice proposing to refuse the Application. No response was received to this correspondence by the stated deadline.

IMPACT ON THRESHOLD CONDITIONS

28. The regulatory provisions relevant to this Final Notice are referred to in Annex A.
29. MCL has failed to respond to four 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 12 week period; the last three requests included a statement to the effect that MCL must contact the Authority or the Authority would recommend to the RTC that they receive a Warning Notice.
30. 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 ensure that MCL satisfies, and will continue to satisfy, the threshold conditions.
31. 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 MCL would fail to do so if the Application were to be granted.
32. The failure to provide the information raises concerns as to whether MCL:
 - i. can be effectively supervised by the Authority as required by threshold condition 2C;
 - ii. has appropriate human resources, given MCL'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.

IMPORTANT NOTICES

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

Publication

34. 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.

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

Authority contacts

36. For more information concerning this matter generally, contact Sharika Nightingale, Manager, Lending & Intermediaries at the Authority (direct line: 020 7066 0244/ email: sharika.nightingale@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

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 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) 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.