



Financial Services Authority

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## **FINAL NOTICE**

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**Mass Pays Ltd**  
**14 -18 Heddons Street**  
**London**  
**W1B 4DA**

10 May 2012

### **ACTION**

1. By an application received by the FSA on 06 December 2010 (“the Application”) Mass Pays Ltd (“Mass”) applied under Regulation 12 of the Payment Services Regulations 2009 (“the PSRs”) for registration as a small payment institution and to perform the following payment services:
  - (1) Money Remittance
2. The Application is incomplete.
3. For the reasons listed below and pursuant to Regulation 13 of the PSRs, the FSA has refused the Application.

### **SUMMARY OF REASONS**

4. By its Warning Notice dated 22 December 2011 (“the Warning Notice”) issued pursuant to Regulation 9(7) of the PSRs, (as modified by Regulation 14), the FSA

gave notice that it proposed to refuse the Application and that Mass was entitled to make representations to the FSA about that proposed action.

5. As no representations have been received by the FSA from Mass 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.
6. By its Decision Notice dated 22 March 2012 ("the Decision Notice"), the FSA gave Mass notice that it had decided to take the action described above.
7. Under section 133(1) of the Act, Mass 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 FSA, having decided to refuse the Application and there having been no reference of that decision to the Tribunal, must give Mass Final Notice of its refusal.
9. The FSA decided to refuse the Application and to give this Final Notice as Mass has failed to provide the information required by the FSA, and the FSA has accordingly concluded that Mass does not meet the 'Conditions for registration as a small payment institution' set out in Regulation 13 of the PSRs on the basis that Mass has failed to demonstrate that its head office, registered office or place of residence, is in the United Kingdom.

## **DEFINITIONS**

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

"the PSRs" means the Payment Services Regulations 2009

"the FSA" means the Financial Services Authority

"the Act" means the Financial Services and Markets Act 2000 (as modified and applied by the PSRs)

## **FACTS AND MATTERS**

11. The Application for registration as a small payment institution, made under the PSRs, was received on 06 December 2010.
12. Further information was requested from Mass to complete the Application but the applicant has not responded. Details of all the communications between the FSA and Mass are set out below:

- (1) On 11 May 2011 the FSA sent an email to Mass (using the email address provided in the Application) requesting further information in respect of Mass' application. This included seeking:
  - a. Mass' HMRC registration number (as confirmation that Mass had complied with the requirement for registration with HMRC under the Money Laundering Regulations 2007) – Mass had failed to provide this information in response to the relevant question in the Application;
  - b. Mass' brief business model/plan;
  - c. Mass' fraud management controls;
  - d. Mass' complaints procedures; and
  - e. confirmation of Mass' proposed plan in respect of the safeguarding provisions.
- (2) No response having been received, a further email was sent to Mass at the same address on 10 August 2011. In that email the FSA:
  - a. noted that the Application remains incomplete;
  - b. noted that the FSA is required to determine an incomplete application within 12 months of its receipt;
  - c. stated that, in the absence of a full response to the outstanding queries, the FSA would recommend that the application be refused; and
  - d. stated that a refusal of the Application would result in the issuing of a Warning Notice, on which Mass would be entitled to make representations.
- (3) The FSA also made a telephone call to the landline number provided in the Application on 10 August 2011 and left a message with Mass' receptionist.
- (4) No response having been received, further telephone calls were made by the FSA to the same landline number on 19 August 2011 and 22 August 2011 and message left with Mass' receptionist.
- (5) No responses having been received, the FSA made a further telephone call to the same landline number on 31 August 2011 but a "number unavailable" message was heard. The FSA also attempted to contact Mass using the mobile number provided in the Application, but the telephone was not answered.
- (6) Subsequent attempts were also made to contact Mass through EA Associates (UK) LLP, the firm which submitted the application on its behalf. Michael Michaelides of EA Associates (UK) LLP undertook to

contact Mr. Novichkov. On 26 September 2011 he advised the FSA by email that his attempts to contact Mass by email had been unsuccessful. On 3 October 2011 he advised by telephone that his further attempts to contact Mass had not been successful; he also suggested that the application be cancelled, but stated that he was not authorised to speak on behalf of Mass.

(7) Following these various (unsuccessful) attempts by the FSA to make contact with Mass, on 04 October 2011 the FSA wrote to Mass at the address of its registered office. The letter was sent special delivery. In that letter the FSA:

- a. referred to its outstanding queries sent by email of 11 May 2011;
- b. noted that the FSA is required to determine an incomplete application within 12 months of its receipt;
- c. stated that, in the absence of full response to the outstanding queries, the FSA would recommend that the Application be refused; and
- d. stated that a refusal of the Application would result in the issuing of a Warning Notice, on which Mass would be entitled to make representations.

(8) No response having been received, on 25 October 2011 the FSA wrote to Mass at the postal address provided in the Application. In that letter the FSA:

- a. referred to its outstanding queries;
- b. noted that the FSA is required to determine an incomplete application within 12 months of its receipt;
- c. stated that, in the absence of a full response to the outstanding queries, the FSA would determine the Application on the basis of the incomplete information provided;
- d. noted that Mass' failure to respond to the FSA's queries raises significant doubts as to the accuracy of the address/contact details provided to the FSA in the Application;
- e. noted the FSA's view that Mass had not demonstrated its compliance with regulation 13(5) of the PSRs; and
- f. stated that, in light of the above matters, the FSA would look to recommend refusal of the Application, which would result in the issuing of a Warning Notice if the recommendation was accepted by the decision-maker.

(9) The letters dated 04 October 2011 and 25 October 2011 that were sent by special delivery to Mass have each been returned to the FSA marked 'addressee gone away'. All attempts to contact Mass have proven unsuccessful.

13. The FSA has not received a substantive response to any of the communications set out above.

## **CONCLUSIONS**

14. Pursuant to Regulation 13(1) of the PSRs the FSA may refuse an application for registration as a small payment institution if any of the conditions in paragraphs (2) – (6) of Regulation 13 are not met. The Regulations and FSA guidance relevant to this Final Notice are referred to in Annex A.
15. The FSA considers that an applicant's head office is the location of the firm's central management and control, which includes the directors and other senior management and central administrative functions of the firm.
16. On the basis of the facts and matters described above, Mass has failed to respond substantively to the FSA's questions. Mass' failure to respond to the FSA's questions raises significant doubts that the address/contact details provided are accurate and that Mass' central management, administrative functions and head office are in the UK.
17. Mass has therefore failed to meet the condition in Regulation 13(5) that requires that its "head office, registered office or place of residence, as the case may be, must be in the United Kingdom".

## **IMPORTANT NOTICES**

18. This Final Notice is given to Mass pursuant to Schedule 5 Part 1 (7) of the PSRs (which incorporates section 390(1) of the Act).

## **Publication**

19. 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. The information may be published 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 Mass or prejudicial to the interests of consumers.

**FSA contacts**

20. For more information concerning this matter generally, contact Jonathan Bromberger, Manager, PSD Team at the FSA (direct line: 020 7066 9080 /email: [jonathan.bromberger@fsa.gov.uk](mailto:jonathan.bromberger@fsa.gov.uk)).

**Sharon Campbell**  
**on behalf of the Regulatory Transactions Committee**

## **ANNEX A – REGULATORY PROVISIONS RELEVANT TO THIS FINAL NOTICE**

### **Relevant Statutory Provisions**

#### ***The Payment Services Regulations 2009***

1. Regulation 9(2) of the PSRs (as applied by regulation 14 to applications for registration as an SPI) provides that the Authority may determine an incomplete application if it considers it appropriate to do so, and it must in any event determine any such application within 12 months beginning with the date on which it received the application.
2. Regulation 12(1) requires an application for registration as a small payment institution to contain, or be accompanied by, the information required by the FSA.
3. 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.
4. 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.
5. Regulation 13(2) states that the application must comply with the requirements of, and any requirements imposed under, regulation 12.
6. Regulation 13(5) requires that the applicant's head office, registered office or place of residence, as the case may be, must be in the United Kingdom.
7. Regulation 13(6) requires that the applicant must comply with a requirement of the Money Laundering Regulations 2007 to be included in a register maintained under those Regulations where such a requirement applies to the applicant.
8. Regulation 14 provides for regulations 7 to 11 to apply to registration as an SPI as they apply to authorisation as a payment institution (subject to certain modifications).
9. Schedules 5, Part 1 (7) states that Part 26 of the Act applies with the modifications detailed.

#### ***The Act (ie the Financial Services and Markets Act 2000)***

10. Part 26 section 390(1) states that if the FSA has given a person a Decision Notice and the matter was not referred to a Tribunal within the time required by the Tribunal Procedure Rules, the FSA must give the person concerned a Final Notice.
11. Part 26 section 391(4) states that the FSA must publish such information about the matter to which a final notice relates as it considers appropriate.

12. Part 26 section 391(6) states that the FSA may not publish information if publication would, in its opinion, be unfair to the person with respect to whom the action was taken or prejudicial to the interests of consumers.
13. Part 26 section 391(7) states that information is to be published in such a manner as the FSA considers appropriate.

## **Relevant Guidance**

### ***“The FSA’s role under the Payment Services Regulations 2009 – Our approach”***

14. 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’. The version of the ‘Our approach’ document current at the date of the application was dated May 2010..
15. The paragraphs relevant to the refusal of the Application are set out below (references to ‘we’ are references to the FSA).
16. Paragraph 3.7: At any time after receiving an application for authorisation or registration (or a variation of either of these) and before determining it, we can require the applicant to provide such further information as we reasonably consider necessary to enable us to determine the application
17. Paragraph 3.91: The location of the head office, registered office, or principal place of business is to be supplied as part of the contact details.
18. Paragraph 3.97: We have to make a decision on a complete application within three months of receiving it. An application is complete when we have received all the information and evidence needed for us to make a decision. We will let the applicant know if we need more information.
19. Paragraph 3.98: In the case of an incomplete application, we must make a decision within 12 months of receipt. However, if that date is reached and discussions with the firm have not resulted in us receiving all the information we need to make our decision, it is likely that an incomplete application will result in a refusal. This is because it is unlikely we will have been able to satisfy ourselves that the applicant has met the authorisation/registration requirements.
20. Paragraph 3.105: We can refuse an application when the information and evidence provided does not satisfy the requirements of the PSRs. When this happens we are 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.