
FINAL NOTICE

MBG Scotland Limited

6 July 2023

ACTION

1. By an application dated 27 October 2022 ("the Application"), MBG Scotland Limited ("MBG" or "the Applicant") 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; and
 - b. Credit Broking, limited to secondary broking.
2. The Application is incomplete.
3. The Authority has refused the Application as it cannot ensure that MBG will satisfy, and continue to satisfy, the threshold conditions set out in Schedule 6 of the Act.

SUMMARY OF REASONS

4. The Applicant has failed to respond substantively, or at all, to information requests which the Authority considers to be necessary to the determination of the Application. The Authority last issued a request to the Applicant on 5 January 2023 which included a statement to the effect that the Applicant must contact the Authority within 10 business days, otherwise the Authority would recommend to the Executive Decision Maker that a Warning Notice should be issued to the Applicant. No response was received.
5. The Authority must therefore seek a determination on the information available and received to date. Having reviewed that information, the Authority cannot be assured that the Applicant satisfies, and will continue to satisfy, the threshold conditions.
6. The failure of the Applicant to provide the requested information raises concerns as to whether the Applicant:
 - a. can be effectively supervised by the Authority, as required by threshold condition 2C;

- b. has appropriate financial and non-financial resources given its failure to provide the Authority with the requested information in a timely manner, as required by threshold condition 2D; and
 - c. is able to conduct business with integrity and in a manner that is compliant with regulatory standards, as required by threshold condition 2E.
7. By its Warning Notice the Authority gave notice that it proposed to refuse the Application and that MBG was entitled to make representations to the Authority about that proposed action. No representations were received.
8. By its Decision Notice dated 24 May 2023, the Authority gave MBG notice that it had decided to take the action described above. MBG 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. 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 MBG a Final Notice of its refusal.

DEFINITIONS

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.

“MBG” or “the Applicant” means MBG Scotland Limited.

“the Outstanding Information” means the information requested in paragraph 12 below.

“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.

“the Tribunal” means the Upper Tribunal (Tax & Chancery Chamber).

FACTS AND MATTERS

9. The Application was received by the Authority on 27 October 2022. After an initial assessment of the Application on 1 November 2022, it was deemed incomplete.
10. The Authority requested further information from the Applicant under section 55U(5) of the Act. Details of all relevant communications between the Authority and the Applicant are set out below.

11. On 1 December 2022, the Authority held a call with the Applicant to notify it of the additional information the Authority required in order to assess the Application. During the call, the Applicant advised that the company was short staffed but agreed to provide a response by 9 December 2022.
12. On the same date, the Authority emailed the Applicant to confirm the requested information and provided a response deadline of 9 December 2022. The information requested (“the Outstanding Information”) is as follows:
 - a. a standard DBS check for the Applicant’s directors;
 - b. the Applicant’s financial forecasts for its regulated business;
 - c. confirmation of the projected consumer credit income included in the Application;
 - d. whether the Applicant undertook any unregulated financial services activities;
 - e. the business rationale for seeking limited permission credit broking;
 - f. whether the Applicant intended to approve any financial promotions on behalf of others;
 - g. whether the Applicant had used a compliance consultant to support its application; and
 - h. a request to remove misleading wording on the Applicant’s website.
13. The Authority received no response to the email dated 1 December 2022. The Authority then made two phone calls to the Applicant on 9 December 2022:
 - a. The first call was answered by an individual on the front desk who advised that the relevant contact was on leave until 19 December 2022.
 - b. A second call was held with the Applicant’s complaints contact who advised that a response to the email dated 1 December 2022 would be provided by 12 December 2022. The Authority agreed to extend the deadline to 12 December 2022.
14. Following the calls, the Authority provided the Applicant with a copy of the email it sent on 1 December 2022, extending the original response deadline to 12 December 2022. The subsequent correspondence with the Applicant is set out below:
 - a. On 12 December 2022, the Applicant notified the Authority that it was still working on a response.
 - b. On 13 December 2022, the Authority replied requesting that the information be provided by 14 December 2022.
 - c. On 14 December 2022, a non-substantive response was received from the Applicant to the Authority’s chaser request issued on 13 December 2022.
 - d. On 20 December 2022, the Authority emailed the Applicant again requesting a response to be provided by 23 December 2022.

- e. On 23 December 2022, no response had been received to the Authority's second chaser request dated 20 December 2022.
15. On 5 January 2023, the Authority issued a letter to the Applicant via email and recorded delivery, highlighting a lack of response to its requests for information and informing the Applicant that failure to provide this information would result in the Application being determined on the information received to date. The letter also explained that this could result in the Authority issuing the Applicant with a Warning Notice proposing to refuse the Application. A response deadline of 10 business days was provided, expiring on 19 January 2023.
 16. By 19 January 2023, the Authority had not received a response from the Applicant.
 17. The Applicant failed to provide the Outstanding Information as outlined below:
 - a. No response was received by 9 December 2022 to the Authority's initial information request dated 1 December 2022.
 - b. Non-substantive response received on 12 December 2022 to the extended deadline for the initial information request.
 - c. Non-substantive response received on 14 December 2022 to chaser request issued by the Authority on 13 December 2022.
 - d. No response received by 23 December 2022 to second chaser request issued by the Authority on 20 December 2022.
 - e. No response received by 19 January 2023 to non-responder letter issued by the Authority on 5 January 2023.
 18. On 13 March 2023, the Authority issued a Warning Notice to the Applicant with a deadline of 10 business days for representations to be made. This deadline expired on 27 March 2023 by which date no representations were received.
 19. On 24 May 2023, the Authority issued a Decision Notice to the Applicant with a deadline of 28 days for MBG to refer the matter, to which the Decision Notice relates, to the Tribunal. No such reference was made within this period.

IMPACT ON THE THRESHOLD CONDITIONS

The regulatory provisions relevant to this Final Notice are referred to in **Annex A**.

20. The Applicant has failed to respond to 5 separate requests for the provision of information considered by the Authority to be necessary to allow the Application to be assessed and determined. The final request allowed the Applicant 10 business days to respond, and included a statement to the effect that the Applicant must contact the Authority, failing which the Authority would recommend to the Executive Decision Maker that a Warning Notice should be issued to the Applicant.
21. 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 received that information, the Authority cannot ensure that the Applicant satisfies, and will continue to satisfy, the threshold conditions.

22. Authorised firms (including those seeking authorisation) are expected to engage with the Authority in an open and cooperative way. The apparent failure to provide the requested information raises concerns that the Applicant would fail to do so if the Application were to be approved.
23. In light of the facts and matters set out above and for the reasons set out below, the Authority cannot ensure that, if the Application were granted, MBG would satisfy, and continue to satisfy, threshold conditions 2C, 2D and 2E, and accordingly has refused the application.

24. PROCEDURAL MATTERS

Important Notices

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

Publication

26. 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.
27. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Authority contacts

28. For more information concerning this matter generally, contact Donna Finlayson, Manager, Credit & Lending Department at the Authority (direct line: 020 7066 7618 / email: Donna.Finlayson3@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 that relate to the current application are set out in Part 2 of Schedule 6 to the Act. In brief, the threshold conditions relate to:
 - (1) Threshold condition 2C: Effective supervision
 - (2) Threshold condition 2D: Appropriate resources
 - (3) Threshold condition 2E: Suitability

Relevant provisions of the Authority’s Handbook

Threshold Conditions - COND

4. In exercising its powers in relation to the granting of a Part 4A permission, the Authority has regard to guidance published in the Authority’s Handbook, including the part entitled ‘Threshold Conditions’ (“COND”). Provisions relevant to the consideration of the current application include those set out below.

General guidance

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. Under COND 1.3.3AG, 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 FCA threshold conditions, the FCA 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 FCA threshold conditions, the FCA 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 the Act (Persons connected with an applicant). For example, a firm’s controllers, its directors or

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

Threshold condition 2C: Effective supervision

9. COND 2.3.3G states that, when the FCA is assessing threshold condition 2C, factors which the FCA will take into consideration include, among other things, whether:

- (1) it is likely that the FCA will receive adequate information from the firm, and those persons with whom the firm has close links, to enable it to determine whether the firm is complying with the requirements and standards under the regulatory system for which the FCA 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 FCA;
- (2) the structure and geographical spread of the firm, the group to which it belongs and other persons with whom the firm has close links, might hinder the provision of adequate and reliable flows of information to the FCA; factors which may hinder these flows include the fact there may be branches or connected companies in territories which supervise companies to a different standard or territories with laws which restrict the free flow of information, although the FCA will consider the totality of information available from all sources; and
- (4) in respect of a firm not carrying on, or seeking to carry on, a PRA-regulated activity, it is possible to assess with confidence the overall financial position of the group at any particular time; factors which may make this difficult include lack of audited consolidated accounts for a group, if companies in the same group as the firm have different financial years and accounting dates and if they do not share common auditors.

Threshold condition 2D: Appropriate resources

10. COND 2.4.2G(2) states that the FCA 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(3) states that high level systems and control requirements are in SYSC. The FCA 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 threshold condition 2D.

12. COND 2.4.2G(4) states that detailed financial resources requirements are in the relevant section of the Prudential Standards part of the FCA Handbook, including specific provisions for particular types of regulated activity. The FCA will consider whether firms (other than firms carrying on, or seeking to carry on, PRA-regulated

activities) are ready, willing and organised to comply with these requirements when assessing if they have appropriate financial resources for the purposes of 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 threshold condition 2E. 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) states that examples of the kind of general considerations to which the FCA 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:
 - (a) conducts, or will conduct, its business with integrity and in compliance with proper standards;
 - (b) has, or will have, a competent and prudent management; and
 - (c) can demonstrate that it conducts, or will conduct, its affairs with the exercise of due skill, care and diligence.