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## **FINAL NOTICE**

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**Noisnep Capital Limited  
34 Howard Business Park  
Howard Close  
Waltham Abbey  
Essex  
EN9 1XE**

**12 January 2018**

### **ACTION**

1. By an application dated 23 November 2015 NCL applied under section 55A of the Act for Part 4A permission to carry on the regulated activities of 'Entering into a regulated credit agreement as Lender (excluding high-cost short-term credit, bill of sale agreement, and home collected credit agreement)' and 'Exercising/having right to exercise lender's rights and duties under a regulated credit agreement (excluding high-cost short-term credit, bill of sale agreement, and home collected credit agreement)'.
2. The Application is complete.
3. For the reasons listed below, the Authority has refused the Application.

### **SUMMARY OF REASONS**

4. By its Warning Notice dated 6 October 2017 the Authority gave notice that it proposed to refuse the Application and that NCL was entitled to make representations to the Authority about that proposed action.
5. As no representations were received by the Authority from NCL 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 applied, 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 NCL notice that it had decided to take the action described above.
7. NCL 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 NCL Final Notice of its refusal.
9. For the reasons set out herein, the Authority cannot ensure that NCL will satisfy, and continue to satisfy, the threshold conditions set out in schedule 6 of the Act.
10. In particular, the Authority considers that it cannot ensure, if the Application were granted, NCL would satisfy, and continue to satisfy threshold conditions 2C (Effective supervision), 2D (Appropriate resources) and 2E (Suitability). This is based on:
  - i. Mr Say, the sole director of NCL, was convicted on 21 July 2017 at Chelmsford Crown Court of fraud (contrary to section 1 of the Fraud Act 2006) and fraudulent trading (contrary to section 993(1) of the Companies Act 2006). The conviction relates to a SIPP scheme set up and administered by Mr Say in which he, between 1 April 2010 and 20 January 2016, made personal use of over £1 million of assets invested by his clients. Mr Say was sentenced on 17 August 2017 to 6 years' imprisonment and was disqualified from acting as a company director for 8 years.
  - ii. NCL does not have sufficient non-financial (human) resources to manage the firm by virtue of the fact that as a consequence of his imprisonment and disqualification, Mr Say (the firm's sole director and human resource) is unable to control and manage his business (going to threshold condition 2D).
  - iii. Due to Mr Say's imprisonment and in the absence of any other personnel, it is unlikely that the FCA will receive adequate information from NCL required to determine whether the firm is complying with the relevant regulatory requirements and standards (going to threshold condition 2C).
  - iv. NCL's most recent accounts indicate that it does not have appropriate financial resources (going to threshold condition 2D).
  - v. On the basis of Mr Say's conviction, involving serious financial fraud against consumers committed over a recent period of approximately six years, NCL is not a fit and proper person (going to threshold condition 2E).
11. In light of the above, the Authority considers that NCL has not demonstrated that it is ready, willing and organised to comply with the regulatory regime and, accordingly, the Authority cannot ensure that, if the Application were granted, NCL would satisfy threshold conditions 2C (Effective supervision), 2D (Appropriate resources) and 2E (Suitability).

## **DEFINITIONS**

12. 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.

"Mr Say" means Mr Darren Say.

"NCL" means the applicant, Noisnep Capital Limited.

"the RBP" means the Regulatory Business Plan submitted by NCL on 2 March 2017.

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

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

"SIPP" means self-invested personal pension.

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

"the Warning Notice" means the Warning Notice dated 6 October 2017 given to NCL.

"the Decision Notice" means the Decision Notice dated 17 November 2017 given to NCL.

## **FACTS AND MATTERS**

### **Background to the firm**

13. NCL is a financial advisory firm specialising in pensions. The firm was incorporated on 11 March 2008 as RGP Consulting (UK) Limited (Companies House registration number 06529747), changing to its present name on 24 September 2015.

14. Between 11 November 2008 and 31 March 2014, NCL held a licence from the Office of Fair Trading. On 1 April 2014, NCL became regulated by the FCA (with interim permission reference 621681). NCL applied for full permission on 23 November 2015.

### **Overview of the firm's business**

15. NCL intends to act as a lender.

16. NCL's business model is understood to entail providing investment funding to clients to form the basis for SIPP schemes and its primary source of income is intended to be derived from fees charged to customers.

### **Mr Say's conviction for fraud and fraudulent trading**

17. In January 2016, Mr Say was charged with fraud by abuse of position contrary to section 1 of the Fraud Act 2006, and fraudulent trading, contrary to section 993(1) of the Companies Act 2006.
18. These offences relate to a SIPP scheme set up and administered by Mr Say in which he made personal use of assets invested by his clients, involving sums of over £1 million.
19. On 21 July 2017, Mr Say was convicted at Chelmsford Crown Court of the offences set out in paragraph 17 above. On 17 August 2017 Mr Say was sentenced for these offences to 6 years' imprisonment and disqualified from acting as a director for 8 years.

### **Lack of personnel**

20. Mr Say is sole director and controller of NCL and there are no other employees.
21. The Application included a CF1 and CF11 application for a third party. However, that third party is not and has never been listed with Companies House as a director of NCL and informed the Authority on 14 July 2016 that he was no longer associated with NCL. The RBP refers to Mr Say as the only approved person and, whilst it states that discussions for the appointment of new directors and key staff were ongoing during 2017, the Authority has not been made aware of any further personnel at NCL.

### **Financial resources**

22. NCL stated in its RBP that it has not traded since 2012 and that its income for 2016/2017 will therefore be nil.
23. Audited accounts have never been provided by NCL since the FCA took over regulation of the firm on 1 April 2014. NCL's current liabilities (£3,784,023) outweigh its current assets (£3,675,469).

### **IMPACT ON THE THRESHOLD CONDITIONS**

24. The regulatory provisions relevant to this Final Notice are referred to in Annex A.
25. In light of the facts and matters set out above and for the reasons set out below, the Authority cannot ensure that that, if the Application were granted, NCL will satisfy, and continue to satisfy, the threshold conditions 2C (Effective supervision), 2D (Appropriate resources) and 2E (Suitability).

### **Threshold Condition 2C (Effective Supervision)**

26. The Authority does not consider that NCL satisfies, and will continue to satisfy, the effective supervision threshold condition in light of the concerns identified in paragraphs 17 to 21 as regards the sole director's imprisonment (i.e. absence from the firm) and there being no other personnel.
27. In light of this, NCL has not satisfied the Authority that it will receive adequate information from NCL required to determine whether the firm is complying with relevant requirements and standards if the application were granted.

### **Threshold condition 2D (Appropriate resources)**

28. The Authority does not consider that NCL satisfies, and will continue to satisfy, the appropriate resources threshold condition in light of the concerns identified in paragraphs 17 to 21 as regards the sole director's imprisonment and disqualification (i.e. absence from the firm), and there being no other personnel to manage, control and run the business.
29. Further, in light of the concerns identified above in paragraphs 22 to 23 the Authority is not satisfied that the firm has the appropriate financial resources required in relation to the regulated activities it seeks to carry on if the application were to be granted.

### **Threshold condition 2E (Suitability)**

30. The Authority does not consider that NCL satisfies, and will continue to satisfy, the suitability threshold condition in light of the concerns identified above in paragraphs 17 to 19 as regards Mr Say's conviction for offences of fraud and fraudulent trading. The Authority notes that the offences committed by Mr Say can be categorised as financial crime involving dishonesty and were committed over a recent period of approximately 6 years.
31. The Authority considers that Mr Say's conviction raises significant concerns as to his suitability to carry out his role at NCL and the firm's fitness and propriety to carry on the regulated activities sought. The Authority considers that it cannot ensure that NCL will conduct its affairs in an appropriate manner, having regard in particular to the risks to consumers and (owing to Mr Say's absence) its inability to manage its business in such a way as to ensure that its affairs will be conducted in a sound and prudent manner.

### **IMPORTANT NOTICES**

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

### **Publication**

33. 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.
34. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

### **35. Authority contacts**

36. For more information concerning this matter generally, contact Kate Pitt, Manager, Authorisations at the Authority (direct line: 020 7066 0714/ email: [kate.pitt@fca.org.uk](mailto:kate.pitt@fca.org.uk)).

**David Fisher**  
**Chair of the Regulatory Transactions Committee**

## **ANNEX A – REGULATORY PROVISIONS RELEVANT TO THIS DECISION 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 of the Act. In brief, the threshold conditions relate to:
  - a) Threshold condition 2B: Location of offices
  - b) Threshold condition 2C: Effective supervision
  - c) Threshold condition 2D: Appropriate resources
  - d) Threshold condition 2E: Suitability
  - e) Threshold condition 2F: Business model

### **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. 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.
7. 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*

8. COND 2.3.1A provides that the firm must be capable of being supervised by the Authority having regard to all circumstances including the way in which the firm's business is organised.
9. COND 2.3.3G provides that, in assessing the threshold conditions 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, 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 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) states that paragraph 1A(2) of Schedule 6 to the Act provides that "non-financial resources" of a firm for the purposes of the threshold conditions include any systems, controls, plans or policies that the firm maintains and the human resources that the firm has available.
12. COND 2.4.4G(2)(d) states that relevant matters to which the Authority may have regard when assessing whether a firm will satisfy, and continue to satisfy, this threshold condition may include whether the firm has taken reasonable steps to identify and measure any risks of regulatory concern that it may encounter in conducting its business and has installed appropriate systems and controls and appointed appropriate human resources to measure them prudently at all times.

*Threshold condition 2E: Suitability*

13. COND 2.5.1A(1) states that the applicant must be a fit and proper person having regard to all the circumstances, including its:
  - a) connection with any person;
  - b) the need to ensure that the applicant's affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers and the integrity of the UK financial system;
  - c) whether those who manage the applicant's affairs have adequate skills and experience and act with probity; and



- d) the need to minimise the extent to which it is possible for the business carried on by the firm, or to be carried on by the firm, to be used for a purpose connected with financial crime.

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:

- a) the firm has been convicted, or is connected with a person who has been convicted, of any criminal offence; this must include, where provided for by the Rehabilitation Exceptions Orders to the Rehabilitation of Offenders Act 1974 or the Rehabilitation of Offenders (Northern Ireland) Order 1978 (as applicable), any spent convictions; particular consideration will be given to offences of dishonesty, fraud, financial crime or an offence under legislation relating to companies, building societies, industrial and provident societies, credit unions, friendly societies, banking, other financial services, insolvency, consumer credit companies, insurance, consumer protection, money laundering, market manipulation and insider dealing, whether or not in the United Kingdom; and
- b) the firm has developed human resources policies and procedures that are reasonably designed to ensure that it employs only individuals who are honest and committed to high standards of integrity in the conduct of their activities.