



Financial Conduct Authority

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FINAL NOTICE

Richard Barca
18 Carlisle Street
London
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12 July 2016

ACTION

1. By an application dated 31 March 2015, Mr Barca applied under section 55A of the Financial Services and Markets Act 2000 ("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 loan agreement, and home credit loan agreement) and Exercising or having the right to exercise the lender's rights and duties under a regulated credit agreement (excluding high-cost short-term credit, bill of sale loan agreement, and home collected credit loan agreement).
2. The Application was for the incorrect level of permission.
3. For the reasons listed below, the Authority has refused the Application.

SUMMARY OF REASONS

4. By its Warning Notice dated 10 February 2016 ("the Warning Notice") the Authority gave notice that it proposed to refuse the Application and that Mr Barca was entitled to make representations to the Authority about that proposed action.
5. As no representations have been received by the Authority from Mr Barca 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.
6. By its Decision Notice dated 17 March 2016 ("the Decision Notice"), the Authority gave Mr Barca notice that it had decided to take the action described above.
7. Mr Barca 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 Mr Barca Final Notice of its refusal.
9. The Authority decided to refuse the Application and to give this Final Notice as Mr Barca has failed to provide the information required by the Authority and, in the absence of the information sought, the Authority cannot ensure that Mr Barca will satisfy, and continue to satisfy, the threshold conditions set out in Schedule 6 of the Act.

DEFINITIONS

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

"Mr Barca" means Richard Barca, trading as a sole trader under that name.

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

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

FACTS AND MATTERS

11. The Application was received by the Authority on 31 March 2015.
12. Further information was requested from Mr Barca under section 55U(5) of the Act. Details of the relevant communications between the Authority and Mr Barca are set out below:

- a. On 31 March 2015, the Part 4A application of Mr Barca was received by the Authority.
- b. On 24 June 2015, the Authority telephoned Mr Barca and queried an anomaly between the application for limited permission lending permissions and the anticipated income to be received from these activities.
- c. The same day the Authority sent an email to Mr Barca acknowledging receipt of the application and confirming that the case had been allocated to a case officer. The email asked Mr Barca to consider whether he wished to apply for full permission lending permissions and, if so, to provide the following by 8 July 2015:
 - 1. The additional application fee;
 - 2. His regulatory business plan;
 - 3. An assessment of key business risks;
 - 4. His compliance procedures;
 - 5. Details of how he identifies and deals with vulnerable consumers;
 - 6. His forbearance policy; and
 - 7. Details of how he assesses affordability.
- d. On 24 June 2015 Mr Barca acknowledged receipt of the email.
- e. On 9 July 2015 the Authority called Mr Barca by telephone. The call note states that Mr Barca said during this conversation that he would apply for full permission and he and the Authority discussed the additional application fee for this. The Authority also asked Mr Barca about a disclosure he had made in his application and Mr Barca provided more details of this.
- f. On 9 July 2015 the Authority sent an email to Mr Barca asking him to provide the following by 30 July 2015:

1. The additional application fee;
 2. His regulatory business plan;
 3. An assessment of key business risks;
 4. His compliance procedures;
 5. Details of how he identifies and deals with vulnerable consumers;
 6. His forbearance policy; and
 7. Details of how he assesses affordability.
- g. No response was received by the Authority, so on 4 August 2015 the Authority sent an email to Mr Barca asking him to provide the following by 18 August 2015:
1. The additional application fee;
 2. His regulatory business plan;
 3. An assessment of key business risks;
 4. His compliance procedures;
 5. Details of how he identifies and deals with vulnerable consumers;
 6. His forbearance policy; and
 7. Details of how he assesses affordability.
- h. On 4 August 2015 Mr Barca replied by email, saying that he would either pay the fee and supply the information or withdraw the application.
- i. On 5 August 2015 the Authority sent an email to Mr Barca reminding him that he would have to cease carrying on all activities regulated by the Authority if he withdrew the application. The email said that if Mr Barca was not going to withdraw the application, he should pay the fee and supply the information previously requested by 18 August 2015.
- j. On 21 August 2015 the Authority attempted to call Mr Barca by telephone but was unable to make contact on the landline. The Authority then rang the mobile number provided in the application and left a message asking him to respond to the Authority's previous requests.
- k. On 21 August 2015 the Authority sent an email to Mr Barca informing him 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 might result in a recommendation to the RTC that it issue Mr Barca with a Warning Notice proposing to refuse the Application. The email asked for the requested information to be supplied by 4 September 2015 (i.e. within 14 days).

- l. On 21 August 2015 Mr Barca sent an email to the Authority, stating that he was on annual leave until 1 September 2015 and he would address the matter on his return.
 - m. On 21 August 2015 the Authority sent a second email to Mr Barca, reiterating its request for a substantive reply by 4 September 2015. No response was received to this email by the stated deadline.
 - n. On 10 September 2015 the Authority wrote to Mr Barca, noting the lack of a response to its previous email of 21 August 2015 and reiterating that a failure to provide the outstanding information would result in the application being determined based upon the information received to date. The letter again noted that a failure to reply might result in a recommendation to the RTC that it issue Mr Barca with a Warning Notice proposing to refuse the Application. The letter asked Mr Barca to respond by 23 September 2015 (i.e. within 13 days). The letter was sent by Special Delivery and was signed for as received on 11 September 2015. A copy of the letter was sent by email on 10 September 2015, although this email gave a different deadline of 24 September 2015 (i.e. within 14 days).
 - o. On the 10 September 2015 the Authority also attempted to contact Mr Barca by telephone, using both telephone numbers it had for him on its records. The Authority left a message on his mobile telephone.
 - p. On 14 September 2015 the Authority attempted to call Mr Barca by telephone. Mr Barca's mobile telephone was answered but it was not possible for the Authority to confirm the identity of the speaker. The call note however states that the individual did acknowledge receipt of the Authority's letter and deadline.
 - q. On 25 September 2015 the Authority called Mr Barca. He answered the telephone but said he was unable to speak and that he would call the Authority back.
 - r. On 28 September 2015 the Authority wrote to Mr Barca, noting the lack of a response to its previous letter of 10 September 2015 and reiterating that a failure to provide the outstanding information would result in the application being determined based upon the information received to date. The letter again noted that this might result in a recommendation to the RTC that it issue Mr Barca with a Warning Notice proposing to refuse the application. The letter was signed for as received on 29 September 2015. A copy of the letter was sent by email on 29 September 2015. No response was received to the letter by the stated deadline of 12 October 2015 (i.e. within 14 days).
 - s. On 6 October 2015 the Authority contacted Mr Barca by telephone. In this conversation he confirmed receipt of the Authority's previous letter and stated that he would reply within the deadline set. However no response was received from Mr Barca either before or after the deadline stated in the letter, i.e. 12 October 2015.
13. If Mr Barca had replied to the queries set out above, the Authority would have sought further information as to how he complies with relevant regulations, legislation, and meets the Threshold Conditions.

IMPACT ON THRESHOLD CONDITIONS

14. The regulatory provisions relevant to this Final Notice are referred to in Annex A.
15. By virtue of Mr Barca's failure to provide the requested information and to substantively reply to the Authority's correspondence, the Authority cannot ensure that Mr Barca satisfies, and will continue to satisfy, the following threshold conditions:

2C (Effective Supervision)

- i. Mr Barca's failure to provide the Authority with the requested information calls into question whether the Authority would be able to obtain (on an ongoing basis) sufficient information about Mr Barca's activities such that the Authority would be able to effectively supervise him.

2D (Appropriate Resources)

- ii. In failing to respond to the Authority's requests and correspondence in the manner set out above, Mr Barca has been unable to satisfy the Authority that he has the appropriate human resources.

2E (Suitability)

- iii. The failure by Mr Barca to supply the information requested means he is not being open and co-operative with the Authority or being ready, willing and organised to comply in his dealings with the Authority.
16. On the basis of the facts and matters described above, the Authority has concluded that Mr Barca will not satisfy, and continue to satisfy, the threshold conditions in relation to all of the regulated activities for which Mr Barca would have permission if the application was granted.

IMPORTANT NOTICES

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

Publication

18. 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.
19. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Authority contacts

20. For more information concerning this matter generally, contact Marta Lipska, Manager, Credit department at the Authority (direct line: 020 7066 0152 /email: marta.lipska@fca.org.uk).

Patricia Knox
on behalf 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 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’s Handbook, including the part titled Threshold Conditions (“COND”). The main considerations in relation to the action specified are set out below.

Principles for Businesses

5. PRIN 2.1.1R, Principle 11 states that a firm must deal with its regulators in an open and co-operative way, and must disclose to the appropriate regulator appropriately anything relating to the firm of which that regulator would reasonably expect notice.

Threshold Condition 2C: Effective Supervision

6. 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 they are 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 part of the Authority Handbook titled Supervision regarding the provision of information to the Authority.

Threshold condition 2D: Appropriate Resources

7. 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.
8. 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.
9. COND 2.4.4G(2) states that, when assessing whether a firm has appropriate resources, the Authority will have regard to matters including:
 - 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 to measure them prudently at all times.
 - whether the resources of the firm are commensurate with the likely risks it will face.

Threshold condition 2E: Suitability

10. 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.
11. COND 1.3.3BG provides that, in determining whether the firm will satisfy, and continue to satisfy, the Authority's threshold conditions, the Authority will have regard to all relevant matters, whether arising in the United Kingdom or elsewhere.
12. COND 2.5.3G(1) states that the emphasis of the threshold conditions set out in paragraphs 2E and 3D of Schedule 6 of the Act is on the suitability of the firm itself. The suitability of each person who performs a controlled function will be assessed by the Authority and/or the PRA, as appropriate, under the approved persons regime (see SUP 10 (Approved persons) and FIT). In certain circumstances, however, the Authority may consider that the firm is not suitable because of doubts over the individual or collective suitability of persons connected with the firm.
13. 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
- whether the resources of the firm are commensurate with the likely risks it will face.
- the governing body of the firm is made up of individuals with an appropriate range of skills and experience to understand, operate and manage the firm's regulated activities;
- the governing body of the firm is made up of individuals with an appropriate range of skills and experience to understand, operate and manage the firm's regulated activities;
- the firm has taken reasonable care to ensure that robust information and reporting systems have been developed, tested and properly installed;
- the firm has in place appropriate systems and controls against financial crime, including, for example, money laundering;