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## **FINAL NOTICE**

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**To:** **South Kintyre Credit Union Limited**

**Address:** **25 Longrow  
Campbeltown  
PA28 6ER**

**FRN:** **213867**

**Dated:** **22 August 2017**

### **ACTION**

1. For the reasons set out in this Final Notice, the Authority hereby takes the following action against SKCUL.
2. The Authority issued to SKCUL the Decision Notice which notified SKCUL that, for the reasons given below and pursuant to section 55J of the Act, the Authority had decided to cancel SKCUL's Part 4A permission.
3. SKCUL has not referred the matter to the Tribunal within 28 days of the date on which the Decision Notice was given to SKCUL.
4. Accordingly, the Authority has today cancelled SKCUL's Part 4A permission.

## **DEFINITIONS**

5. The definitions below are used in this Final Notice (and in the Annex):

“the Act” means the Financial Services and Markets Act 2000;

“the Authority” means the Financial Conduct Authority;

“the Decision Notice” means the Decision Notice given by the Authority to SKCUL dated 27 April 2017;

“EG” means the Enforcement Guide;

“the FSCS” means the Financial Services Compensation Scheme;

“FSN” means First Supervisory Notice;

“the Handbook” means the Authority’s Handbook of rules and guidance;

“the PRA” means the Prudential Regulation Authority;

“the Principles” means the Authority’s Principles for Businesses;

“SKCUL” means South Kintyre Credit Union Limited;

“SKCUL’s Part 4A permission” means the permission granted by the Authority to SKCUL pursuant to Part 4A of the Act;

“the suitability Threshold Condition” means the threshold condition set out in paragraph 3D of Schedule 6 to the Act;

“SUP” means the section of the Handbook entitled ‘Supervision Manual’;

“the Threshold Conditions” means the threshold conditions set out in Schedule 6 to the Act;

“the Tribunal” means the Upper Tribunal (Tax and Chancery Chamber); and

“the Warning Notice” means the Warning Notice given by the Authority to SKCUL dated 30 March 2017.

## **RELEVANT STATUTORY PROVISIONS**

6. The statutory and regulatory provisions relevant to this Final Notice are set out in the Annex.

## **FACTS AND MATTERS RELIED ON**

7. SKCUL became regulated by the Authority on 2 July 2002 and also by the PRA on 1 April 2013.
8. A FSN was issued to SKCUL on 29 October 2010 which varied SKCUL’s permission by removing SKCUL’s only regulated activity such that SKCUL was unable to conduct any regulated business. On 26 November 2010, the FSCS declared SKCUL “in default” and its depositors were compensated by the FSCS for their savings. Since 29 October 2010 to date, SKCUL has continued to be authorised and to hold a Part 4A permission (albeit the permission is empty).

9. Correspondence sent by the Authority on 1 February 2017 and 15 February 2017 to the postal address last notified by SKCUL to the Authority as SKCUL's principal place of business was returned to the Authority marked "addressee gone away".
10. SKCUL has never provided a telephone number or email address to the Authority.
11. Accordingly, it appears to the Authority that SKCUL has failed to notify the Authority of a change in the address of its principal place of business.

#### **FAILINGS**

12. The Authority has concluded, on the basis of the facts and matters described above, that SKCUL:
  - a. has failed to notify the Authority of a change in the address of its principal place of business, contrary to SUP 15.5.4R(1);
  - b. has failed to deal openly and co-operatively with the Authority, in breach of Principle 11 (Relations with regulators) of the Principles (by not providing an up-to-date address for its principal place of business);
  - c. has not demonstrated that it is ready, willing and organised to comply with the requirements and standards under the regulatory system, namely the requirement in SUP 15.5.4R(1) to give the Authority reasonable advance notice of a change in the firm's principal place of business and the date of the change;
  - d. has therefore failed to satisfy the Authority that it is a fit and proper person, having regard to the operational objectives of the Authority; and
  - e. is therefore failing to satisfy the suitability Threshold Condition,and accordingly, SKCUL's Part 4A permission should be cancelled.

#### **DECISION MAKER**

13. The decision which gave rise to the obligation to give this Final Notice was made by the Regulatory Decisions Committee.

#### **IMPORTANT**

14. This Final Notice is given to SKCUL in accordance with section 390(1) of the Act.

#### **Publicity**

15. The Authority must publish such information about the matter to which this Final 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 SKCUL or prejudicial to the interest of consumers.
16. The Authority intends to publish this Final Notice and such information about the matter to which this Final Notice relates as it considers appropriate.

**Authority Contact**

17. For more information concerning this matter generally, SKCUL should contact Dilip Vekariya at the Authority (direct line: 020 7066 5520).

**John Kirby**  
**Enforcement and Market Oversight Division**

## **ANNEX**

### **RELEVANT STATUTORY PROVISIONS**

1. The Authority's operational objectives established in section 1B of the Act include protecting and enhancing the integrity of the UK financial system and securing an appropriate degree of protection for consumers.
2. The Authority is authorised by section 55J of the Act to cancel an authorised person's Part 4A permission, where it appears to the Authority that such a person is failing to satisfy the Threshold Conditions.
3. The suitability Threshold Condition provides, in relation to a person ("B") carrying on or seeking to carry on regulated activities which consist of or include a PRA-regulated activity, that:
  - "(1) B must be a fit and proper person, having regard to the operational objectives of the [Authority].
  - (2) The matters which are relevant in determining whether B satisfies the conditions in sub-paragraph (1) include-
    - (d) whether B has complied and is complying with requirements imposed by the [Authority] in the exercise of its functions, or requests made by the [Authority], relating to the provision of information to the [Authority] and, where B has so complied or is so complying, the manner of that compliance;

[...]."

### **RELEVANT HANDBOOK PROVISIONS**

4. In exercising its power to cancel a firm's Part 4A permission, the Authority must have regard to the regulatory requirements and guidance published in the Handbook and in regulatory guides, such as EG. The relevant main considerations in relation to the action specified above are set out below.

#### **Relevant Principle**

5. Principle 11 requires a firm to deal with its regulators in an open and co-operative way, and to disclose to the Authority appropriately anything relating to the firm of which the Authority would reasonably expect notice.

#### **Relevant Rule**

6. SUP 15.5.4R requires that:

"A *firm* must give the [Authority] reasonable advance notice of a change in any of the following addresses, and give details of the new address and the date of the change:

  - (1) the *firm's* principal place of business in the *United Kingdom*;

[...]."

## **Guidance concerning the suitability Threshold Condition**

7. Guidance on the suitability Threshold Condition is set out in COND.

### COND 2.5 – Suitability: Paragraph 3D of Schedule 6 to the Act

8. COND 2.5.1CUK reproduces the relevant statutory provision that a person concerned must be a fit and proper person having regard to the operational objectives of the FCA, including, amongst other things, the need to ensure that it has complied and is complying with requirements imposed by the Authority in the exercise of its functions.
9. COND 2.5.2G states that the Authority will take into consideration anything that could influence a firm's continuing ability to satisfy the suitability Threshold Condition.
10. COND 2.5.6G gives 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, the suitability Threshold Condition, including whether:
- the firm has been open and co-operative in all its dealings with the Authority and is ready, willing and organised to comply with the requirements and standards under the regulatory system (COND 2.5.6G(1));
  - the firm has contravened, amongst other things, the provisions of the regulatory system, which include the Principles and other rules (COND 2.5.6G(4)).

## **OTHER RELEVANT REGULATORY PROVISIONS**

11. The Authority's policy in relation to its enforcement powers is set out in EG, certain provisions of which are summarised below.

### **Cancelling a firm's Part 4A permission on the Authority's own initiative**

12. EG 8.1.1(1) provides that the Authority may use its own initiative power to vary or cancel the permission of an authorised person under section 55J of the Act, where the person is failing or is likely to fail to satisfy the Threshold Conditions for which the Authority is responsible.
13. EG 8.5.1(1) states that the Authority will consider cancelling a firm's Part 4A permission using its own initiative power contained in section 55J of the Act in circumstances where the Authority has very serious concerns about the firm, or the way its business is or has been conducted.
14. EG 8.5.2 provides examples of the types of circumstances in which the Authority may cancel a firm's Part 4A permission. One such example is the failure to provide the Authority with valid contact details or failure to maintain the details provided, such that the Authority is unable to communicate with the firm (EG 8.5.2(6)).