



Financial Services Authority

FIRST SUPERVISORY NOTICE

To: **Edinburgh Hackney Cab Trade Credit Union Limited**

Of: **18 Forth Street
Edinburgh
EH1 3LH**

Dated: **29 January 2010**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (the "FSA") has taken the following action

1. ACTION

- 1.1 For the reasons listed below and pursuant to section 45 of the Financial Services and Markets Act 2000 (the "Act"), the FSA has varied the permission granted to Edinburgh Hackney Cab Trade Credit Union Limited ("Edinburgh CU") pursuant to Part IV of the Act ("Edinburgh CU's Part IV permission") by removing its regulated activity with immediate effect. Accordingly, Edinburgh CU's Part IV permission no longer includes the regulated activity of accepting deposits.
- 1.2 The FSA has further varied Edinburgh CU's Part IV permission by including the following requirements, namely that Edinburgh CU must not:
 - i. make new loans, or make further advances in relation to, or otherwise vary the terms of, any existing loans;
 - ii. redeem any member's shares;
 - iii. repay any deposits;



Financial Services Authority

- iv. effect any share to loan transfers; or
 - v. without the written consent of the FSA, make any payment, or otherwise dispose of, deal with or diminish the value of any of its assets, except to pay expenses incurred in the ordinary course of Edinburgh CU's business.
- 1.3 For the avoidance of doubt, the expenses referred to in paragraph 1.2v. above do not include gifts, or payments of unusual or significant amounts to Edinburgh CU's employees or officers or any persons connected to them.
- 1.4 The FSA has also varied Edinburgh CU's Part IV permission by including the following requirements, namely that within 14 days it must:
- i. advise in writing all members of Edinburgh CU that it is no longer permitted by the FSA to carry on accepting deposits and is subject to the other restrictions contained within this Notice; and
 - ii. provide the FSA with a copy of the written advice sent to all members pursuant to (i) above, together with a list of all members to whom such advice has been sent.

2. REASONS FOR ACTION

Summary

- 2.1 The FSA has concluded, on the basis of the facts and matters described below, that Edinburgh CU is failing to satisfy the threshold conditions set out in Part 1 of Schedule 6 to the Act (the "Threshold Conditions") in that, in the opinion of the FSA, it has not satisfied the FSA that it is a fit and proper person having regard to all the circumstances, including the need to ensure that its affairs are conducted soundly, prudently and in compliance with proper standards. Edinburgh CU has also failed to comply with Principle 11 of the FSA's Principles for Businesses (the "Principles"), under which firms must co-operate with the FSA.
- 2.2 The FSA considers that Edinburgh CU should not be permitted to accept new deposits when it has failed to provide audited financial information to, and reply adequately to communications from, the FSA.
- 2.3 The FSA considers, on the basis of those facts and matters, that it is necessary, in order to protect the interests of consumers, for the action specified above to take immediate effect.

Relevant Statutory Provisions



Financial Services Authority

- 2.4 The FSA's regulatory objectives established in section 2(2) of the Act include the protection of consumers.
- 2.5 The FSA is authorised by section 45 of the Act to exercise the following powers:
- to vary an authorised person's permission where it appears to the FSA that such person is failing to satisfy the Threshold Conditions;
 - to vary such a permission by removing a regulated activity from those for which the permission is given; and
 - to include any provision in the permission as varied that could be included if a fresh permission were being given in response to an application under section 40 of the Act, including the imposition pursuant to section 43 of the Act of such requirements as the FSA considers appropriate which may extend to activities which are not regulated activities.
- 2.6 Section 53(3) of the Act allows such variations to take effect immediately if the FSA reasonably considers that it is necessary for the variations to take effect immediately.

Relevant Handbook Provisions

- 2.7 In exercising its power to vary a Part IV permission, the FSA must have regard to guidance published in the FSA Handbook. The main considerations relevant to the action specified above are set out below.

Relevant Principle

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

Relevant Rules

- 2.9 FSA Rule SUP 16.12.5R in the Supervision Manual ("SUP") states that a credit union must submit an annual return ("Form CY").
- 2.10 SUP 16.12.7R requires that credit unions submit extended financial data (in the Form CY) annually, seven months after the financial year end.
- 2.11 FSA Rule CRED 14.10.10R in the Credit Unions Sourcebook ("CRED") requires that:



Financial Services Authority

- “(1) Every *credit union* must send to the *FSA* a copy of its audited accounts published in accordance with section 3A of the Friendly and Industrial and Provident Societies Act 1968 (CRED 14 Annex 1G);
- (2) the accounts must:
- (a) be made up for the period beginning with the date of the *credit union's* registration or with the date to which the *credit union's* last annual accounts were made up, whichever is the later, and ending on the *credit union's* most recent financial year end; and
 - (b) accompany the annual return submitted to the FSA under SUP 16.12.5R (see CRED 14.10.7G), unless they have been submitted already.”

Relevant Regulatory Guidance

- 2.12 Guidance on the Threshold Conditions is set out in the part of the FSA Handbook entitled Threshold Conditions ("COND"), and Guidance on the application of the Threshold Conditions to Credit Unions is set out in CRED.

Guidance concerning the Threshold Conditions for Credit Unions – CRED 5

- 2.13 CRED 5.1.5 requires the Threshold Conditions to be met on a continuing basis by credit unions, and states that failure to meet one of the conditions is sufficient grounds for the exercise by the FSA of its powers.
- 2.14 CRED 5.2.1(5) requires the FSA to be satisfied that a credit union is 'fit and proper' to be authorised and permitted to carry on regulated activities.
- 2.15 CRED 5.2.4 allows the FSA to vary a credit union's Part IV permission on its own initiative if it appears that the credit union is failing, or is likely to fail, to satisfy the Threshold Conditions.

Guidance concerning Threshold Condition 5: Suitability (paragraph 5, Schedule 6 to the Act) – COND 2.5

- 2.16 COND 2.5.1UK reproduces the relevant statutory provision that the person concerned must satisfy the FSA that he is a fit and proper person having regard to all the circumstances including, among other things, the need to ensure that his affairs are conducted soundly and prudently.



Financial Services Authority

- 2.17 COND 2.5.2G(1) requires the firm to satisfy the FSA that it is 'fit and proper' to have Part IV permission. COND 2.5.2G(2) requires the FSA to take into consideration anything that could influence a firm's continuing ability to satisfy the Threshold Condition relating to suitability, when forming its opinion as to whether the firm is a fit and proper person.
- 2.18 COND 2.5.6G(1) requires the FSA to take into account whether the firm has been open and co-operative in its dealings with the FSA and is ready, willing and organised to comply with the requirements and standards under the regulatory system. Such requirements include the obligation to submit financial returns.

Other Relevant Regulatory Provisions

- 2.19 The FSA's policy in relation to its enforcement powers is set out in the Enforcement Guide ("EG").

EG 8 – The FSA's general approach to exercising the own-initiative power under section 45 of the Act to vary a firm's Part IV permission: the FSA's policy

- 2.20 EG 8.1B requires the FSA to have regard to its regulatory objectives and the range of regulatory tools that are available to it.
- 2.21 EG 8.5 provides that the circumstances in which the FSA will consider exercising its power include where the FSA has serious concerns that the authorised person has breached requirements imposed on it by or under the Act (including Principles and rules) and the breaches are material in number or individual seriousness.
- 2.22 EG 8.9 includes among the factors which will determine whether the urgent exercise of the FSA's own-initiative power is an appropriate response to serious concerns, the extent of any loss or risk of loss or other adverse effect on consumers and the steps the authorised person has taken or is taking to address the issue.

Facts and matters relied on

- 2.23 Edinburgh CU is a version 1 credit union, with ten approved persons, all of whom are executive directors. According to its quarterly return for the period ended 30 September 2009, Edinburgh CU has 203 members.
- 2.24 Edinburgh CU has failed to submit annual returns or its audited annual accounts to the FSA for the years ended 30 September 2007 and 2008, despite repeated requests and warnings from the FSA. These returns and accounts should have been submitted to the FSA by 30 April 2008 and 30 April 2009 respectively.

Conclusions



Financial Services Authority

2.25 The facts and matters described above lead the FSA, having regard to its regulatory objectives to the following conclusions:

- in breach of SUP 16.12.5R and CRED 14.10.10R, Edinburgh CU has failed to submit annual returns and audited accounts for the years ended 30 September 2007 and 30 September 2008;
- Edinburgh CU, by failing to submit financial returns, despite repeated requests for such information from the FSA, is failing to comply with Principle 11, under which a firm must deal with its regulator in an open and co-operative way;
- Edinburgh CU, by failing to submit financial returns, despite repeated requests for such information from the FSA, is failing to satisfy the FSA that it is conducting its business soundly and prudently and in compliance with proper standards;
- these failures are material in relation to the regulated activity for which Edinburgh CU has permission and it therefore fails to satisfy Threshold Condition 5 (Suitability);
- the risk of loss or other adverse effect on consumers from Edinburgh CU's failings, causes the FSA to have serious concerns about Edinburgh CU, and the exercise of the FSA's own-initiative powers to vary Edinburgh CU's Part IV permission with immediate effect is an appropriate response to those concerns, and
- specifically, the variation of Edinburgh CU's Part IV permission should take immediate effect to address the FSA's serious concern that it is not a fit and proper person to conduct the regulated activity it carries on.

3. DECISION MAKER

The decision which gave rise to the obligation to give this Supervisory Notice was made by the Chairman of the Regulatory Decisions Committee.

4. IMPORTANT

4.1 This Supervisory Notice is given to Edinburgh CU under section 53(4) and in accordance with section 53(5) of the Act, and is being served on Edinburgh CU at the principal place of business last notified by Edinburgh CU to the FSA. The following statutory rights are important.



Financial Services Authority

The Tribunal

- 4.2 Edinburgh CU may refer this matter to the Financial Services and Markets Tribunal (the "Tribunal"). Under section 133 of the Act, Edinburgh CU has 28 days from the date it was sent this Supervisory Notice to refer the matter to the Tribunal or such other period as specified in the Tribunal Rules or as the Tribunal may allow. A reference to the Tribunal is made by way of a written notice signed by Edinburgh CU and filed with a copy of this Notice. The Tribunal's address is: 15-19 Bedford Avenue, London WC1B 3AS (telephone: 020 7612 9700). The detailed procedures for making a reference to the Tribunal are contained in section 133 of the Act and the Tribunal Rules.
- 4.3 Edinburgh CU should note that the Tribunal Rules provide that, at the same time as filing a reference notice with the Tribunal, Edinburgh CU must send a copy of the reference notice to the FSA. Any copy notice should be sent to Martin Badcock at the FSA, 25 The North Colonnade, Canary Wharf, London E14 5HS.

Representations

- 4.4 Edinburgh CU has the right to make written and oral representations to the FSA (whether or not it refers this matter to the Tribunal). If Edinburgh CU wishes to make written representations it must do so by 4 March 2010 or such later date as may be permitted by the FSA. Written representations should be made to the Regulatory Decisions Committee and sent to Husayn Rahman, Regulatory Decisions Committee Professional Support Services. The Regulatory Decisions Committee Professional Support Services' address is: 25 The North Colonnade, Canary Wharf, London E14 5HS. If Edinburgh CU wishes to make oral representations, it should inform the FSA of its intention to do so by 9 February 2010. If Edinburgh CU does not notify the FSA by 9 February 2010, it will not, other than in exceptional circumstances, be able to make oral representations.

Confidentiality and publicity

- 4.5 Edinburgh CU should note that this Supervisory Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining advice on its contents). Edinburgh CU should also note that section 391 of the Act requires the FSA when the Supervisory Notice takes effect, to publish such information about the matter as it considers appropriate.

FSA contacts

- 4.6 If Edinburgh CU has any questions regarding the procedures of the Regulatory Decisions Committee, it should contact either Husayn Rahman (direct line: 020 7066 1072) or Jackie Noonan (direct line: 020 7066 3074).



Financial Services Authority

4.7 For more information concerning this matter generally, Edinburgh CU should contact Martin Badcock at the FSA (direct line: 020 7066 1560 / fax: 020 7066 1561).

Tim Herrington
Chairman, Regulatory Decisions Committee