
FIRST SUPERVISORY NOTICE

To: **South Kintyre Credit Union Limited**

Of: **25 Longrow
Campbeltown
Renfrewshire
PA28 6ER**

FSA Reference Number: **213867**

Dated: **29 October 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 South Kintyre Credit Union Limited ("SKCU"), pursuant to Part IV of the Act ("SKCU's permission"), by removing its only regulated activity with immediate effect. Accordingly, SKCU's permission no longer includes the regulated activity of accepting deposits.
- 1.2. The FSA has further varied SKCU's permission pursuant to section 43 of the Act by including the following requirements, namely that SKCU must not:
 - (1) make new loans, or make further advances in relation to, or otherwise vary the terms of, any existing loans;
 - (2) redeem any member's shares;
 - (3) effect any share to loan transfers;
 - (4) repay any deposits; or
 - (5) 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 SKCU's business.

- 1.3. For the avoidance of doubt, the expenses referred to in 1.2(5) do not include gifts, or payments of unusual or significant amounts to SKCU's employees or officers or any persons connected to them.
- 1.4. The FSA has also varied SKCU's permission by including the following requirements, namely that within 14 days of this First Supervisory Notice SKCU must:
 - (1) advise in writing all members of SKCU that it is no longer permitted by the FSA to carry on accepting deposits and of the other restrictions placed upon it by the FSA; and
 - (2) provide the FSA with a copy of the written advice sent to all members for its regulated activity pursuant to 1.4(1) 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 SKCU is failing and will continue to fail 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, SKCU has failed to maintain positive capital, and presents a risk to consumers by continuing to be permitted to conduct the regulated activity it carries on.
- 2.2. The FSA considers that SKCU should not be permitted to accept new deposits nor should it make any further loan advances or redeem any membership shares, when it has failed to maintain adequate capital.
- 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

- 2.4. The FSA's regulatory objectives established in section 2(2) of the Act include the protection of consumers.
- 2.5. Section 45 of the Act authorises the FSA to exercise the following powers:
 - (1) to vary an authorised person's permission where it appears to the FSA that such person is failing to satisfy the Threshold Conditions;
 - (2) to vary such a permission by removing a regulated activity from those for which the permission is given; and

- (3) 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.
- 2.6. Section 43(3) of the Act permits a requirement to extend to activities which are not regulated activities.
- 2.7. 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.
- 2.8. Paragraph 4(1) of Schedule 6 to the Act sets out Threshold Condition 4, which states:
- “The resources of the person concerned must, in the opinion of the Authority, be adequate in relation to the regulated activities that he seeks to carry on, or carries on.”

Relevant Handbook Provisions

- 2.9. In exercising its power to vary a Part IV permission, the FSA must have regard to relevant provisions in the FSA Handbook of rules and guidance (the “Handbook”). The main considerations relevant to the action specified are set out below.

Relevant Principle

- 2.10. Principle 4 (Financial prudence) as set out in the FSA’s Principles for Businesses (the “Principles”) in the Handbook requires that a firm maintain adequate financial resources.

Relevant Rule

- 2.11. FSA Rule CRED 8.3.1R in the Credit Unions Sourcebook in the Handbook (“CRED”) states:

“A *version 1 credit union* must at all times maintain a positive amount of capital.”

- 2.12. The guidance in CRED 8.3.3G states that:

“CRED 8.3.1R implements the principle that every pound saved by a depositor with a *credit union* should always be worth at least a pound.”

- 2.13. CRED 5.2.4G 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.

Relevant Regulatory Guidance

- 2.14. Guidance on the Threshold Conditions is set out in Chapter 2 of the Part of the

Handbook entitled Threshold Conditions (“COND”).

Guidance concerning Threshold Condition 4: Adequate resources (paragraph 4, Schedule 6 to the Act) – COND 2.4

- 2.15. COND 2.4.1UK reproduces the relevant statutory provision that the resources of the person concerned must, in the opinion of the FSA, be adequate in relation to the regulated activities that he seeks to carry on, or carries on.
- 2.16. COND 2.4.2G(2) in giving guidance on the interpretation of “adequate resources”, defines the term “adequate” as meaning sufficient in terms of quantity, quality and availability, and “resources” as including all financial resources, capital, provisions against liabilities, holdings of or access to cash and other liquid assets.
- 2.17. COND 2.4.4G(3) requires the FSA only to take into account relevant matters which are material in relation to the regulated activities for which the authorised person has permission.

Other Relevant Regulatory Provisions

- 2.18. The FSA’s policy in relation to the use of its enforcement powers is set out in the Enforcement Guide (“EG”).

The FSA’s policy for exercising the own-initiative power under section 45 of the Act to vary a Part IV permission – EG 8

- 2.19. EG 8.1B provides that the FSA will have regard to its regulatory objectives and the range of regulatory tools that are available to it, when it considers how it should deal with a concern about a firm.
- 2.20. EG 8.5 provides that the circumstances in which the FSA will consider varying a firm’s Part IV permission include those where the FSA has serious concerns about the firm or about the way its business is being or has been conducted.
- 2.21. EG 8.5(1)(a) specifies the circumstances in which the FSA will consider exercising its own-initiative power include where a firm’s financial resources appear to be inadequate for the scale or type of regulated activity it is carrying on.
- 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, 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. SKCU is a version 1 credit union, with five individuals currently approved as directors, all of whom are executive directors. In its Quarterly Return for the period ended 30 June 2010, SKCU reported that it had 375 members and 72 juvenile depositors.

- 2.24. The latest audited financial information available to the FSA reported that SKCU had negative capital of £7,853 as at 30 September 2009. SKCU has had negative capital since September 2008. SKCU has failed to rectify its negative capital position, despite having had a reasonable opportunity to do so.

Conclusions

- 2.25. The facts and matters described above lead the FSA, having regard to its regulatory objectives, to the following conclusions:
- SKCU is in breach of CRED 8.3.1R by failing to maintain a positive amount of capital at all times and therefore the amount saved by its members is worth less than they deposited;
 - this failing is material in relation to the regulated activity for which SKCU has permission and it therefore fails to satisfy Principle 4 (Financial prudence) and Threshold Condition 4 (Adequate resources);
 - the risk of loss or other adverse effect on consumers because of SKCU's failings causes the FSA to have serious concerns about SKCU such that the exercise of the FSA's own-initiative powers to vary SKCU's permission with immediate effect is an appropriate response to those concerns; and
 - the variation of SKCU's permission should take immediate effect to address the FSA's serious concern that its capital is inadequate to conduct the regulated activity that it carries on.

3. DECISION MAKER

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

4. IMPORTANT

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

The Tribunal

- 4.2. SKCU has the right to refer the matter to which this First Supervisory Notice relates to the Upper Tribunal (the "Tribunal"). Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, SKCU has 28 days from the date on which this First Supervisory Notice is given to it to refer the matter to the Tribunal.
- 4.3. A reference to the Tribunal is made by way of a reference notice (Form FTC3) signed by SKCU (or on SKCU's behalf) and filed with a copy of this First Supervisory Notice. The Tribunal's address is: The Upper Tribunal, Tax and Chancery Chamber,

45 Bedford Square, London WC1B 3DN (telephone 020 7612 9700; email financeandtaxappeals@tribunals.gsi.gov.uk).

- 4.4. Further details are contained in “Making a Reference to the UPPER TRIBUNAL (Tax and Chancery Chamber)” which is available from the Upper Tribunal website:

<http://www.tribunals.gov.uk/financeandtax/FormsGuidance.htm>

- 4.5. SKCU should note a copy of the reference notice (Form FTC3) must also be sent to Pauline Cheng at the FSA at the same time as filing with the Tribunal.

Representations

- 4.6. SKCU has the right to make written and oral representations to the FSA (whether or not it refers this matter to the Tribunal). If SKCU wishes to make written representations, it must do so by 2 December 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 Ben Wright, 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 SKCU wishes to make oral representations, it should inform Ben Wright in writing of its intention to do so by 11 November 2010. If SKCU does not notify the FSA by 11 November 2010, it will not, other than in exceptional circumstances, be able to make oral representations.

Confidentiality and publicity

- 4.7. SKCU should note that this First 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). SKCU should also note that section 391 of the Act requires the FSA when the First Supervisory Notice takes effect (and this First Supervisory Notice has immediate effect), to publish such information about the matter as it considers appropriate.

FSA contacts

- 4.8. If SKCU has any questions regarding the procedures of the Regulatory Decisions Committee, it should contact Ben Wright (direct line: 020 7066 3194 / fax: 020 7066 3195), Regulatory Decisions Committee Professional Support Services at the FSA.
- 4.9. For more information concerning this matter generally, SKCU should contact Pauline Cheng (direct line: 020 7066 5228 / fax: 020 7066 5229), Enforcement and Financial Crime Division at the FSA.

Tim Herrington
Chairman, Regulatory Decisions Committee