
SECOND SUPERVISORY NOTICE

To: **Three Bees Credit Union Limited**
Of: **Manor Green**
Beechwood
Prenton
CH43 9LB

FSA Reference Number: **213330**

Dated: **7 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 having taken into account your written representations of 23 July 2010, pursuant to section 45 and 53 of the Financial Services and Markets Act 2000 (the “Act”), the FSA has decided not to rescind the variation of the permission granted to Three Bees Credit Union Limited (“Three Bees”), pursuant to Part IV of the Act (“Three Bees’ permission”) by removing its regulated activity with immediate effect. Accordingly, Three Bees’ permission no longer includes the regulated activity of accepting deposits.
- 1.2 The further variations of Three Bees’ permission set out in the First Supervisory Notice remain in effect such that Three Bees 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) effect any share to loan transfers;

- (iv) repay any deposits; 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 Three Bees' business.
- 1.3 For the avoidance of doubt, the expenses referred to in 1.2(v) do not include gifts, or payments of unusual or significant amounts to Three Bees' employees or officers or any persons connected to them.
- 1.4 The First Supervisory Notice further varied Three Bees' permission by including the following requirements, namely that within 14 days of the First Supervisory Notice Three Bees must:
- (i) advise in writing all members of Three Bees that it was no longer permitted by the FSA to carry on accepting deposits and of the other restrictions placed upon it by the FSA; and
 - (ii) provide the FSA with a copy of the written advice sent to all members for its regulated activity pursuant to (i) above, together with a list of all members to whom such advice has been sent.

2. REASONS FOR THE ACTION

Summary

- 2.1 The FSA has concluded, on the basis of the facts and matters described below, that Three Bees 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, Three Bees 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 Three Bees 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.

3. STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND GUIDANCE

Relevant statutory provisions

- 3.1 The FSA's regulatory objectives established in section 2(2) of the Act include the protection of consumers.

3.2 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.

3.3 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.

3.4 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

3.5 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 Principles

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

3.7 Principle 11 (Relations with regulators) 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

3.8 FSA Rule SUP 16.12.5R in the Supervision Manual (“SUP”) requires a credit union to submit an annual return (“Form CY”).

3.9 SUP 16.12.7R requires that credit unions submit extended financial data (in the Form CY) annually, seven months after the financial year end.

3.10 FSA Rule CRED 14.10.10R in the Credit Unions Sourcebook (“CRED”) requires that:

“(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 1 G);

(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 16.12.5 R (see CRED 14.10.7 G), unless they have been submitted already.”

3.11 FSA Rule CRED 8.3.1R states:

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

3.12 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.”

Relevant Regulatory Guidance

3.13 Guidance on the Threshold Conditions is set out in the part of the Handbook entitled Threshold Conditions (“COND”), and Guidance on the application of the Threshold Conditions to Credit Unions is set out in the Credit Unions Sourcebook (“CRED”), which is also part of the Handbook.

Guidance concerning the Threshold Conditions for Credit Unions – CRED 5

3.14 CRED 5.1.5G states that the Threshold Conditions must 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.

3.15 CRED 5.2.1G(5) states that the FSA must be satisfied that a credit union is “fit and proper” to be authorised and permitted to carry on regulated activities.

3.16 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.

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

3.17 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.

- 3.18 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.
- 3.19 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.

Relevant regulatory provisions

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

EG 8 - The FSA’s policy for exercising its own-initiative power to vary a Part IV permission

- 3.21 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.
- 3.22 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.
- 3.23 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.
- 3.24 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.

4. FACTS AND MATTERS RELIED ON

- 4.1 Three Bees is a version 1 credit union which has four individuals currently approved as directors. In its Quarterly Return for the period ended 31 December 2009, Three Bees reported that it had 291 members and 24 juvenile depositors.
- 4.2 The latest audited information available to the FSA states that Three Bees had negative capital of £3,906 as at 31 December 2009. Three Bees has had negative capital since 2005, having failed to rectify its capital position during that period Three Bees has been

given the opportunity to present to the FSA a viable plan to achieve positive capital, but has failed to do so.

- 4.3 Three Bees has attempted to raise fresh capital by making applications for grants for sums of £5,000. The FSA believes that these applications have thus far proved to be unsuccessful.

5. REPRESENTATIONS, FINDINGS AND CONCLUSIONS

Representations

- 5.1 Three Bees accepted that it had not maintained positive capital however the credit union asserted that its capital position was likely to improve significantly in the coming months.
- 5.2 Three Bees submitted that it had only been forced into a position where it had negative capital for two reasons;
- (a) they had been prudent in their provision for bad debts; and
 - (b) they had incurred approximately £15,000 in bank charges because their bank had, incorrectly, treated their account as a commercial account.
- 5.3 Three Bees asserted that their capital position would now improve because they had taken a number of steps which would free the credit union from the previous encumbrances it had laboured under and they had also sought to reverse their negative capital position by seeking new sources of capital.
- 5.4 Three Bees suggested that by making provision for potential bad debts they had acted prudently and that this would obviate risk, in the future, to their capital situation. It was also implied that they had successfully addressed their bad debts and that these were no longer hampering Three Bees.
- 5.5 Three Bees also explained that they had now converted their account into a community facility. They asserted that this would ensure that they would not henceforward incur any further bank charges such as those previously imposed on them. Moreover Three Bees explained that they were seeking a refund of approximately £4,000 of these inappropriate bank charges.
- 5.6 Three Bees also noted to the FSA, outwith their written representations, that they were in discussions with two organisations in an effort to secure a grant that would further bolster their capital position.

Findings

- 5.7 The FSA finds that there is no basis to rescind the First Supervisory Notice. Instead as Three Bees remains in negative capital it is instead necessary to maintain the variations to the Part IV permission which are set out above.

- 5.8 The FSA finds that whilst Three Bees may have made provision for bad debts these provisions are only just above the minimum required in CRED. In any event this does not mitigate the fact that Three Bees remains with negative capital and nor is there any verifiable evidence to suggest that by addressing the bad debts Three Bees has thereby improved its capital position.
- 5.9 The FSA also finds that though Three Bees may have changed the type of facility it has with its bank, there is no evidence to suggest that the bank will repay any of the charges incurred with the company account Three Bees previously held. As the value and timing of any repayment remains uncertain the FSA finds that this does not affect its assessment of Three Bees' capital position.
- 5.10 The FSA finds that there is no evidence to suggest that Three Bees will be successful in obtaining fresh capital. Instead it appears that Three Bees' efforts to obtain fresh capital have thus far been rebuffed and that there is no prospect of this position changing.

Conclusions

- 5.3 The facts and matters described above lead the FSA, having regard to its regulatory objectives, to the following conclusions:
- Three Bees 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 Three Bees has permission and it therefore fails to satisfy Threshold Condition 4 (Adequate resources);
 - the risk of loss or other adverse effect on consumers because of Three Bees' failings causes the FSA to have serious concerns about Three Bees such that the exercise of the FSA's own-initiative powers to vary Three Bees' permission with immediate effect was an appropriate response to those concerns; and
 - the variation of Three Bees' permission effected by the First Supervisory Notice should be maintained to address the FSA's serious concerns about Three Bees' capital position.

6. DECISION MAKER

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

7. IMPORTANT

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

The Tribunal

- 7.2 Three Bees has the right to refer the matter to which this Supervisory Notice relates to the Upper Tribunal (the “Tribunal”). The Tax and Chancery Chamber is the part of the Upper Tribunal which, amongst other things, hears references arising from decisions of the FSA. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, Three Bees has 28 days from the date on which this Supervisory Notice is given to it to refer the matter to the Tribunal. A reference to the Tribunal is made by way of a reference notice (Form FTC3) signed by Three Bees (or on Three Bees’ behalf) and filed with a copy of this Supervisory Notice. The Tribunal’s address is: The Upper Tribunal, Tax and Chancery Chamber, 45 Bedford Square, London WC1B 3DN (tel 020 7612 9700; email financeandtaxappeals@tribunals.gsi.gov.uk).
- 7.3 Further details are contained in “Making a Reference to the UPPER TRIBUNAL (Tax and Chancery Chamber)” which is available from the Tribunal website:
- <http://www.tribunals.gov.uk/financeandtax/FormsGuidance.htm>
- 7.4 Three Bees should note that a copy of the reference notice (Form FTC3) must also be sent to the FSA at the same time as filing a reference with the Tribunal. A copy of the reference notice should be sent to John Kirby at the FSA, 25 The North Colonnade, Canary Wharf, London E14 5HS.

Confidentiality and publicity

- 7.5 The FSA is required by section 391(5)-(6) of the Act to publish such information about the matter to which this notice relates as it considers appropriate, unless such publication would in its opinion be unfair to the firm to which the requirement applies or prejudicial to the interest of consumers.

FSA contacts

- 7.6 If Three Bees has any questions regarding the procedures of the Regulatory Decisions Committee, it should contact Amber Naude, RDC Professional Support Services (direct line: 020 7066 2100).
- 7.7 For more information concerning this matter generally, Three Bees should contact at Alexander Banerjee at the FSA (direct line: 020 7066 7206 / fax: 020 7066 7207).

Tim Herrington
Chairman, Regulatory Decisions Committee