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## FINAL NOTICE

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**Neil Moir**

**Anglesey**

19 August 2015

### **ACTION**

1. By an application dated 1 April 2014 ("the Application") Mr Neil Moir, trading as Readymoney, ("Mr Moir") applied under section 40 of the Financial Services and Markets Act 2000 ("the Act") for Part 4A permission to carry on the regulated activity of 'Consumer hire'.
2. On 20 September 2014, Mr Moir wrote to the Authority confirming that he wanted full permission to carry out 'Credit broking', rather than the 'Consumer hire' permission.
3. Though Mr Moir's letter of 20 September 2014 was not explicit in stating that he also wanted permissions to carry out the activities of 'Entering into a regulated credit agreement as a lender (Excluding high-cost short-term credit, bill of sale agreement, and home credit loan agreement)' and 'Exercising or having the right to exercise a lender's rights and duties under a regulated credit agreement (excluding high-cost short-term credit, bill of sale agreement, and home credit loan agreement)', the Authority inferred (from the content of that letter and the fact that Mr Moir enclosed with his letter a cheque for £500.00, which corresponded to the additional fee payable in respect of an application for those permissions, as set out in a letter from the Authority to Mr Moir dated 13 August 2014) that Mr Moir desired those permissions.
4. Mr Moir's application remains incomplete.
5. For the reasons listed below, the Authority has refused the Application.

## **SUMMARY OF REASONS**

6. By its Warning Notice dated 29 January 2015 (“the Warning Notice”) the Authority gave notice that it proposed to refuse the Application and that Mr Moir was entitled to make representations to the Authority about that proposed action.
7. Mr Moir’s written representations were received by the Authority on 28 February 2015. In addition to his written representations, Mr Moir made oral representations to the Authority’s Regulatory Decisions Committee on 8 April 2015. Having considered Mr Moir’s representations the Authority made the decision to give a Decision Notice refusing the Application, in accordance with paragraph 2.3.1 G of the Authority’s Decision Procedure and Penalties Manual on the basis that:
  - (a) The Authority cannot ensure that Mr Moir will satisfy, and continue to satisfy, in relation to the regulated activities for which permission is sought, the threshold conditions set out in Schedule 6 of the Act.
  - (b) In relation to the effective supervision threshold condition (in paragraph 2C of Schedule 6), the Authority is not satisfied that Mr Moir can be effectively supervised.
  - (c) In relation to the appropriate resources threshold condition (in paragraph 2D of Schedule 6), the Authority is not satisfied that Mr Moir has appropriate non-financial resources in place.
8. By its Decision notice dated 5 May 2015 (“the Decision Notice”), the Authority gave Mr Moir notice that it had decided to take the action described above.
9. Mr Moir 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.
10. 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 Moir Final Notice of its refusal.

## **DEFINITIONS**

11. The definitions below are used in this Final Notice.

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

“the Authority” means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority

## **FACTS AND MATTERS**

12. On 1 April 2014, Mr Moir submitted a limited permission application electronically to the Authority. The only permission that was selected was ‘consumer hire’. An email address was provided on the application form.
13. In a telephone conversation between Mr Moir and the Authority (held on 12 May 2014) Mr Moir stated that there were no links between himself and the entity to which the email address related; he had given this email address just to “fill and complete” the application form.

**The effective supervision threshold condition (paragraph 2C of Schedule 6 to the Act)**

14. A key part of the Authority's supervision framework is the electronic provision, by firms, of information on its regulatory activities (via the Authority's GABRIEL system). Mr Moir has been unable to satisfy the Authority that he is ready, willing and organised to use such a system.
15. Mr Moir has not given a satisfactory explanation of how he would remain up to date with regulatory requirements (for example, by receiving electronic communications that are sent by the Authority, such as its monthly regulatory round-up, changes to the Handbook, Consultation Papers, etc).
16. Mr Moir has failed to respond on time to any request made by the Authority.
17. In a letter dated 16 July 2014, Mr Moir stated that that he communicated by post or orally rather than by email. When Mr Moir has responded to the Authority by letter, these responses have been handwritten rather than typed, which has made reviewing and responding to his letters a more time consuming process. Mr Moir has confirmed that he has no disability which prevents him from using email, and that he does use email in relation to his other business interests. In a letter dated 20 September 2014 Mr Moir said that, once authorised, he would engage someone to operate a laptop and email.
18. Mr Moir told the Authority that he had not always seen until some time after their despatch letters sent to him by the Authority because he only infrequently collected post from the postbox on his domestic premises.
19. The Authority is therefore not satisfied that Mr Moir can be effectively supervised, having regard to the guidance in COND 2.3.3G and to the regulatory principles set out in s.3B of the Act, in particular the need to use its resources in the most efficient and economic way.

**The appropriate resources threshold condition (Paragraph 2D of Schedule 6 to the Act)**

20. Throughout the application process, Mr Moir has demonstrated a lack of understanding of the regulatory framework and an unwillingness to engage co-operatively with the Authority. In particular:
  - (a) In his application form (dated 1 April 2014), Mr Moir stated that he wished to apply for permission to carry out limited permission consumer hire activities. Following telephone conversations between Mr Moir and the Authority on 12 and 21 May 2014, it became apparent that Mr Moir's proposed business would not be covered by the permission sought, and that he would be required to apply for full permission for credit broking. The Authority wrote to Mr Moir on 23 May 2014 to inform him of this, and that he would need to submit a business plan in support of his application.
  - (b) Mr Moir's business plan was received by the Authority on 23 July 2014. In his business plan Mr Moir revealed that, in addition to credit broking, he was also contemplating lending directly to customers. In his cover letter to the business plan, Mr Moir stated:

"...I outline below what I am proposing to do and the fact that nearly all of what I am proposing can't be done immediately until there is money, I'll leave it to you to put it in whatever box applies".

Mr Moir's business plan also indicated that he was intending to assist customers to obtain a mortgage (either "to buy a house or to start a business"). Mr Moir has not applied for any permissions in relation to regulated mortgage activity (for example, 'Arranging regulated mortgage contracts' under Article 25A(1) of Part II of the Financial Services and Markets Act 2000 (Regulated Activities Order) 2001).

(c) On 13 August 2014, the Authority wrote to Mr Moir seeking details of (amongst other things) his systems and controls, his policies in relation to vulnerable customers, his charges and fees, his advertising and sales processes and his complaint handling procedures.

(d) On 23 September 2014, the Authority received a response from Mr Moir. In response to a request by the Authority in relation to "full detail[s]... [of] your terms... [for] lending... including copies of contracts / agreements / pre-contract information that you will use" Mr Moir replied:

"As not authorised yet there is no literature yet. As no money to lend yet, all this is irrelevant, but if we agree to provide you with all literature for you to vet before we do our first lend, that is as far as we can go for now".

(e) In representations provided in response to the Warning Notice, Mr Moir provided some further information, including an email address and copies of a client care leaflet and standard terms of business. This was insufficient to respond adequately to the Authority's outstanding queries.

21. Mr Moir proposes to perform his activities as a sole trader and, although he has indicated in general terms an intention to engage assistance, he has provided no proper details of any additional support (either from staff or external consultants) he will receive. The Authority considers that Mr Moir himself does not have the knowledge and understanding required to exercise his intended role in compliance with the Authority's regulatory standards, or properly to supervise staff in assessing what is required.

22. Consequently, the Authority is not satisfied that Mr Moir has appropriate non-financial resources.

### **IMPACT ON THE THRESHOLD CONDITIONS**

23. The regulatory provisions relevant to this Final Notice are referred to in Annex A.

24. The Authority does not consider that Mr Moir has demonstrated that he will satisfy, and will continue to satisfy, in relation to the regulated activities for which he seeks permission, the threshold conditions for which the Authority is responsible.

25. In relation to the effective supervision threshold condition (paragraph 2C of Schedule 6 to the Act), the Authority is not satisfied that Mr Moir can be effectively supervised. In reaching this conclusion, the Authority has had regard to the following facts:

- (a) Mr Moir has failed to respond to any request made by the Authority on time. Letters sent to Mr Moir by mail have not always been read and dealt with promptly.
  - (b) Mr Moir is reluctant to use electronic mail (email) in communicating with the Authority, and has communicated exclusively by telephone and by handwritten letter.
  - (c) Mr Moir has not demonstrated how he will submit regulatory information to the Authority in a timely and efficient manner.
  - (d) Mr Moir has not provided the Authority with all the information it needs to assess his application.
26. Having regard to these circumstances, the Authority cannot be satisfied that Mr Moir is ready, willing and organised to comply with Principle 11 (Relations with regulators) of the Authority's Principles for Businesses and the rules in the Supervision manual (SUP) of the Authority's Handbook which relate to the provision of information to the Authority.
27. In relation to threshold condition 2D, the Authority is not satisfied that Mr Moir has appropriate non-financial resources. In reaching this conclusion, the Authority has had regard to the following facts:
- (a) Mr Moir's application has repeatedly demonstrated a lack of understanding of the regulatory system, for example, by not being clear about the permissions that are actually required and asking the Authority to make a determination for him.
  - (b) Mr Moir's application remains incomplete and he has not submitted key contractual and compliance documents to the Authority during the application process, including:
    - i. Details of the terms for lending money, copies of contracts, agreements and pre-contract information
    - ii. Supporting documents regarding late payments
    - iii. Details of fees charged
    - iv. Complaints handling procedures
  - (c) Mr Moir has not demonstrated how he intends to keep up with any legislative changes, changes to the Authority's Handbook or changes in the Authority's guidance. For example, he has neither provided details of any concrete plans to engage suitably skilled staff or external resource to advise him on these matters, nor given details of how else he intends to achieve this.
  - (d) The Authority is not satisfied that Mr Moir could comply with the requirement to submit regulatory returns via the Authority's electronic reporting system (GABRIEL).
28. Consequently, the Authority is not satisfied that Mr Moir has appropriate resources in place, with particular regard to his lack of non-financial resources.

29. On the basis of the facts and matters described above, the Authority has concluded that Mr Moir will not satisfy, and continue to satisfy, the threshold conditions in relation to all of the regulated activities for which Mr Moir would have permission if the application was granted.

### **IMPORTANT NOTICES**

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

#### **Publication**

31. 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.

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

#### **Authority contacts**

33. For more information concerning this matter generally, contact Mike Baker, Manager, Credit Authorisations (direct line: 020 7066 1026 / email: [mike.baker@fca.org.uk](mailto:mike.baker@fca.org.uk)).

**Val Smith**

**On behalf of the Regulatory Transactions Committee**

## **ANNEX A – REGULATORY PROVISIONS RELEVANT TO THIS FINAL 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. Section 1B(5)(a) of the Act requires the Authority, in discharging its general functions, to have regard to the regulatory principles in section 3B. These include “the need to use [the Authority’s] resources...in the most efficient and economic way”.
4. The threshold conditions are set out in schedule 6 of the Act. In brief, the threshold conditions relate to:
  - (1) Location of offices (paragraph 2B)
  - (2) Effective supervision (paragraph 2C)
  - (3) Appropriate resources (paragraph 2D)
  - (4) Suitability (paragraph 2E)
  - (5) Business model (paragraph 2F)

### **Relevant provisions of the Authority’s Handbook**

5. 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 Handbook, including the part titled Threshold Conditions (“COND”). The main considerations in relation to the action specified are set out below.

#### ***Effective Supervision (Paragraph 2C of Schedule 6 to the Act)***

6. COND 2.3.3.G(1) states that that in assessing the threshold conditions in paragraph 2C the FCA will take into consideration whether it is likely that the FCA will receive adequate information from the firm and those persons with whom the firm has close links to determine whether the firm is complying with the requirements and standards under the regulatory system for which the FCA is responsible. This will include consideration of whether the firm is ready, willing and organised to comply with Principle 11 (Relations with regulators) and the rules in SUP on the provision of information to the FCA.

#### ***Adequate Resources (Paragraph 2D of Schedule 6 to the Act)***

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 2.4.1.A(4)(a) states that matters which are relevant in determining whether a person has appropriate non-financial resources include the skills and experience of those who manage the firm's affairs.
9. COND 2.4.1.A(4)(b)(i) states that matters which are relevant in determining whether a person has appropriate non-financial resources include whether a person's non-financial resources are sufficient to enable him to comply with requirements imposed or likely to be imposed on a firm by the FCA in the course of the exercise of its functions.
10. COND 2.4.2G(2) states that the FCA 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.