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FINAL NOTICE

Tellaw (UK) Limited
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15 August 2016

ACTION

1. By an application dated 24 July 2015 ("the Application") Tellaw (UK) Ltd ("Tellaw") applied under Regulation 12 of the Electronic Money Regulations 2011 (the "EMRs") for registration as a small electronic money institution ("SEMI") and for permission to issue e-money and provide unrelated payment services.
2. The Application is incomplete. For the reasons listed below and pursuant to Regulation 13(1) of the EMRs, the Authority has refused the Application.

SUMMARY OF REASONS

3. Tellaw has failed to provide the Authority with further information that it reasonably considers necessary to enable it to determine the Application, such that the condition for registration set out in regulation 13(2) is not met.
4. Registered firms (and those seeking registration) are expected to engage with the Authority in an open and cooperative way. The failure to provide the requested information raises concerns as to whether Tellaw and its directors would do so if the Application were to be granted.

5. Further, the failure to provide the Information means that the Authority is unable to satisfy itself that the following conditions for registration are met, namely that:
 - (1) Tellaw holds initial capital at the level required by Part 1 of Schedule 2 to the EMRs, given its failure to provide the Authority with the method used to calculate the initial capital figure and a projected figure for outstanding e-money (Regulation 13(5));
 - (2) the directors and persons responsible for the management of Tellaw's electronic money and payment service business are of good repute and possess the appropriate knowledge and experience to issue electronic money and provide payment services, given the failure of the directors of Tellaw to engage in an open and cooperative manner with the Authority and provide the Information (Regulation 13(7)(a));
 - (3) Tellaw has a business plan under which appropriate and proportionate systems, resources and procedures will be employed to enable it to operate soundly (Regulation 13(7)(b)); and
 - (4) Tellaw has taken adequate measures for the purpose of safeguarding electronic money holder's funds in accordance with Regulation 20 (Regulation 13(7)(c)).
6. By its Decision Notice dated 4 July 2016 ("the Decision Notice"), the Authority gave Tellaw notice that it had decided to take the action described above.
7. Tellaw 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.
8. 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 Tellaw a Final Notice of its refusal.

DEFINITIONS

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

"the Act" means the Financial Services and Markets Act 2000.

"the Application" means the application submitted by Tellaw on 24 July 2015 and referred to in paragraph 1 above.

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

"the EMRs" or "Regulations" means the Electronic Money Regulations 2011.

"the Information" means the information requested by the Authority on 25 September 2015, as set out more fully in paragraph 9 below.

"the RDC" means the Authority's Regulatory Decisions Committee.

"the RTC" means the Authority's Regulatory Transactions Committee.

FACTS AND MATTERS

10. The Application was received by the Authority on 24 July 2015.
11. Amongst other things, Tellaw were asked to provide their initial capital calculations. The EMRs require applicants whose business activities generate (or are projected to generate) average outstanding e-money of €500,000 or more to hold an amount of initial capital at least equal to 2% of their average outstanding e-money. Tellaw's business plan stated that it had £760,000 share capital in place. However, the Authority was unable to determine whether this figure met the requirement as the financial forecasts were unclear and the initial capital calculations had not been provided.
12. On 25 September 2015, the Authority sent an email to Tellaw, requesting the following information in support of the Application:
 - (1) clarification of its financial forecasts and its initial capital requirement;
 - (2) "method D" calculations for the ongoing capital requirement;
 - (3) details concerning its safeguarding arrangements;
 - (4) details of the operational activities intended to be outsourced;
 - (5) clarification of the its accounting reference date;
 - (6) a revised anti-money laundering procedures manual; and
 - (7) confirmation of the business continuity plan.
13. As Tellaw did not respond to the Authority's email of 25 September 2015, the Authority sent Tellaw a further email on 15 October 2015 requesting an update on the progress in providing a response to the Information request. Tellaw did not respond.
14. On 28 October 2015, the Authority telephoned Tellaw and discussed the Information request. That same day, the Authority resent the Information request to Tellaw.
15. On 10 November 2015, Tellaw emailed the Authority to request clarification of some items of the Information request.
16. On 30 November 2015, the Authority responded to Tellaw's request for clarification and provided Tellaw with guidance in respect of the Information request.
17. On 1 December 2015, Tellaw emailed the Authority to ask for Tellaw's firm reference number in order to provide this to its client account provider. The Authority responded the same day, confirming Tellaw's provisional firm reference number, and explaining that Tellaw would not appear on the FCA's Financial Services Register as the Application had not yet been approved.
18. On 22 December 2015, the Authority emailed Tellaw to again request the Information. Tellaw did not respond.

19. On 5 February 2016, the Authority telephoned Tellaw to discuss the Application. During this call, the Authority explained that a failure to provide the Information would result in the Application being determined based on the information received to date. The Authority emailed Tellaw that same day to confirm the information discussed during the call.
20. On 19 February 2016, the Authority telephoned Tellaw again. Tellaw did not answer the call.
21. On 22 February 2016, the Authority telephoned Tellaw to discuss the Application and reiterated that a failure to provide the outstanding information would result in the Application being determined based upon the information received to date.
22. On 22 April 2016, the Authority issued a Minded to Refuse letter ("MTR Letter") to Tellaw, noting that a failure to provide the Information would result in the Application being determined based upon the information received to date, and that this might result in a recommendation to the RTC that it issue Tellaw with a Warning Notice proposing to refuse the Application.
23. No substantive response has been received by the Authority to the Information request, and the Authority has not received a response to its MTR Letter.

FAILINGS

24. Pursuant to Regulation 13(1) of the EMRs the Authority may refuse an application for registration as a SEMI only if any of the conditions in paragraphs (2) to (10) of Regulation 13 are not met. The Regulations and Authority guidance relevant to this Final Notice are referred to in Annex A.
25. Regulation 13(2) requires an application to comply with the requirements of, and any requirements imposed under Regulation 12. Tellaw has not met regulation 13(2), as it has failed to respond to the Authority's numerous requests for the provision of the Information considered by the Authority to be necessary to enable it to determine the Application.
26. Authorised firms (and those seeking authorisation) are expected to engage with the Authority in an open and cooperative way. The firm's failure to provide the Information raises concerns as to whether Tellaw and its directors would do so if the Application were to be granted.
27. As Tellaw has failed to provide the Information requested by the Authority to enable it to determine the Application, the Authority cannot be satisfied that the following conditions in Regulation 13 are met:
 - (1) Regulation 13(5), which requires Tellaw to hold initial capital at the level required by Part 1 of Schedule 2 to the EMRs. Tellaw's failure to provide the Authority with the method used to calculate the initial capital figure and a projected figure for outstanding e-money means that the Authority cannot be satisfied that the initial capital requirement is met;

- (2) Regulation 13(7)(a), which requires that the Authority must be satisfied that the directors and persons responsible for the management of Tellaw are of good repute and possess appropriate knowledge and experience to issue electronic money and provide payment services. The failure by the directors of Tellaw to provide the Information means that they have not been open and cooperative with the Authority (over an extended period), which raises concerns as to their willingness to comply with the requirements and standards of the regulatory system;
- (3) Regulation 13(7)(b), which requires that Tellaw has a business plan under which appropriate and proportionate systems, resources and procedures will be employed to enable it to operate soundly; and
- (4) Regulation 13(7)(c), which requires Tellaw to have adequate measures in place to safeguard electronic money holders' funds in accordance with Regulation 20.

IMPORTANT NOTICES

28. This Final Notice is given to Tellaw pursuant to section 390(1) of the Act.

Publication

29. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Final Notice relates. Under those provisions, 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 Tellaw or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
30. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Authority contacts

31. For more information concerning this matter generally, contact James Borley, Manager, Permissions at the Authority (direct line: 020 7066 5340/email: james.borley@fca.org.uk).



Philip Salter
on behalf of the Regulatory Transactions Committee

ANNEX A – REGULATORY PROVISIONS RELEVANT TO THIS FINAL NOTICE

Relevant Statutory Provisions

The Electronic Money Regulations 2011

1. Regulation 9(2) (as applied by Regulation 15 to applications for registration as a SEMI) provides that “[t]he Authority may determine an incomplete application if it considers it appropriate to do so, and it must in any event determine any such application within 12 months beginning with the date on which it received the application”.
2. Regulation 9(6) (as applied by Regulation 15) provides that “[i]f the Authority proposes to refuse an application or to impose a requirement it must give the applicant a Warning Notice”.
3. Regulation 12(1) requires an application for registration as a SEMI to contain, or be accompanied by, the information required by the Authority.
4. Regulation 12(4) states that at any time after receiving an application and before determining it, the Authority may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.
5. Regulation 13(1) states that the Authority may refuse to register an applicant as a SEMI only if any of the conditions set out in paragraphs (2) to (10) are not met.
6. Regulation 13(2) states that the application must comply with the requirements of, and any requirements imposed under, regulation 12.
7. Regulation 13(5) requires that “[t]he applicant must immediately before the time of registration hold such an amount, if any, of initial capital as is required in accordance with Part 1, Schedule 2”.
8. Regulation 13(7)(a) requires that “[t]he applicant must satisfy the Authority that the directors and persons responsible for the management of its electronic money and payment services business are of good repute and possess appropriate knowledge and experience to issue electronic money and provide payment services”.
9. Regulation 13(7)(b) requires that “[t]he applicant must satisfy the Authority that it has a business plan (including for the first three years, a forecast budget calculation) under which appropriate and proportionate systems, resources and procedures will be employed by the institution to operate soundly”.
10. Regulation 13(7)(c) requires that “[t]he applicant must satisfy the Authority that it has taken adequate measures for the purpose of safeguarding electronic money holders’ funds in accordance with regulation 20”.

Financial Services and Markets Act 2000

11. Section 390(1) states that if the Authority has given a person a Decision Notice and the matter was not referred to a Tribunal within the time required by the Tribunal Procedure Rules, the Authority must give the person concerned a Final Notice.

12. Section 391(4) states that the Authority must publish such information about the matter to which a final notice relates as it considers appropriate.
13. Section 391(6) states that the Authority may not publish information if publication would, in its opinion, be unfair to the person with respect to whom the action was taken or prejudicial to the interests of consumers.
14. Section 391(7) states that information is to be published in such a manner as the Authority considers appropriate.

Relevant Guidance

"The Authority's role under the Electronic Money Regulations 2011 – Our approach"

15. In exercising its powers in relation to the approval of an application for registration as a SEMI, the Authority must have regard to guidance published in the Authority's 'Our approach' document, including the section titled 'Authorisation and registration'. The version of the 'Our approach' document at the date of the application was dated June 2013.
16. The paragraphs relevant to the proposal to refuse the Application are set out below (references to 'we' are references to the Authority).
17. Paragraph 3.103: The business plan has to explain how the applicant intends to carry out its business. It should provide enough detail to show that the proposal has been carefully thought out and that the adequacy of financial and non-financial resources has been considered.
18. Paragraph 3.104: The plan must include a forecast budget for the first three financial years. The budget has to demonstrate that the applicant is able to employ appropriate and proportionate systems, resources and procedures to operate soundly, and that it will be able to continue to meet the initial capital requirements and the ongoing capital (own funds) requirement, if applicable.
19. Paragraphs 3.114 and 3.115: By the time of registration, the applicant must provide evidence that it holds initial capital at the level required by Part 1 of Schedule 2 to the EMRs. The level of initial capital required varies according to the average value of outstanding e-money:
 - where the business activities of an applicant generate average outstanding e-money of €500,000 or more, the capital requirement is at least equal to 2% of the average outstanding e-money of the institution; and
 - where the business activities of an applicant generate average outstanding e-money of less than €500,000, there is no capital requirement.

Where an applicant to become a SEMI has not completed a sufficiently long period of business to compile historical data adequate to make that assessment, the applicant must make the assessment on the basis of projected outstanding e-money as evidenced by its business plan, subject to any adjustments to that plan required by us.

20. Paragraphs 3.128 and 3.129: states that the Authority must be satisfied that the applicant's directors and any other persons who are or will be responsible for the management of the e-money business or payment services business carried on by the SEMI are of good repute and possess appropriate knowledge and

experience. This incorporates two elements, firstly identification by the applicant of those with responsibility for the e-money business and payment service business. All such individuals must be included in the application. Secondly the applicant, together with the EMD Individual, must provide full and complete information to the Authority about all EMD Individuals in order to satisfy the Authority as to the reputation, knowledge and experience of these individuals.

21. Paragraphs 3.137: sets out the factors that the Authority will have regard to when making the fit and proper assessment are:
 - honesty, integrity and reputation;
 - competence and capability; and
 - financial soundness.
22. Paragraph 3.148: describes the two methods which may be used to safeguard customer funds that have been received in exchange for e-money.
23. Paragraph 3.163: We have to make a decision on a complete application within three months of receiving it. An application is complete when we have received all the information and evidence needed for us to make a decision. We will let the applicant know if we need more information.
24. Paragraph 3.164: In the case of an incomplete application, we must make a decision within 12 months of receipt. If discussions with the applicant have not resulted in us receiving all the information we need to make our decision, it is likely that an incomplete application will result in a refusal. This is because it is unlikely we will have been able to satisfy ourselves that the applicant has met the authorisation/registration requirements.
25. Paragraph 3.169: We can refuse an application when the information and evidence provided does not satisfy the requirements of the EMRs. When this happens we are required to give the applicant a Warning Notice setting out the reason for refusing the application and allowing 28 days to make a representation on the decision.