
FIRST SUPERVISORY NOTICE

To: **Hull Northern Credit Union Limited**

Of: **99 Greenwood Avenue
Kingston Upon Hull
HU6 9NX**

Dated: **20 May 2009**

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 you, Hull Northern Credit Union Limited ("HNCU"), pursuant to Part IV of the Act ("HNCU's permission") by removing its regulated activity with immediate effect. Accordingly, HNCU's permission no longer includes the regulated activity of accepting deposits.

1.2 The FSA has further varied HNCU's permission by including the following requirements, namely that HNCU 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 HNCU's business.
- 1.3 For the avoidance of doubt, the expenses referred to in 1.2(v) do not include gifts, nor payments of unusual or significant amounts to HNCU's employees or officers or any persons connected to them.
- 1.4 The FSA has also varied HNCU's permission by including the following requirements, namely that within 14 days it must:
 - (i) advise in writing all members of HNCU 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
 - (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 ACTION

Summary

- 2.1 The FSA has concluded, on the basis of the facts and matters described below, that HNCU 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, HNCU has failed to maintain positive capital and an adequate governing body, 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 HNCU 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 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.

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.

2.7 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.”

2.8 Paragraph 5 of Schedule 6 to the Act sets out Threshold Condition 5 which provides that:

"The person concerned must satisfy the Authority that he is a fit and proper person having regard to all the circumstances, including –

- (c) the need to ensure that his affairs are conducted soundly and prudently."

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 “FSA Handbook”). The main considerations relevant to the action specified are set out below.

Relevant Principles

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

2.11 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 and guidance

Failure to maintain adequate resources

2.12 FSA Rule 8.3.1R of the Credit Unions Sourcebook in the FSA Handbook (“CRED”) states:

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

2.13 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."

Failure to maintain an adequate governing body

2.14 CRED 13.4.1G sets out that in order to be registered by the FSA a credit union must demonstrate that the statutory conditions set out in section 1 of the Credit Unions Act will be fulfilled. These conditions, as set out in CRED 13 Annex 1, include that the credit union must set rules which provide for all matters required in section 4(1) of and Schedule 1 to the Credit Unions Act 1979. Section 14(1) of the Industrial and Provident Societies Act 1965 sets out that a credit union and all members thereof are bound by the rules of the credit union.

2.15 The guidance in 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 power.

2.16 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.

2.17 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 the relevant Threshold Conditions

2.18 Guidance on the Threshold Conditions is set out in Chapter 2 of the Part of the FSA Handbook entitled Threshold Conditions ("COND").

COND 2.4 - Threshold Condition 4: Adequate Resources (paragraph 4, Schedule 6 to the Act)

2.19 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.

2.20 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.

2.21 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.

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

- 2.22 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, amongst other things, the need to ensure that his affairs are conducted soundly and prudently.
- 2.23 COND 2.5.4G(2)(b) states that the FSA, when forming its opinion as to whether an authorised person is conducting its affairs soundly and prudently, will have regard to relevant matters including whether it has, or will have, a competent and prudent management.
- 2.24 COND 2.5.4G(3) states that the FSA will only to take into account relevant matters which are significant in the context of the suitability of the firm.
- 2.25 COND 2.5.7G(1) states that the FSA will, when forming its opinion as to whether an authorised person has a competent and prudent management, have regard to relevant matters, including whether the authorised person has a governing body made up of individuals with an appropriate range of skills and experience to understand, operate and manage the firm's regulated activities, in determining whether a firm satisfies Threshold Condition 5.

Relevant regulatory provisions

- 2.26 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

- 2.27 EG 8.1 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.
- 2.28 EG 8.2 provides that the FSA will take formal action affecting the conduct of a firm's commercial business only if that business is being conducted in such a way that the FSA judges it necessary to act in order to address the consequences of non-compliance with the Act and the Principles.
- 2.29 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.
- 2.30 EG 8.5 specifies the circumstances in which the FSA will consider exercising its own-initiative power, including where a firm's financial resources appear to be inadequate for the scale or type of regulated activity it is carrying on (EG 8.5(1)(a)) and where a firm has not been managed competently and prudently and has not exercised due skill, care, and diligence (EG 8.5(1)(b)(ii)).
- 2.31 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.

Background facts

2.32 HNCU is a version 1 credit union which has 18 individuals who are currently approved as directors, five of which are non-executive directors. In its Quarterly Return for the period ended 31 December 2008, HNCU reported that it had 65 members and three juvenile depositors.

Facts and matters relied on

2.33 The latest information available to the FSA, which was provided to the FSA by HNCU's accountant, not by HNCU in any formal regulatory return, appears to show that HNCU had negative capital resources of £6, 276 as at 28 February 2009.

2.34 HNCU has failed to provide any audited financial information to satisfy the FSA that it has positive capital, including failing to submit its Annual Return ("Form CY") for the year ended 30 September 2007, or provide any proposals to rectify the capital deficit.

2.35 Further, HNCU has informed the FSA that there are only three remaining directors on the Board of HNCU, in breach of HNCU's own rules, and that one of the remaining directors has, for personal reasons, not attended a Board meeting for more than a year. HNCU has also stated that the Board is no longer meeting.

2.36 HNCU has failed to notify the FSA formally of the members of its Board, despite repeated requests by the FSA that it do so.

Conclusions

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

- HNCU 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;
- HNCU has failed to maintain an adequate number of directors, in breach of its own rules. By virtue of that failing, HNCU fails to satisfy the FSA that it has a competent and prudent management;
- those failings are material in relation to the regulated activity for which HNCU has permission and it therefore fails to satisfy Threshold Condition 4 (Adequate resources);
- by failing to respond adequately to the FSA's repeated requests that HNCU provide the FSA with accurate financial information and notify the FSA formally of the members of the Board, and by failing to submit an accurate and complete

Form CY and audited accounts for the year ended 30 September 2007, HNCU is in breach of Principle 11 of the FSA's Principles for Businesses;

- these failings are material in relation to the regulated activity for which HNCU has permission and it therefore fails to satisfy Threshold Condition 5 (Suitability);
- the risk of loss or other adverse effect on consumers by HNCU's failings, causes the FSA to have serious concerns about HNCU such that the exercise of the FSA's own-initiative powers to vary HNCU's permission with immediate effect is an appropriate response to those concerns; and
- specifically, the variation of HNCU's permission should take immediate effect to address the FSA's serious concern that its capital and its governing body are inadequate to conduct the regulated activity it carries on.

3. DECISION MAKER

3.1 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 HNCU in accordance with section 53(4) of the Act and is served on HNCU at its principal place of business last notified to the FSA. The following statutory rights are important.

The Tribunal

4.2 You may refer this matter to the Financial Services and Markets Tribunal (the "Tribunal"). Under section 133 of the Act, you have 28 days from the date you were 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 you 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 You should note that the Tribunal Rules provide that at the same time as filing a reference notice with the Tribunal, you must send a copy of the notice to the FSA. Any copy notice should be sent to Martin Badcock at the FSA, 5th Floor, 25 The North Colonnade, Canary Wharf, London E14 5HS.

Representations

4.4 You have the right to make written and oral representations to the FSA, whether or not you refer this matter to the Tribunal. If you wish to make written representations you must do so by 23 June 2009 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 you wish to make oral representations, you should inform us in writing of your intention to do so by 2 June 2009. If you do not notify us by 2 June 2009, you will not, other than in exceptional circumstances, be able to make oral representations.

Confidentiality and publicity

- 4.5 You 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). You 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 you have any questions regarding the procedures of the Regulatory Decisions Committee, you should contact either Husayn Rahman (direct line: 020 7066 1072/ fax: 020 7066 1073, or Jackie Noonan, RDC Professional Support Services (direct line: 020 7066 3074/fax: 020 7066 3075).
- 4.7 For more information concerning this matter generally, you should contact Martin Badcock at the FSA (direct line: 020 7066 1560 / fax: 020 7066 1561).

Tim Herrington
Chairman, Regulatory Decisions Committee