
FINAL NOTICE

To: Arthur Kirk trading as Grosvenor Mortgage Advice Centre
FRN / Individual reference: 305203 / AJK00022
Date: 15 September 2009

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") gives you final notice about a decision to prohibit you, Arthur Kirk, trading as Grosvenor Mortgage Advice Centre, from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

1. ACTION

1.1 The FSA gave you a Decision Notice on 11 September 2009 which notified you that that the FSA decided to take the following action:

- (1) to make a prohibition order, pursuant to section 56 of the Act, to prevent you from performing any function in relation to any regulated activity carried on by any authorised person, exempt person, or exempt professional firm, in relation to any regulated activity ("the Prohibition Order"); and
- (2) to cancel, pursuant to section 45 of the Financial Services and Markets Act 2000 ("the Act"), the permission granted to you, trading as Grosvenor, pursuant to Part IV of the Act.

1.2 You confirmed on 24 August 2008 that you will not be referring the matter to the Financial Services and Markets Tribunal.

1.3 Accordingly, for the reasons set out below, the FSA has today made a Prohibition Order against you and cancelled the permission granted to Grosvenor.

2. REASONS FOR THE ACTION

2.1 The FSA has concluded, on the basis of the facts and matters described below, that you are not fit and proper to carry out any functions in relation to regulated activities carried on by authorised persons and that you should be prohibited from doing so.

2.2 In the opinion of the FSA, you are not fit and proper because you have failed to act with competence and capability in relation to your sole trader business, Grosvenor. In particular, you have failed to:

- (1) establish appropriate systems and controls to reduce the risk of your firm being used for financial crime, specifically mortgage fraud;
- (2) establish appropriate systems and controls to ensure that the advice you gave was suitable; and
- (3) take remedial action required by the FSA.

2.3 In failing to take the above steps, you have demonstrated a failure to understand the requirements and standards of the regulatory system. The FSA has concluded that your failings are serious because they exposed customers to the risk of receiving unsuitable advice, lenders to the risk of making loans on the basis of inaccurate information and your firm to the risk of being used for financial crime.

2.4 In addition, the FSA has concluded, on the basis of the facts and matters described below and on the basis of the action to prohibit you, that Grosvenor 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").

2.5 The FSA is not satisfied that Grosvenor is a fit and proper to conduct regulated activities having regard to all the circumstances including its connection with you, the nature of any regulated activity that it seeks to carry on and the need to ensure that its

affairs are conducted soundly and prudently (Threshold Condition 5). Specifically, Grosvenor:

- (1) has failed to conduct its business in compliance with proper standards;
- (2) does not have competent and prudent management in place (both historically and in view of the action to prohibit you); and
- (3) has failed to conduct its affairs with due skill, care and diligence.

2.6 The FSA therefore considers it necessary to cancel Grosvenor's Part IV permission.

2.7 The prohibition order against you and cancellation of your Part IV permission support the FSA's statutory objectives of maintaining market confidence, reducing financial crime and protecting consumers.

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS

3.1 The relevant statutory and regulatory provisions are set out at Annex 1 to this Final Notice.

4. FACTS AND MATTERS RELIED ON

Background

4.1 You, trading as Grosvenor, were first authorised by the FSA to perform regulated activities on 31 October 2004 and currently hold the following permissions:

- (1) Advising on investments (excluding Pension Transfers and Opt outs);
- (2) Advising on regulated mortgage contracts;
- (3) Agreeing to carry on a regulated activity;
- (4) Arranging (bringing about) deals in investments;
- (5) Arranging (bringing about) regulated mortgage contracts;
- (6) Dealing in investments as agent;
- (7) Making arrangements with a view to regulated mortgage contracts; and

- (8) Making arrangements with a view to transactions in investments.
- 4.2 You are the sole principal responsible for mortgage advice at Grosvenor.
- 4.3 In June 2007 Grosvenor was visited by the FSA as part of a thematic project looking at the sale of self-certified mortgages (“the 2007 visit”).
- 4.4 In June 2008, Grosvenor was assessed by the FSA as part of its Treating Customers Fairly (“TCF”) initiative (“the TCF Assessment”). The firm was subsequently selected for a follow-up visit in August 2008 (“the 2008 visit”).
- 4.5 Unless otherwise stated the facts and matters set out in paragraphs 4.6 to 4.56 below relate to the period between 31 October 2004 (the date you were authorised by the FSA) and 27 November 2008 (the date of the Memorandum of Appointment of Investigators) (“the relevant period”).

Systems and Controls to prevent financial crime

- 4.6 The FSA requires firms to take reasonable care to establish and maintain effective systems and controls to counter the risk that the firm might be used to further financial crime, including mortgage fraud.

Evidence of Income

- 4.7 You do not have a process for obtaining evidence of customers’ income. The FSA requires that, before recommending a mortgage, a firm must assess, verify and demonstrate that the mortgage is affordable for the customer. It is not sufficient, in order to make such an assessment, simply to ask the customer to sign a declaration stating that they can afford the mortgage.
- 4.8 At an interview with the FSA investigators on 16 January 2009, you stated that, in practice, you rely on information provided verbally by the customer, and that you only collect evidence of income if it is required by the mortgage lender or if the information provided verbally by the customer appears implausible.
- 4.9 You stated that, in some cases, a customer may not be able to provide proof of income. You explained, by way of example, that a number of your customers receive additional income in cash which is not declared to Her Majesty’s Revenue and

Customs (“HMRC”) and for which they cannot provide evidence. In such cases, you asked your customers to sign a form declaring that they were not declaring all of their income to HMRC and confirming that they were able to afford the mortgage that had been recommended.

4.10 You claimed that you might speak to the customer’s employer or accountant to verify the information that has been provided by the customer. You stated you do not record these conversations and that this approach is not applied in every case where there is no proof of income.

4.11 The FSA has obtained and reviewed files for eight regulated mortgage contracts. The FSA’s findings were as follows:-

(1) In six cases there was no proof of income on file. You admitted that you did not obtain proof of income in these cases;

(2) In three of these cases you had recorded that proof of income in the form of accounts or bank statements was available. However, you failed to collect such evidence;

(3) In two cases, you collected proof of income in the form of payslips. In the case of Client A, it appeared to the FSA that some of the descriptive text relating to the year to date figures was missing from the payslips. These payslips were used to verify the income as stated on Client A’s application form. When asked about Client A’s payslips during interview, you accepted that there was a question over the validity of the documents because the net pay figure was identical on each payslip. However, you had failed to identify or act on these concerns prior to the FSA questioning you about the validity of the payslips. You accepted that you had not adequately checked the payslips in the case of Client A; and

(4) In three cases, employed customers were self-certifying their income, with no proof of income provided:

(a) in two of these cases, you recorded that the customers had additional income which they did not wish to declare to HMRC; and

- (b) in the third case, there was no explanation as to why the customer was self-certifying their income.

4.12 The FSA does not consider that Grosvenor has appropriate systems and controls in place for evidencing customers' income. In particular, the FSA considers that, by failing to verify customers' income in every case and failing to obtain proof of the customer's income, you have exposed:

- (1) your firm to the risk of being used for purposes connected with financial crime;
- (2) customers to receiving mortgages which they cannot afford; and
- (3) lenders to receiving false and misleading information in relation to customers' mortgage applications and granting mortgages on the basis of such information.

Verification of documents

4.13 You claimed that you ask customers to provide original documents in respect of identification and proof of address. You claimed that you would then copy the document and sign it to certify that it was a true copy of the original document. You would then submit it to the mortgage lender in support of a customer's mortgage application.

4.14 Client A provided a statement from his existing mortgage lender in support of his new mortgage application. On your file for Client A, there were three versions of this statement:

- (1) version one appears to be a faxed copy of the statement;
- (2) version two appears to be a photocopy of version one, but with tippex on it - the tippex obscured one of the two mortgage account numbers which appeared on version one; and
- (3) version three is a photocopy of version two.

You certified version three as “*a true copy of the original / true likeness*” despite the fact that version three is a modified copy of version one, which is in itself only a fax, not an original. You then submitted the certified copy to a lender in support of a mortgage application.

4.15 You denied altering the document and stated that you had not noticed the tippex on the document before the FSA brought it to your attention. You further stated that the content of the letter was not relevant because the document was being used as proof of address, and that lenders would not look at the content.

4.16 Despite this, you accepted that you were responsible for certifying the document and that you should not have certified the document as “*a true copy of the original / true likeness*” when you had not seen the original.

Verification of client signatures

4.17 You stated that you complete a ‘fact find’ document to gather and record information from customers. The fact find is then signed by the customer either at your office if they are present, or is posted to the customer for them to sign and return.

4.18 In each of the eight cases reviewed by the FSA, the signatures on the fact finds and on associated documents were significantly different to the signatures on the mortgage application and on the customers’ identification documents. You stated that you were unaware of these discrepancies before the FSA brought it to your attention.

4.19 You admitted that, had you reviewed the client file, you should have noticed the discrepancies. You were the adviser in each case and you failed to verify the authenticity of the customers’ signatures which you now acknowledge appear to have been falsified.

False and misleading information

4.20 You submitted a mortgage application for Client B dated 2 April 2008 in which you recorded the customer’s occupation as a Post Office Manager with an income of £22,750.

4.21 The FSA found a home insurance quotation on Client B's file which recorded the customer's occupation as a student and part time shopkeeper. You were unable to recall whether you had submitted this information to the insurer on behalf of the client, or whether the client had provided it to you after the mortgage application had been submitted. In either event, you failed to identify this discrepancy prior to the FSA bringing it to your attention.

4.22 The FSA obtained information from HMRC which showed that Client B did not receive any income over the relevant period. You admitted that false or misleading information had been submitted to the mortgage lender through your firm. You further admitted that, had you reviewed the client file, you should have identified this.

Conclusion

4.23 The FSA considers that your failings as set out in paragraphs 4.7 to 4.22 above, demonstrate a serious lack of competence and capability. In particular, you failed to ensure that:

- (1) customer files were reviewed;
- (2) adequate checks were carried out to ensure that information provided by customers was accurate and true; and
- (3) you applied sufficient due diligence to identify false and misleading information provided by customers.

4.24 Your failings in this regard are serious because they exposed your firm to the risk that it would be used for financial crime, specifically mortgage fraud, and lenders to the risks associated with providing mortgages without being given all the information necessary to assess the risk of customers defaulting on mortgage payments.

Systems and controls to ensure suitability of advice

4.25 The FSA requires mortgage brokers to take reasonable care to ensure the suitability of the advice that it gives to customers. In order to meet this requirement, mortgage brokers must take reasonable steps to gather all information likely to be relevant to the

assessment of suitability and make and retain a record of that information and the advice given to the customer.

- 4.26 You claimed that you completed a 'fact find' during telephone conversations or face to face meetings with the customer and that you used this document to record information about the customers' circumstances, needs and preferences.

Record Keeping

- 4.27 Due to your poor record keeping and/or your lack of appropriate fact finding, it was not possible to undertake a detailed assessment of the suitability of the advice which you had provided on any of the eight regulated mortgage files reviewed by the FSA.
- 4.28 Examples of insufficient information being obtained and/or retained by you are set out in paragraphs 4.7 to 4.12 above and in paragraphs 4.33, 4.37, and 4.40 to 4.41 below. You admitted that insufficient information had been retained on your files in order to demonstrate whether the advice given was suitable.

Suitability letters

- 4.29 You explained that, some time after the FSA visit in 2007, you decided to start issuing 'suitability letters' to customers in order to document why any recommendation made was suitable for them in light of their circumstances, needs and preferences.
- 4.30 The FSA reviewed two of your suitability letters and found that the letters did not set out clearly the reasons why the recommendation had been made, and did not contain sufficient detail to evidence why the advice given was suitable for the customer.
- 4.31 You admitted that the suitability letters would not help the customer understand why a particular mortgage had been recommended as being suitable to them.

Attitude to risk

- 4.32 On seven of the eight client files reviewed by the FSA, the attitude to risk of the customer is unclear. During interview, you were unable to describe where attitude to risk should be recorded on the fact find.

- 4.33 You claimed that you ask questions to determine the appropriate repayment method for the client, but stated that you do not document the reasons why the repayment method was appropriate for the client.

Affordability

- 4.34 In five of the eight client files reviewed by the FSA, you had calculated whether the mortgage was affordable for the customer incorrectly by using the customer's gross income as opposed to their net income. This resulted in the mortgage appearing to be more affordable for the customer than, in fact, it was.
- 4.35 In one case, the affordability assessment is blank, suggesting that no affordability check was carried out.
- 4.36 As the provider of mortgage advice, you are responsible for assessing whether a mortgage is affordable. However, you stated that in some cases you do not verify the customer's income himself, but instead ask the customers' accountant to verify that the mortgage is affordable.

Research

- 4.37 You use a computer software research tool to ascertain the most suitable product for a customer. The FSA identified that in six out of the eight cases reviewed, you had not kept a copy of the results of this research. Therefore you could not evidence why a particular mortgage was suitable for the customer.
- 4.38 On the remaining two files which contained the details of products which had been researched, the products were sorted in alphabetical order and did not display the product which had been recommended. You accepted that this was confusing to the customer and did not demonstrate why the specific product had been recommended.

Product

- 4.39 In two of the eight client files reviewed by the FSA, the fact find recorded that the individual required a fixed rate product for a specified number of years, but the mortgage you recommended was fixed for a different period.

4.40 You claimed that this was because the customer had changed his mind on seeing the available rates. You accepted that you should have documented that the client had changed their preference.

4.41 You admitted that you did not always refer to the fact find when submitting a mortgage application or sourcing a mortgage product to ensure that you recommended the customer a product that matched their needs and preferences.

Conclusion

4.42 The FSA considers that your failings, as set out in paragraphs 4.25 to 4.41 above, demonstrate a serious lack of competence and capability. In particular, you failed to ensure that:

(1) adequate information about the customer's circumstances was gathered; and

(2) adequate records relating to the advice given were retained on file.

4.43 Your failings in this regard are serious because they exposed your customers to the risk that they would be recommended specific mortgage contracts when that mortgage contract was not suitable for their particular needs and circumstances.

Failure to take remedial action

The 2007 Visit

4.44 The 2007 visit identified a number of issues that were the subject of concern and which required you to take remedial action in order to address those concerns. The concerns included the following matters:-

(1) There were insufficient controls around the sale of self-certified mortgages. In particular:

(a) there were instances where individuals were employed but were self-certifying their income with no explanation recorded on file; and

- (b) the client files did not contain any evidence of proof of income where this should reasonably have been provided.
 - (2) Insufficient information was recorded on the client file, which made it difficult to assess whether the advice given was suitable. In particular:
 - (a) insufficient information was collected to demonstrate whether the mortgage product was affordable;
 - (b) in several files, the product offered did not match the client's needs and preferences; and
 - (c) no evidence of product research was available.
- 4.45 You failed to take any remedial action in relation to the concerns raised by the FSA and consequently the same failings were also identified during the 2008 visit (as to which see paragraphs 4.50 - 4.53 below).
- 4.46 You have accepted that you did not take the remedial action required following the 2007 visit and that you should have done more to address the FSA's concerns.

The TCF Assessment

- 4.47 The TCF Assessment in June 2008 identified a number of issues with respect to your ability to demonstrate that customers were treated fairly and required you to undertake remedial action. This included:
- (1) reviewing the business in order to identify where TCF needed to be incorporated into your business practices and documenting this process; and
 - (2) considering how Management Information ("MI") could be used in the business and beginning the process of using MI as a management tool.
- 4.48 The FSA's letter setting out the remedial action to be taken by Grosvenor included references to materials available through the FSA's public website designed to assist firms to implement such remedial action.
- 4.49 You failed to implement this remedial action.

The 2008 Visit

- 4.50 In August 2008 Grosvenor was visited by the FSA to follow up on the issues identified in the TCF Assessment. During this visit, you stated that you had put in place an informal arrangement with another mortgage advisor (the “Locum”) under which the Locum reviewed your mortgage files. However, you stated that neither the arrangement with the Locum nor the feedback you had received from the Locum had been documented.
- 4.51 The FSA was still not satisfied that you were embedding a culture of TCF at your firm or that you were in a position to demonstrate that the fair treatment of customers is central to Grosvenor’s culture.
- 4.52 The FSA therefore wrote to you on 22 September 2008 requiring you to carry out further remedial action by 17 October 2008. This included:
- (1) providing a copy of your procedures in respect of self-certification business to the FSA in order to demonstrate that you were collecting appropriate evidence;
 - (2) confirming that you had formalised file-check procedures with the Locum;
 - (3) providing details on how you would ensure that correct and relevant information was being collected from customers in order to make a suitable recommendation; and
 - (4) providing details of what MI you would produce going forward and how this would be used.
- 4.53 As at 16 January 2009, you had still not completed this remedial action.

The Enforcement investigation

- 4.54 During the interview with the FSA investigators on 16 January 2009, you claimed to be willing to implement the FSA requirements as to remedial action, but stated that you did not have a clear understanding of some of the requirements imposed on you. You stated that you were not able fully to understand the material available on the FSA website and confirmed that you had failed to seek further advice on this.

Conclusions

- 4.55 You have consistently failed to take remedial action required by the FSA. In failing to do so, you have demonstrated that you do not understand the requirements and standards of the regulatory system. In particular, you do not understand the requirements of TCF or how to demonstrate that customers are treated fairly through MI. You have accepted that you should have done more to comply with the FSA's requirements.
- 4.56 Your failings demonstrate a serious lack of competence and capability.

5. ANALYSIS OF MISCONDUCT AND PROPOSED ACTION

- 5.1 The FSA has concluded that, by reason of the facts and matters referred to in paragraphs 4.1 to 4.56 above, your conduct, as a sole trader and the authorised person responsible for the day-to-day activities and running of Grosvenor, fell short of the standards required by the FSA's Fit and Proper test for Approved Persons.
- 5.2 Having regard to its regulatory objectives to maintain confidence in the financial system, to reduce financial crime and to secure the appropriate degree of protection for consumers, the FSA considers it appropriate to make an order prohibiting you from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm. In reaching this decision, the FSA has also had regard to Chapter 9 of the Enforcement Guide ("EG") and the following factors in particular:
- (1) you failed to act with the requisite competence and capability by failing to put in place adequate systems and controls to mitigate the risk of unsuitable advice and that your firm would be used for purposes connected with financial crime, specifically mortgage fraud;
 - (2) your failure to complete the remedial action required by the FSA demonstrates a fundamental failure to understand and inability to comply with the requirements of the regulatory system; and

(3) the nature of your conduct demonstrates that you present a serious and continuous risk to consumers and lenders and to confidence in the financial system.

5.3 The facts and matters described above have also led the FSA to conclude that Grosvenor is failing to satisfy Threshold Condition 5 (Suitability) pursuant to section 45 of the Act. In addition, in view of the action to prohibit you, Grosvenor will inevitably fail that condition in the future. The FSA has therefore concluded that its Part IV permission should be cancelled.

6. DECISION MAKERS

6.1 The decision which gave rise to the obligation to give this Final Notice was made by the Settlement Decision Makers on behalf of the FSA.

7. IMPORTANT

7.1 This Final Notice is given to you in accordance with section 390 of the Act.

Publicity

7.2 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 FSA must publish such information about the matter to which this notice relates as the FSA considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to you or prejudicial to the interests of consumers.

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

FSA contacts

- 7.4 For more information concerning this matter generally, you should contact Mario Theodosiou (direct line: 020 7066 5914 / fax: 020 7066 5915) of the Enforcement Division of the FSA.

Signed:

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Tom Spender
Head of Department
FSA Enforcement Division

Annex 1

1. STATUTORY PROVISIONS

- 1.1 The FSA's statutory objectives, set out in section 2(2) of the Act, include market confidence, the protection of consumers, and the reduction of financial crime.

Prohibition

- 1.2 The FSA has the power, under section 56 of the Act, to make an order prohibiting an individual from performing a specified function, any function falling within a specified description, or any function, if it appears to the FSA that he is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person. Such an order may relate to a specified regulated activity or any regulated activity falling within a specified description or all regulated activities.

Cancellation

- 1.3 Section 41 and Schedule 6 of the Act set out the Threshold Conditions. These are the minimum standards for becoming and remaining authorised and are conditions that the FSA must ensure a firm will satisfy, and continue to satisfy, in relation to regulated activities for which it has permission.
- 1.4 The FSA is permitted by section 45(2) of the Act to cancel an authorised person's Part IV permission where it appears that they are failing, or likely to fail, to satisfy the Threshold Conditions.
- 1.5 Paragraph 5 of Schedule 6 to the Act sets out Threshold Condition 5 which provides that the person concerned must satisfy the FSA that he is a fit and proper person having regard to all the circumstances including: (a) his connection with any person; (b) the nature of any regulated activity that he carries on or seeks to carry on; and (c) the need to ensure that his affairs are conducted soundly and prudently.

Regulatory guidance and policy

- 1.6 In considering the appropriate sanction, the FSA has had regard to its published guidance. Although the references in this notice are to the Enforcement Guide ("EG"), the FSA has had regard to the appropriate provisions of the Enforcement

Manual (“ENF”) which is no longer in force but applied to Grosvenor during some of the relevant period. The FSA has also had regard to the relevant provisions in its Decision Procedure and Penalties Manual (“DEPP”) which came into effect on 28 August 2007.

Prohibition

- 1.7 The FSA will consider making a prohibition order where it appears that an individual is not fit and proper to carry out functions in relation to regulated activities carried on by firms. The FSA may exercise these powers where it considers that to achieve any of its statutory objectives it is appropriate to prevent an individual from carrying out any function in relation to regulated activities. The FSA policy in relation to the decision to make a prohibition order is set out in Chapter 9 of EG.
- 1.8 EG 9.4 sets out the general scope of the FSA’s powers in this respect, which include the power to make a range of prohibition orders depending on the circumstances of each case and the range of regulated activities to which the individual’s lack of fitness and propriety is relevant. EG 9.5 provides that the scope of a prohibition order will vary according to the range of functions which the individual concerned performs in relation to regulated activities, the reasons why he is not fit and proper and the severity of risk which he poses to consumers or the market generally.
- 1.9 EG 9.8 to 9.14 concerns the prohibition of approved persons and EG 9.17 to 9.18 provides guidance on the FSA’s exercise of its power to make a prohibition order against an individual other than an individual referred to in EG 9.8 to 9.14. In each case, the FSA may prohibit the individual where it considers this is appropriate to achieve one or more of its regulatory objectives. When considering whether to exercise its power to make a prohibition order against an individual, the FSA will consider all the relevant circumstances of the case, which may include but are not limited to the factors set out in EG 9.9.
- 1.10 EG 9.9 provides that when deciding whether to make a prohibition order the FSA will consider all the relevant circumstances of the case, which may include (but are not limited to):

- (1) whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and propriety are set out in the Fit and Proper test for Approved Persons (“FIT”) in FIT 2.1 (Honesty, integrity and reputation), FIT 2.2 (Competence and capability) and FIT 2.3 (Financial soundness);
- (2) the relevance and materiality of any matters indicating a lack of fitness and propriety;
- (3) the length of time since the occurrence of any matters indicating lack of fitness and propriety;
- (4) the particular controlled function the approved person is (or was) performing, the nature and activities of the firm concerned and the markets in which he operates; and
- (5) the severity of the risk which the individual poses to consumers and to confidence in the financial system.

1.11 EG 9.10 provides that the FSA may have regard to the cumulative effect of a number of factors which, when considered in isolation, may not be sufficient to show that the individual is fit and proper to continue to perform a controlled function or other function in relation to regulated activities.

Fit and Proper Test for Approved Persons

1.12 The section of the FSA handbook entitled “FIT” sets out the Fit and Proper test for Approved Persons. The purpose of FIT is to outline the main criteria for assessing the fitness and propriety of a candidate for a controlled function and FIT is also relevant in assessing the continuing fitness and propriety of an approved person.

1.13 FIT 1.3 provides that the FSA will have regard to a number of factors when assessing a person’s fitness and propriety, including the person’s competence and capability.

1.14 In determining a person’s competence and capability FIT 2.2 provides that the FSA will have regard to all relevant matters including, but not limited to, those set out in FIT 2.2.1G. The guidance includes:

- (1) whether the person satisfies the relevant FSA training and competence requirements in relation to the controlled function the person performs or is intended to perform (FIT 2.2.1G(1)); and
- (2) whether the person has demonstrated by experience and training that the person is able, or will be able if approved, to perform the controlled function (FIT 2.2.1G(2)).

Cancellation

- 1.15 In exercising its power to cancel a Part IV permission, the FSA must have regard to relevant provisions in the FSA Handbook. The main provisions relevant to the action specified above are set out below.

Threshold Condition 5: Suitability (Paragraph 4, Schedule 6 to the Act) – COND 2.5

- 1.16 COND gives guidance on the Threshold Conditions set out in Schedule 6 of the Act. COND 1.3.2G provides that in relation to Threshold Condition 5, the FSA 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.
- 1.17 COND 2.5.2G(1) provides that Threshold Condition 5 requires the firm to satisfy the FSA that it is "fit and proper" to have Part IV permission having regard to all the circumstances, including its connection with other persons, the range and nature of its regulated activities and the overall need to be satisfied that its affairs are and will be conducted soundly and prudently.
- 1.18 COND 2.5.3G(1) provides that the emphasis of this Threshold Condition is on the suitability of the firm itself. The suitability of each person who performs a controlled function will be assessed by the FSA under the approved persons regime. In certain circumstances, however, the FSA may consider that the firm is not suitable because of doubts over the individual or collective suitability of persons connected with the firm.
- 1.19 COND 2.5.3G(2) permits the FSA, when assessing this Threshold Condition in relation to a firm, to have regard to any person appearing to it to be, or likely to be, in a relevant relationship with the firm, as permitted by section 49 of the Act (Persons connected with the applicant). The guidance in COND 2.5.3G(2) also refers to

COND 2.4.3G, which sets out examples of persons in a relevant relationship with the firm.

- 1.20 COND 2.5.4G(2) provides that when determining whether the firm will satisfy and continue to satisfy Threshold Condition 5, the FSA will have regard to all relevant matters including whether a firm: (a) conducts, or will conduct, its business with integrity and in compliance with proper standards; (b) has or will have a competent and prudent management; and (c) can demonstrate that it conducts, or will conduct, its affairs with the exercise of due skill, care and diligence.
- 1.21 COND 2.5.6G provides that in determining whether a firm will satisfy, and continue to satisfy, Threshold Condition 5 in respect of conducting its business with integrity and in compliance with proper standards, relevant matters may include whether (a) the firm is ready, willing and organised to comply with the requirements and standards under the regulatory system; (b) the firm is connected with a person who has contravened any provisions of the Act or the regulatory system; and (c) the firm has taken reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system.
- 1.22 COND 2.5.7G provides that in determining whether a firm will satisfy, and continue to satisfy, Threshold Condition 5 in respect of having competent and prudent management and exercising due skill, care and diligence, relevant matters may include whether (a) the governing body of the firm is made up of individuals with an appropriate range of skills and experience to understand, operate and manage the firm's regulated activities; and (b) the firm has made arrangements to put in place an adequate system of internal control to comply with the requirements and standards under the regulatory system.

Provisions of EG

- 1.23 EG 8.13(1) provides that the FSA will consider cancelling a firm's Part IV permission using its own-initiative powers contained in section 45 of the Act where the FSA has very serious concerns about a firm, or the way its business is or has been conducted.
- 1.24 EG 8.14 provides that the grounds on which the FSA may exercise its power to cancel an authorised person's permission under section 45 of the Act include where (a) there

has been a failure to co-operate with the FSA which is of sufficient seriousness that the FSA ceases to be satisfied that the firm is fit and proper, for example failing without reasonable excuse to take remedial action reasonably required by the FSA; and (b) it appears to the FSA that the firm is failing, or is likely to fail, to satisfy the Threshold Conditions.