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**FINAL NOTICE**

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To: **Best Advice Mortgage Network Limited**

Of: **1<sup>st</sup> Floor, Units 3 & 4  
Kingfisher Way  
Silverlink Business Park  
Newcastle upon Tyne  
NE28 9ND**

Date: **19 October 2006**

**TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives you final notice about a requirement to pay a financial penalty:**

**1. THE PENALTY**

1.1. The FSA gave Best Advice Mortgage Network Limited (“BAMNL”) a Decision Notice on 9 October 2006 which notified BAMNL that pursuant to section 206 of the Financial Services and Markets Act 2000 (“the Act”), the FSA had decided to impose a financial penalty of £7,000 on BAMNL in respect of breaches of Principle 2 (Skill,

care and diligence) and Principle 6 (Customers' interests) of the FSA's Principles for Businesses for persistent record keeping failures and a failure to notify complainants of their right to refer the matter to the Financial Ombudsman Service.

1.2. BAMNL confirmed on 27 September 2006 that it will not be referring the matter to the Financial Services and Markets Tribunal.

1.3. Accordingly, for the reasons listed below and having agreed with BAMNL the facts and matters relied on, the FSA imposes a financial penalty on BAMNL in the sum of £7,000.

1.4. BAMNL agreed to settle at an early stage of the FSA's investigation. It therefore qualified for a 30% (stage 1) discount under the FSA's executive settlement procedures<sup>1</sup>. The FSA would otherwise have imposed a financial penalty of £10,000 on BAMNL based on the facts and matters described in this Final Notice.

## **2. REASONS FOR THE ACTION**

2.1. BAMNL failed to:

(1) make and retain appropriate records of customer information relating to customers' needs and circumstances, which in turn limited the ability of its senior management, compliance consultants and regulatory bodies to assess whether suitable recommendations to enter into regulated mortgage contracts had been made, (**Principle 2**), and

(2) ensure that complaint handlers notified customers in final responses to customers' complaints that they may refer the matter to the Financial Ombudsman Service (**Principle 2 and Principle 6**).

2.2. BAMNL's failure to make and retain appropriate records of customer information is viewed as serious because the FSA drew the matter to BAMNL's attention and found subsequently that it had failed to address the deficiency.

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<sup>1</sup> Guidance on discounts for early settlement is contained in ENF 13.7 (part of the FSA's Handbook of rules and guidance).

2.3. BAMNL's failure to notify customers of their right to refer matters to the Financial Ombudsman Services affected only 12 customers, and was addressed immediately. If the FSA had not identified the failure, it is likely that more customers would have been adversely affected.

### **3. FACTS AND MATTERS RELIED ON**

3.1. On 9 May 2005, the FSA's Small Firms Division ("SFD") visited BAMNL as part of a thematic project. SFD identified a number of issues of concern, including the adequacy of the information found on client files in relation to affordability of mortgage contracts recommended. The FSA wrote to BAMNL on 1 June 2005 setting out its concerns and referring to the corresponding remedial action that may be appropriate.

3.2. SFD's findings included the following:

- (1) there was no evidence in the sample of files reviewed that a fact find had been completed and retained,
- (2) Know Your Customer information had been obtained by introducers who had completed a generic application form, and there was no evidence that BAMNL staff had obtained any further information from the customers in support of the advice given,
- (3) insufficient evidence in the sample of client files reviewed as to why the specific mortgage contracts had been recommended (where, for example, sub prime mortgage contracts had been recommended in the absence of any evidence of adverse credit histories), and
- (4) there was no evidence of product research in the sample of client files.

3.3. SFD asked BAMNL in writing after a visit on 9 May 2005 to ensure that, in future, sufficient Know Your Customer information was gathered and recorded to enable the BAMNL to demonstrate that the most suitable recommendations were made to customers (see MCOB 4.7.4R).

- 3.4. On 23 March 2006, SFD visited BAMNL again and found that BAMNL had not addressed the concerns raised in June 2005 and that, in addition, final responses to customers' letters of complaints made no reference to the right to refer the matter to the Financial Ombudsman Service. SFD set out its findings in a letter dated 4 May 2006 to BAMNL.
- 3.5. The matter was referred to the FSA's Enforcement Division ("Enforcement") and investigators were appointed on 30 May 2006.
- 3.6. Enforcement reviewed a further sample of client files, relating to sales during the period June 2005 to May 2006, which provided further evidence that BAMNL could still not demonstrate on client files that sufficient customer information had been obtained to ensure an accurate assessment of whether customers could afford the recommended mortgage contracts.

#### **4. RELEVANT STATUTORY PROVISIONS**

- 4.1. The FSA has the power, pursuant to section 206 of the Act, to impose a financial penalty of such amount as it considers appropriate on an authorised person if it considers that it has contravened a requirement imposed on it by or under the Act.

#### **5. RELEVANT REGULATORY REQUIREMENTS**

##### **PRINCIPLE 2**

- 5.1. Under Principle 2, a firm must conduct its business with due skill, care and diligence.
- 5.2. Under MCOB 4.7.17R, a firm must make and retain a record of (1) the customer information, including that relating to the customer's needs and circumstances, that it has obtained for the purposes of MCOB 4.7, and (2) that explains why the firm has concluded that any personal recommendation given in accordance with MCOB 4.7.2R satisfies the suitability requirements in MCOB 4.4.4R(1).
- 5.3. Under MCOB 4.7.2R, a firm must take reasonable steps to ensure that it does not make a personal recommendation to a customer to enter into a regulated mortgage

contract, or to vary an existing regulated mortgage contract, unless the regulated mortgage contract is, or after the variation will be, suitable for that customer.

5.4. MCOB 4.7.4R says that, for the purposes of MCOB 4.7.2 R, a regulated mortgage contract will be suitable if, having regard to the facts disclosed by the customer and other relevant facts about the customer of which the firm is or should reasonably be aware, the firm has reasonable grounds to conclude that: (a) the customer can afford to enter into the regulated mortgage contract; (b) the regulated mortgage contract is appropriate to the needs and circumstances of the customer; and (c) the regulated mortgage contract is the most suitable of those that the firm has available to it within the scope of the service provided to the customer.

5.5. Despite the FSA drawing to BAMNL's attention, in writing, the record keeping failures, files reviewed by SFD during its visit in March 2006 contained inadequate personal and financial information about its clients, including a lack of evidence of any assessment of affordability or evidence of product research that would indicate that the best value product had been recommended. The failure is serious because it hindered the ability of BAMNL's senior management and compliance consultants to carry out effective monitoring and checking of the suitability of recommendations to enter into regulated mortgage contracts. It also meant that lenders may have entered into mortgage contracts in circumstances where all relevant information about the customers' financial positions had not been made available. Furthermore, it had the potential of hindering any independent assessments carried out as necessary by third parties such as the FSA's Small Firms Division on future supervision visits or the Financial Ombudsman Service if any customer complaints needed to be investigated. The repeated failure makes the misconduct more serious.

#### **PRINCIPLE 6**

5.6. Under Principle 6, a firm must pay due regard to the interests of its customers and treat them fairly.

5.7. Under DISP 1.4.12R, when a firm sends a complainant a final response it must:

- (1) state that the complainant may refer the complaint to the Financial Ombudsman Service ("FOS") if he is dissatisfied with the final response and that he must do so within six months; and
- (2) enclose a copy of the FOS explanatory leaflet.

5.8. In 12 complaints BAMNL failed to inform customers in final responses to their complaints of their rights to refer the complaint to the FOS in accordance with DISP 1.4.12R. If the FSA had not identified this failure, a potentially larger number of customers could have been adversely affected, in that potential new complainants may not have been made aware of the right to refer matters to the FOS. By this failure, BAMNL failed to act with due skill, care and diligence and failed to treat its customers fairly.

## **6. ANALYSIS OF SANCTION**

6.1. The FSA's general approach to taking disciplinary action is set out in ENF 11, which is part of the FSA's Handbook of rules and guidance. The purpose of taking disciplinary action generally is to show that regulatory standards are being upheld.

6.2. The FSA's policy on the imposition of financial penalties is set out in ENF 13. The principal purpose of financial penalties is to promote high standards of regulatory conduct by deterring firms and approved persons who have breached regulatory requirements from committing further contraventions, helping to deter other firms and approved persons from committing contraventions, and demonstrating generally to firms and approved persons the benefits of compliant behaviour (ENF 13.1.2G).

6.3. In determining whether a financial penalty is proportionate the FSA will take into account all the relevant circumstances of a case. ENF 13.3.3 sets out a non-exhaustive list of factors that may be of relevance in determining the amount of a financial penalty, which include the following:

### ***ENF 13.3.3(1): The seriousness of the misconduct or contravention.***

6.4. The FSA had regard to the seriousness of the contraventions, including the nature of the requirements breached, the number and duration of the breaches and the number of customers affected and/or placed at risk. The misconduct was more serious

because it was not addressed after the FSA had drawn the matter to BAMNL's attention. It also hindered the ability BAMNL's senior management and compliance consultant to monitor and check the suitability of advice and potentially hindered the independent assessments of issues by third parties. The misconduct referred to at paragraph 2.1(2) above resulted in a small group of customers (and a potentially a larger group of customers in due course) not being aware of their right to refer matters complained about to the Financial Ombudsman Services.

***ENF 13.3.3(2): The extent to which the misconduct was deliberate or reckless***

- 6.5. The FSA found no evidence that the conduct in issue was deliberate or reckless. It was apparent that BAMNL's directors intended to comply with regulatory requirements.

***ENF 13.3.3(3): Size, financial resources and other circumstances of the firm***

- 6.6. The FSA is satisfied that BAMNL has the means to pay the level of financial penalty imposed on it. In determining the level of penalty, the FSA has taken into account the likely cost of appointing a skilled person and the impact on the business of reducing the number of staff from 67 to 9 advisers.

***ENF 13.3.3(4): The amount of profits accrued or loss avoided.***

- 6.7. The FSA found no evidence that BAMNL sought to make profit or loss by the approach taken to record keeping or by the failure to notify customers in final response letters of their rights to complain to the Financial Ombudsman Service.

***ENF 13.3.3(5): Conduct following the contravention.***

- 6.8. The FSA has taken into account BAMNL's willingness to take all reasonable steps to satisfy the FSA that it will comply with regulatory requirements on an ongoing basis. BAMNL has agreed to appoint a skilled person to undertake work to assess a sample of client files in terms of suitability of advice and to produce a report which may include as appropriate any further remedial steps. BAMNL also reduced the number of advisers that it employed.

***ENF 13.3.3(6): Disciplinary record and compliance history.***

- 6.9. BAMNL has no previous disciplinary record.

***ENF 13.3.3(7): Previous action taken by the FSA.***

- 6.10. The FSA has taken into account penalties imposed by the FSA on other authorised persons for similar and more serious conduct, and private warnings given to authorised persons for less serious or more limited record keeping failures.

**7. DECISION MAKERS**

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

**8. IMPORTANT**

- 8.1. This Final Notice is given to BAMNL in accordance with section 390 of the Act.

**Manner of and time for Payment**

- 8.2. The financial penalty must be paid in full by BAMNL to the FSA by no later than 2 November 2006, 14 days from the date of this Final Notice.

**If the financial penalty is not paid**

- 8.3. If all or any of the financial penalty is outstanding on 2 November 2006, the FSA may recover the outstanding amount as a debt owed by BAMNL and due to the FSA.

**Publicity**

- 8.4. 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.



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

**FSA contacts**

- 8.6. For more information concerning this matter generally, you should contact Chris Walmsley (direct line: 020 7066 5894) of the Enforcement Division of the FSA.

Jonathan Phelan  
Head of Department  
FSA Enforcement Division