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**FINAL NOTICE**

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To: **Daniel Esqulant**  
Address: **Flat 249 Leamore Court  
1 Meath Crescent  
Bethnal Green  
London  
E2 0QA**

Individual reference: **DJE00009**

Dated: **7 July 2009**

**TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives Daniel Esqulant final notice about the withdrawal of the approval given to you to perform the controlled functions of CF1 (Director), CF8 (Apportionment and oversight) and responsibility for insurance mediation and of 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:**

## **1. THE ORDER**

1.1. The FSA gave you, Daniel Esquant, a Decision Notice dated 7 July 2009 (the “Decision Notice”) which notified you that the FSA had decided:

- (1) pursuant to section 63 of the Financial Services and Markets Act 2000 (“the Act”), to withdraw the approval given to you to perform the controlled functions of CF1 (Director), CF8 (Apportionment and oversight) and responsibility for insurance mediation; and
- (2) 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 out by an authorised person, exempt person or exempt professional firm (“the Prohibition Order”).

1.2. You agreed that you would 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 Accordingly, for the reasons set out below, the FSA has today withdrawn the approval given to you and hereby makes an order, pursuant to section 56 of FSMA, prohibiting you from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm. The Prohibition Order takes effect from 7 July 2009.

## **2. REASONS FOR THE ORDER**

2.1. The FSA has concluded, on the basis of the facts and matters described below, that Daniel Esquant is not a fit and proper person, as his conduct demonstrates a lack of honesty and integrity, and that it is appropriate to withdraw his individual approval to perform controlled functions and to make the Prohibition Order against him. This view is based on:

- (a) the submission by him of mortgage applications to lenders for himself that were based on false and misleading information about his income; and

- (b) his knowing involvement in the submission of a mortgage application for Applicant A that was also based on false and misleading income information.

2.2. By virtue of such conduct, the FSA has concluded that Daniel Esqulant poses a serious risk to consumers and to confidence in the financial system. It is also appropriate for action to be taken against him in support of the FSA's financial crime objective.

**Relevant statutory provisions, regulatory guidance and policy**

2.3. The FSA's statutory objectives, set out in section 2(2) of the Act are: market confidence, public awareness, the protection of consumers and the reduction of financial crime.

**Withdrawal of approval**

2.4. Under section 63 of the Act, the FSA may withdraw the approval given under section 59 of the Act if it considers that the person in respect of whom it was given is not a fit and proper person to perform the function to which the approval relates.

**Prohibition**

2.5. The FSA may, pursuant to section 56(1) of the Act, prohibit an individual from performing functions in relation to regulated activities where it appears to the FSA that the individual is not fit and proper to perform such functions.

**FSA's policy for exercising its power to make a prohibition order and withdraw a person's approval**

2.6. The FSA's approach to exercising its powers to make prohibition orders and withdraw approvals is set out at Chapter 9 of the Enforcement Guide ("EG").

2.7. EG 9.1 states that the FSA's power to make prohibition orders under section 56 of the Act helps it work towards achieving its regulatory objectives. The FSA may exercise this power where it considers that, to achieve any of those objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities or to restrict the functions which he may perform.

- 2.8. 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 posed by him to consumers or the market generally.
- 2.9. In circumstances where the FSA has concerns about the fitness and propriety of an approved person, EG 9.8 to 9.14 provide guidance. In particular, EG 9.8 states that the FSA may consider whether it should prohibit that person from performing functions in relation to regulated activities, withdraw that person's approval or both. In deciding whether to withdraw approval and/or make a prohibition order, the FSA will consider whether its regulatory objectives can be achieved adequately by imposing disciplinary sanctions.
- 2.10. EG 9.9 states that the FSA will consider all the relevant circumstances when deciding whether to make a prohibition order against an approved person and/or to withdraw that person's approval. Such circumstances may include, but are not limited to, the following factors:
- (1) whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and propriety of an approved person in terms of honesty, integrity and reputation are set out in FIT2.1 (Honesty, integrity and reputation);
  - (2) whether, and to what extent, the approved person has failed to comply with the Statements of Principle or been knowingly concerned in a contravention by the relevant firm of a requirement imposed on the firm by or under the Act (including the Principles and other rules).
  - (3) the relevance and materiality of any matters indicating unfitness;
  - (4) the length of time since the occurrence of any matters indicating unfitness;

- (5) 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;
- (6) the severity of the risk which the individual poses to consumers and to confidence in the financial system; and
- (7) the previous disciplinary record and general compliance history of the individual.

2.11. EG 9.10 provides that the FSA may have regard to the cumulative effect of a number of factors and may take into account the particular controlled function which an approved person is performing for a firm, the nature and activities of the firm concerned and the markets within which it operates.

2.12. EG 9.12 provides a number of examples of types of behaviour which have previously resulted in the FSA deciding to issue a prohibition order or withdraw the approval of an approved person. The examples include severe acts of dishonesty, for example those which may have resulted in financial crime.

#### Fit and Proper Test for Approved Persons

2.13. 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.

2.14. In this instance, the criteria set out in FIT are relevant in considering whether the FSA may exercise its powers to make a prohibition order against an individual in accordance with EG 9.9.

2.15. In determining a person’s honesty, integrity and reputation, FIT 2.1.1G provides that the FSA will have regard to matters including, but not limited to, those set out in FIT 2.1.3G including:

- (1) whether the person has contravened any of the requirements and standards of the regulatory system (FIT 2.1.3G(5)); and

- (2) whether, in the past, the person has been candid and truthful in all his dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards (FIT 2.1.3G(13)).

## **Facts and matters relied on**

### **Background**

- 2.16. From 4 December 2000, Daniel Esquant was one of two partners of Lifetime Value (“the Partnership”). From 31 May 2005 to 13 March 2008, the Partnership was an appointed representative providing mortgage advice through a network. As an appointed representative, he held no controlled functions.
- 2.17. Lifetime (UK) Limited (“the Firm”) has been authorised and regulated by the FSA since 31 October 2004 as a mortgage broker and since 10 March 2008 as an insurance broker. Daniel Esquant was approved by the FSA on 31 October 2004 to perform the controlled function of CF1 (Director) at the Firm. On 18 December 2007 he was also approved to perform CF8 (Apportionment and Oversight) and insurance mediation functions. He has been an adviser at the Firm since it was established.
- 2.18. In addition, from 26 February 2008 to 30 May 2008, Daniel Esquant conducted business as a sole trader appointed representative under the registered name of Daniel Esquant and Lifetime Value Financial Services (“the Sole Trader”).

### **Daniel Esquant’s own mortgage applications**

- 2.19. Daniel Esquant applied for two residential mortgages through the Partnership in December 2006 and June 2007. In the two applications, he declared the following levels of income:
- (a) £210,723 in the tax year ending 31 March 2004;
  - (b) £227,336 in the tax year ending 31 March 2005; and
  - (c) £338,750 in the tax year ending 31 March 2006.

- 2.20. In addition, he declared that he was in receipt of rental income of £33,600 in the December 2006 application and £52,800 in the June 2007 application.
- 2.21. Daniel Esquant also applied for two buy-to-let mortgages through the Firm. In his applications, he declared his income to be £227,000 in the August 2006 application and £301,920 in the March 2008 application.
- 2.22. According to records held by Her Majesty's Revenue and Customs ("HMRC"), Daniel Esquant's declared income for tax purposes was:
- (a) £75,702 in the tax year ending 2004;
  - (b) £48,122 in the tax year ending 2005;
  - (c) £61,198 in the tax year ending 2006; and
  - (d) £55,786 in the tax year ending 2007.
- 2.23. The FSA has therefore concluded that Daniel Esquant knowingly submitted mortgage applications to a lender which contained false information about his income.

**Mortgage application submitted through the Partnership for Applicant A**

- 2.24. In March 2008, Daniel Esquant submitted a mortgage application for Applicant A through the Partnership. He was closely related to Applicant A.
- 2.25. In the application, Applicant A declared that she was self employed as a proprietor of a pub with an income of £138,500 in 2007. According to HMRC records the applicant actually earned £8,000 in the tax year ending 5 April 2007.
- 2.26. Given the significant level of income discrepancy between Applicant A's actual income and that listed on the mortgage application, as well as Daniel Esquant's close family relationship to Applicant A, he would have known that it was highly unlikely that Applicant A was earning the high level income stated in her mortgage application.

### **3. ANALYSIS OF SANCTIONS**

- 3.1. The FSA considered whether Daniel Esquant is a fit and proper person. In assessing his honesty, integrity and reputation, the FSA had regard to his knowing involvement in the submission of false information on mortgage application forms to lenders. As such, it concluded that he failed to act with honesty and integrity.
- 3.2. The FSA considers that Daniel Esquant poses a serious risk to consumers, lenders and to confidence in the financial system, and also that action should be taken in support of the FSA's financial crime objective.
- 3.3. The FSA considers that Daniel Esquant's conduct falls well below the standards expected of approved persons performing significant influence functions. Accordingly, the FSA considered it necessary to withdraw his approval as he did not exhibit the honesty and integrity required of an approved person and is therefore not a fit and proper person to perform the controlled functions for which he was approved.
- 3.4. As these facts and matters led the FSA to conclude that Daniel Esquant is not a fit and proper person the FSA, considered it necessary to make the Prohibition Order, pursuant to section 56 of the Act, to prevent him from performing any function in relation to any regulated activity carried out by any authorised person, exempt person or exempt professional firm.

### **4. DECISION MAKERS**

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

### **5. IMPORTANT**

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

#### **Publicity**

- 5.2. 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.

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

**FSA contacts**

- 5.4. 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**