
FINAL NOTICE

To: **Earlybird Finance Ltd**

Of: Collier Row
Romford
Essex

Date: 2 July 2007

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (the "FSA") gives Earlybird Finance Ltd ("the Firm") final notice about a decision to cancel the permission granted to the Firm.

1. ACTION

- 1.1. The FSA gave the Firm a Decision Notice on 2 July 2007 which notified the Firm that pursuant to section 45 of the Financial Services and Markets Act 2000 ("the Act"), the FSA decided to cancel the permission granted to the Firm pursuant to Part IV of the Act ("the Firm's Part IV Permission").
- 1.2. The Firm agreed on 25 June 2007 that it will not be referring the matter to the Financial Services and Markets Tribunal.

- 1.3. The Firm agreed to settle at an early stage of the FSA's investigation on the basis of the FSA's decision to cancel the Firm's Part IV Permission.
- 1.4. Accordingly, for the reasons set out below and having agreed with the Firm the facts and matters relied on, the FSA hereby makes this Notice to cancel the Firm's Part IV Permission.

2. REASONS FOR THE ACTION

- 2.1. By a Decision Notice dated 2 July 2007, having concluded that Mrs Spring is not a fit and proper person, pursuant to section 63 of the Act, the FSA withdrew the individual approval granted to her to perform controlled functions in relation to regulated activities carried on by the Firm.
- 2.2. Mrs Spring is the Managing Director of the Firm and is responsible for the day-to-day activities and running of the Firm. Mrs Spring is the sole mortgage adviser. She is a majority shareholder with her husband, Mr Rosoff, who deals mainly with the Firm's accounts and expenses. Both Mrs Spring and Mr Rosoff were approved by the FSA to perform controlled functions in relation to regulated activities carried on by the Firm.
- 2.3. Due to the decision to withdraw Mrs Spring's approval (on the basis that she is not fit and proper) there will be no one who is involved in mortgage advice at the Firm who is approved to carry out controlled functions.
- 2.4. In these circumstances, the Firm fails to satisfy the threshold conditions set out in Schedule 6 to the Act (the "Threshold Conditions") in that, in the opinion of the FSA, the Firm will not have adequate resources in relation to the regulated activities it seeks to carry on. Specifically, the Firm will not have adequate human resources (Threshold Condition 4).
- 2.5. In addition, the Firm will not be able to satisfy the FSA that it is fit and proper having

regard to all the circumstances, including its connection with Mrs Spring and the overall need to ensure that its affairs are conducted soundly and prudently (Threshold Condition 5).

3. RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND GUIDANCE

Statutory Provisions

- 3.1. The FSA's regulatory objectives as set out in section 2(2) of the Act are: market confidence; public awareness; the protection of consumers and the reduction of financial crime.
- 3.2. Section 41 and Schedule 6 of the Act set out the Threshold Conditions which 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.
- 3.3. Paragraph 4 of Schedule 6 to the Act states 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 (Threshold Condition 4: Adequate Resources).
- 3.4. Paragraph 5 of Schedule 6 to the Act states 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 (Threshold Condition 5: Suitability).
- 3.5. The FSA is authorised by section 45(2) of the Act to cancel an authorised person's Part IV permission where it appears that an authorised person is failing, or likely to fail, to satisfy the Threshold Conditions.

FSA's policy for exercising its power to cancel Part IV permission

- 3.6. In exercising its power to vary a firm's Part IV permission, the FSA must have regard to guidance published in the FSA Handbook. The FSA's policy in relation to the

decision to cancel a firm's permission is set out in Chapters 3 and 5 of the Enforcement section of the FSA Handbook.

- 3.7. ENF 5.5.1G provides that the FSA will consider cancelling a firm's Part IV permission where the FSA has very serious concerns about a firm, or the way its business is or has been conducted.
- 3.8. ENF 5.5.2G refers to examples of the circumstances in which the FSA will consider cancelling a firm's Part IV permission, and these are set out in ENF 3.3.2G. They include where it appears to the FSA that the firm is failing, or is likely to fail to satisfy the Threshold Conditions relating to one or more, or all, of its regulated activities for which the firm concerned has Part IV permission because, for instance, the firm's material and financial resources appear inadequate for the scale or type of regulated activity it is carrying on (ENF 3.5.8G(1)).

Guidance concerning Threshold Condition 4: Adequate resources (Paragraph 4, Schedule 6 to the Act) – COND 2.4

- 3.9. COND gives guidance on the Threshold Conditions set out in or under Schedule 6 to the Act (COND 1.2.1G).
- 3.10. COND 2.4.1D states 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.
- 3.11. COND 2.4.2G(2) provides that the FSA will interpret the term 'adequate' as meaning sufficient in terms of quantity, quality and availability, and 'resources' as including all financial resources, non-financial resources and means of managing its resources such as, for example, human resources and effective means by which to manage risks.
- 3.12. COND 2.4.3G(1) provides that when assessing this Threshold Condition, the FSA may have regard to any person appearing to it to be, or likely to be, in a relevant relationship with the firm, in accordance with section 49 of the Act (Persons connected with an applicant); for example, a firm's controllers, its directors or partners, other persons with close links to the firm, and other persons that exert influence

over the firm which might pose a risk to the firm's satisfaction of the Threshold Conditions and would, therefore, be in a relevant relationship with the firm.

- 3.13. COND 2.4.4G(1) states that the FSA will have regard to all relevant matters which include (d) whether the firm has taken reasonable steps to identify and measure any risks of regulatory concern that it may encounter in conducting its business and has installed appropriate systems and controls and appointed appropriate human resources to measure them prudently at all times.
- 3.14. COND 2.4.4G(3) requires the FSA to take into account only relevant matters which are material in relation to the regulated activities for which the authorised person has permission.

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

- 3.15. COND 2.5.1D states 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.
- 3.16. COND 2.5.2G 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 of its regulated activities and the overall need to be satisfied that its affairs are conducted soundly and prudently.
- 3.17. COND 2.5.3G further provides that the emphasis of the Threshold Conditions 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). However, COND 2.5.3(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 2.5.3(2) also refers to COND 2.4.3 G, which sets out examples of persons in a relevant relationship with the firm, including a firm's controllers, its directors or partners, other persons with close links to the firm and other persons that exert influence on the firm which might pose a risk to the firm's satisfaction of the Threshold Conditions and would, therefore, be in a relevant relationship with the firm.

- 3.18. COND 2.5.4G provides that in determining whether the firm will satisfy and continue to satisfy Threshold Condition 5, the FSA will have regard to all relevant matters arising including whether a firm has or will have a competent and prudent management (COND 2.5.4G(2)(b)) and whether it can demonstrate that it conducts, or will conduct, its affairs with due skill, care and diligence (COND 2.5.4G(2)(c)).
- 3.19. COND 2.5.6G gives guidance in respect of whether a firm satisfies Threshold Condition 5, in conducting its business with integrity and in compliance with proper standards including whether the firm is ready, willing and organised to comply with the requirements and standards under the regulatory system (COND 2.5.6G(1)); and whether the firm has contravened, or is connected with any person who has contravened any provision of the Act or the regulatory system (COND 2.5.6G(4)); and whether 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 that apply to the firm (COND 2.5.6G(6)).
- 3.20. COND 2.5.7G provides guidance on the matters that are relevant to determining a firm satisfying and continuing to satisfy Threshold Condition 5 in respect of it having competent and prudent management and exercising due skill, care and diligence. Such matters include whether the firm has conducted enquiries that are sufficient to give it reasonable assurance that it will not be posing unacceptable risks to consumers or the financial system (COND 2.5.7G(9)); and putting in place systems and controls against money laundering (COND 2.5.7(10)).

4. FACTS AND MATTERS RELIED ON

Background

- 4.1. The Firm's main regulated activity is advising on and arranging mortgage contracts. With effect from 31 October 2004, the Firm became authorised and regulated by the FSA to carry on the following regulated activities in relation to regulated mortgage contracts:
- (1) advising on regulated mortgage contracts;
 - (2) agreeing to carry on a regulated activity.
 - (3) arranging regulated mortgage contracts; and
 - (4) making arrangements.
- 4.2. With effect from 14 January 2005, the Firm was additionally granted permission to carry out the following activities in relation to insurance mediation activities:
- (1) advising on investments (except on Pension Transfer and Pension Opt Outs);
 - (2) arranging (bringing about) deals in investments; and
 - (3) making arrangements with a view to transactions in investments.
- 4.3. Mrs Spring was approved by the FSA on 31 October 2004 to perform the controlled functions of CF1 (Director) and CF8 (Apportionment and Oversight) at the Firm. Mrs Spring is the Firm's only adviser. Mrs Spring's husband, Mr Rosoff, is the other main shareholder of the Firm. He was approved by the FSA on 31 October 2004 as a CF1 Director with CF17 (Other business operations) responsibilities. Mr Rosoff deals mainly with the Firm's accounts and expenses, and is not directly involved in any of the Firm's regulated activities. The Firm employs two administrators who assist Mrs Spring with the day-to-day running of the business.
- 4.4. The Firm operates from premises at Collier Row, Romford Essex .

Background to the FSA's action

- 4.5. The FSA conducted an investigation into the firm, the main focus of which was on the apparent failure to prevent the Firm from being used to submit fraudulent mortgage applications to lenders. The FSA considered issues surrounding Mrs Spring's competence and capability in the management of the Firm.

- 4.6. The FSA's concerns about the conduct of Mrs Spring and the systems and procedures in place at the Firm are set out more fully in the Decision Notice dated 2 July 2007 given to Mrs Spring relating to the withdrawal of her individual approval.

5. CONCLUSIONS

- 5.1. The facts and matters described above led the FSA, having regard to its regulatory objectives which include maintaining confidence in the financial system and helping to reduce financial crime, to conclude that the Firm fails, and is likely to fail to satisfy Threshold Condition 4 (Adequate resources) and Threshold Condition 5 (Suitability).

6. DECISION MAKER

- 6.1. The decision which gave rise to the obligation to give this Final Notice was made by the executive decision makers on behalf of the FSA.

7. IMPORTANT

- 7.1. This Final Notice is given to the Firm in accordance with section 390 of the Act. The following statutory rights are important.

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. If there are any questions concerning this matter generally, please contact Chris Walmsley at the FSA (direct line: 020 7066 5894) at the Enforcement Division of the FSA.

Jonathan Phelan

Head of Department

FSA Enforcement Division