
FINAL NOTICE

To: **Gemmini Mortgages Limited**

Address: **18 Manchester Court
Garvary Road
London
E16 3GZ**

Firm reference number: **449476**

Dated: **11 April 2011**

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 cancel the permission granted to Gemmini Mortgages Limited to carry on regulated activities

1. THE ACTION

- 1.1. The FSA gave Gemmini Mortgages Limited (“GML”) a Decision Notice on 23 February 2011 (the “Decision Notice”) which notified GML that, pursuant to section 45 of the Financial Services and Markets Act 2000 (“the Act”), the FSA had decided to cancel the permission granted to GML pursuant to Part IV of the Act (“GML’s Part IV permission”).
- 1.2. GML has not referred the matter to the Upper Tribunal (Tax and Chancery Division) within 28 days of the date on which the Decision Notice was given to GML.
- 1.3. Accordingly, for the reasons set out below, the FSA has today cancelled GML’s Part IV permission.

2. REASONS FOR THE ACTION

Summary

- 2.1. The FSA has concluded, on the basis of the facts and matters set out below, that GML is failing to satisfy the threshold conditions set out in Part 1 of Schedule 6 to the Act (the “Threshold Conditions”).

- 2.2. By a Final Notice dated 11 April 2011, the FSA withdrew the approval of Joseph Chinedu Nwosu (“Mr Nwosu”) and made an order prohibiting him from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm on the grounds that he is not a fit and proper person.
- 2.3. As a consequence of the actions taken by the FSA against Mr Nwosu, GML does not have any approved persons to carry out controlled functions. In these circumstances, GML is failing to satisfy Threshold Condition 4 (Adequate resources) because it has inadequate human resources in relation to the regulated activities that it has permission to carry on.
- 2.4. In addition, the FSA is not satisfied that GML is fit and proper having regard to all the circumstances, including its connection with Mr Nwosu whom the FSA considers not to be a fit and proper person to perform controlled functions and is an unfit controller. Consequently, GML is failing to satisfy Threshold Condition 5 (Suitability) by virtue of its connection with Mr Nwosu.

Relevant statutory provisions

- 2.5. The FSA’s regulatory objectives are set out in section 2(2) of the Act and include maintaining confidence in the financial system and the protection of consumers.
- 2.6. 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 the regulated activities for which it has permission.
- 2.7. The FSA is authorised by section 45(1) of the Act to cancel an authorised person’s Part IV permission where it appears to the FSA that such a person is failing, or likely to fail, to satisfy the Threshold Conditions.
- 2.8. Paragraph 4(1) of Schedule 6 to the Act sets out Threshold Condition 4 (Adequate resources) which provides 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.
- 2.9. Paragraph 5 of Schedule 6 to the Act sets out Threshold Condition 5 (Suitability) 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.

Relevant Handbook provisions

- 2.10. In exercising its power to cancel a Part IV permission, the FSA must have regard to guidance published in the FSA’s Handbook of Rules and Guidance (the “Handbook”).

The relevant main considerations in relation to the decision to cancel your permission are set out below.

Guidance concerning the relevant Threshold Conditions

- 2.11. Guidance on the Threshold Conditions is set out in the part of the Handbook entitled Threshold Conditions (“COND”).

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

- 2.12. COND 2.4.1UK(1) 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.
- 2.13. COND 2.4.2G(1) states that Threshold Condition 4 requires the FSA to ensure that a firm has adequate resources in relation to the specific regulated activity or regulated activities which it seeks to carry on, or carries on.
- 2.14. COND 2.4.2G(2) states 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.
- 2.15. COND 2.4.3G(1) states 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 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.

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

- 2.16. 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, among other things, the need to ensure that his affairs are conducted soundly and prudently.
- 2.17. COND 2.5.2G(1) states 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 connections 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.
- 2.18. COND 2.5.3G(1) states 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.

- 2.19. 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.
- 2.20. COND 2.5.4G(1) and (2) states 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; or (b) has or will have a competent and prudent management.
- 2.21. COND 2.5.6G states 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:
 - (1) the firm has contravened, or is connected with a person who has contravened, any provisions of the Act, the regulatory system or the rules, statements of principles or codes of practice (COND 2.5.6G(4); and
 - (2) the firm has taken reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory systems that apply to the firm and the regulated activities for which it has permission (COND 2.5.6G(6).
- 2.22. COND 2.5.7G states that in determining whether a firm will satisfy, and continue to satisfy, Threshold Condition 5 in respect of having competent and prudent management, relevant matters may include whether:
 - (1) 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 (COND 2.5.7G(1); and
 - (2) 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 (COND 2.5.7G(5).

Other relevant regulatory provisions

- 2.23. The FSA's policy in relation to exercising its enforcement powers is set in the Enforcement Guide ("EG"), certain provisions of which are summarised below.

Cancelling a firm's Part IV permission on the FSA's own initiative

- 2.24. EG 8.1(1) provides that the FSA may use its own initiative power to vary or cancel the permission of an authorised person under section 45 of the Act, where a firm is failing or is likely to fail to satisfy the Threshold Conditions.
- 2.25. EG 8.13(1) provides that the FSA will consider cancelling a firm's Part IV permission using its own-initiative powers contained under section 45 of the Act in circumstances where the FSA has very serious concerns about the firm, or the way its business is or has been conducted.

Facts and matters relied on

- 2.26. GML is a small retail mortgage intermediary based in East London. GML was authorised by the FSA on 1 June 2006 to conduct regulated mortgage business and to carry on insurance mediation business. With effect from 1 June 2006, GML was granted permission by the FSA to carry out the following regulated activities (those marked with an asterisk are limited to non-investment insurance contracts):
- (1) advising on investments (except on pension transfers and pension 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) making arrangements with a view to regulated mortgage contracts; and
 - (7) making arrangements with a view to transactions in investments*.
- 2.27. With effect from 12 March 2009, GML voluntarily varied its Part IV permission such that it could not carry on any of the regulated activities in its permission.
- 2.28. Mr Nwosu was approved by the FSA on 1 June 2006 to perform the following controlled functions at GML: CF1 (Director) and CF8 (Apportionment and Oversight) and he is responsible for insurance mediation. Mr Nwosu is also the sole controller of GML.
- 2.29. By a Final Notice dated 11 April 2011, the FSA withdrew Mr Nwosu's approval and made a prohibition order against him on the grounds that he is not a fit and proper person.

Conclusions

- 2.30. The facts and matters described above lead the FSA, having regard to its regulatory objectives which include maintaining confidence in the financial system and the

protection of consumers, to conclude that, as a consequence of the FSA's withdrawal of Mr Nwosu's approval and prohibition order against him, GML is failing to satisfy:

- (1) Threshold Condition 4 (Adequate resources) because it has inadequate human resources in relation to the regulated activities that it has permission to carry on; and
- (2) Threshold Condition 5 (Suitability) because it no longer satisfies the FSA that it is a fit and proper person having regard to all the circumstances, including its connection with Mr Nwosu whom the FSA considers not to be a fit and proper person to perform controlled functions and is an unfit controller.

3. DECISION MAKER

- 3.1. The decision which gave rise to the obligation to give this Final Notice was made by the Regulatory Decisions Committee.

4. IMPORTANT

- 4.1. This Final is given to GML in accordance with section 390(1) of the Act.

Publicity

- 4.2. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Final Notice relates. Under those provisions, the FSA must publish such information about the matter to which this Final 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 GML or prejudicial to the interests of consumers.
- 4.3. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contact

- 4.4. For more information concerning this matter generally, GML should contact Anna Hynes (direct line: 020 7066 9464 / fax: 020 7066 9465) of the Enforcement and Financial Crime Division at the FSA.

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Tom Spender
Head of Department
FSA Enforcement and Financial Crime Division