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**FINAL NOTICE**

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**To:** **Guiliano Chianelli trading as GCM**

**Of:** **34 Barringer Square  
Tooting Bec  
London  
SW17 8EE**

**FRN:** **425693**  
**Individual ref:** **GXC01067**

**Dated:** **3 June 2009**

**TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives you, Guiliano Chianelli trading as GCM, final notice about an order prohibiting you from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt profession firm and about the cancellation of your Part IV permission.**

**1. ACTION**

- 1.1. The FSA gave you, Guiliano Chianelli trading as GCM, a Decision Notice on 1 May 2009 (“the Decision Notice”) which notified you that it had decided to:

- (1) make an order pursuant to section 56 of the Act prohibiting you from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm (the “Prohibition Order”), because you lack honesty and integrity; and
  - (2) cancel your Part IV permission pursuant to section 45 of the Act, because you are failing to satisfy Threshold Condition 5 (Suitability).
- 1.2. You did not refer the matter to the Financial Services and Markets Tribunal within 28 days of the date on which the Decision Notice was given to you.
- 1.3. Accordingly the FSA hereby makes an order, pursuant to section 56 of the Act, prohibiting you from performing any function in relation to any regulated activity carried out by an authorised person, exempt person or exempt professional firm and has cancelled your Part IV permission pursuant to section 45 of the Act. The Prohibition Order and the cancellation of your Part IV permission take effect from 3 June 2009.

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

- 2.1 By a Decision Notice dated 1 May 2009, the FSA concluded that:
  - (1) Guiliano Chianelli declared false and misleading information about his income to a lender to obtain a mortgage for himself, and
  - (2) he failed to co-operate with the FSA in that he refused to provide the FSA with his customer mortgage files, thereby preventing the FSA from assessing whether he was also knowingly involved in the submission of any mortgage applications on behalf of his customers that were based on false and misleading information.

## **3. STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY**

- 3.1. The relevant statutory provisions, regulatory guidance and policy are set out as an Annex to this Notice.

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

##### **Background**

- 4.1. Between 8 March 2005 and 10 September 2008, Guiliano Chianelli operated as a sole trader mortgage intermediary in Tooting Bec, London. He was the authorised person. His trading name was GCM. He was the only mortgage adviser at GCM.

##### **Personal mortgage application**

- 4.2. Guiliano Chianelli submitted a mortgage application to a lender for himself in November 2005. On his mortgage application form, he said that his salary was £70,000 and he declared that his self-employed income (i.e. profit) from GCM was £61,000 for the tax year 2003/2004 and £70,000 for the tax year 2004/2005.
- 4.3. According to HMRC's records for the tax year 2004/05, Guiliano Chianelli worked for Company A until 1 January 2005 and earned £9,000 from that employment.
- 4.4. According to HMRC's records for the tax year 2005/06, Guiliano Chianelli declared gross income of £22,645 and taxable income of £9,289.
- 4.5. On his Retail Mediation Activities Return ("RMAR") for the six months ending 30 November 2005, Guiliano Chianelli disclosed net profit of £2,537. On his RMAR for the period ending 31 May 2006, he disclosed net profit of £12,964.
- 4.6. On his RMAR for the six months ending 30 November 2005, Guiliano Chianelli declared gross income of £26,130. On the RMAR for the six months ending 31 May 2006, he declared gross income of £65,514.
- 4.7. Until Guiliano Chianelli made representations in the statutory notice procedure, he did not offer any explanation as to why the income figures that he declared on his mortgage application were significantly higher than the income figures that he reported to Her Majesty's Revenue and Customs ("HMRC") for tax purposes and to the FSA for the same period. The FSA concluded that he entered false and misleading income figures on his mortgage application form and obtained the mortgage on a fraudulent basis, and that he therefore lacks honesty and integrity.

### **Failure to co-operate with the FSA**

- 4.8 Guiliano Chianelli did not provide the FSA with a sample of his mortgage client files when requested. Nor did he provide the full address of one of the locations where some of the files were held.

### **Representations and findings**

- 4.9 In his email dated 12 March 2009 to the FSA, Guiliano Chianelli did not dispute the facts. He said that he believed that his personal income declared on the RMAR, to HMRC and on his personal mortgage application, was correct because his income which was derived from gambling was not subject to income tax.
- 4.10 Regarding the failure to cooperate, Guiliano Chianelli said that he was no longer an active mortgage broker and that he has found it difficult to find the time to look for the files that the FSA was requesting. He said that he had always replied to queries from the Enforcement team even though, because of circumstances beyond his control, he could not produce the files as requested.
- 4.11 In his email of 26 March 2009 to the FSA, Guiliano Chianelli responded to comments made by the FSA to his representations but did not raise any new points.
- 4.12 The FSA found that the explanation why the declaration about income was not false or misleading to be unconvincing. Whatever the tax position, the source of that part of the income derived from gambling, which was significant, would clearly have been a material consideration for any lender.
- 4.13 The FSA also find that Guiliano Chianelli had more than sufficient time to find the files requested by the FSA. The fact that the business was no longer active did not disguise the fact that it was authorised and carried with it certain responsibilities. The duty to cooperate, by for example responding to requests for files to demonstrate compliance, is fundamental.

## 5. CONCLUSIONS

### *Prohibition order*

- 5.1. Guiliano Chianelli provided a lender with false and misleading information about his income for the purpose of obtaining a mortgage for himself.
- 5.2. By using false and misleading information about his income to obtain a mortgage for himself, Guiliano Chianelli failed to act with honesty and integrity. As a consequence of his lack of honesty and integrity, a lender agreed to provide him with a loan without being given all the relevant information to assess the risk of him defaulting on mortgage payments (i.e. credit risk).
- 5.3. Guiliano Chianelli failed to be open and co-operative with the FSA, by refusing to provide the FSA with mortgage client files, which he said were stored in two locations other than at his business address. He therefore prevented the FSA from making a full assessment of the allegation that he was knowingly involved in the submission of mortgage applications to lenders, on behalf of his customers, based on false and misleading information.
- 5.4. As Guiliano Chianelli lacks honesty and integrity he is not a fit and proper person. A prohibition order is necessary and proportionate, and is consistent with the FSA's policy of seeking to prevent individuals lacking in honesty and integrity from working in authorised firms, in support of the FSA's financial crime, market confidence and consumer protection objectives.

### *Cancellation of permission*

- 5.5. As a sole trader, Guiliano Chianelli was the authorised person. He was solely responsible for the regulated activities at GCM and only he gave mortgage advice there. The FSA concluded that he is not a fit and proper person. He failed to conduct his business with integrity and in compliance with proper standards by, for example, failing to be open and co-operative in all his dealings with the FSA in accordance with Principle 11 of the FSA's Principles for Businesses and failing to demonstrate that he was ready, willing and organised to comply with the requirements and standards under the regulatory system. As such, as the authorised person, he was

failing to satisfy Threshold Condition 5 (Suitability). Pursuant to section 45 of the Act, his Part IV permission has been cancelled.

*General conclusion*

- 5.6 Taken together, Guiliano Chianelli's actions and responses demonstrate that he is not ready and willing to comply with the requirements and standards of the regulatory system. The FSA is satisfied that he is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised firm and that his permission should be cancelled.

**6. DECISION MAKER**

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

**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 Final 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 Chris Walmsley of the Enforcement Division of the FSA (direct line: 020 7066 5894/ fax 020 7066 5895).

**Jonathan Phelan**  
**Head of Department**  
**FSA Enforcement Division**

## **Annex**

### **STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY**

#### **Statutory objectives**

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 orders**

The FSA has the power, by virtue of section 56 of the Act, to make an order prohibiting you from performing a specified function, any function falling within a specified description or any function, if it appears to the FSA that you are 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 specific regulated activity, an activity falling within a specified description or all regulated activities.

#### **Fit and Proper Test for Approved Persons**

The part 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. FIT is also relevant in assessing the continuing fitness and propriety of an individual who is not an approved person.

FIT 1.3.1G provides that the FSA will have regard to a number of factors when assessing a person's fitness and propriety. One of the most important considerations will be the person's honesty, integrity and reputation.

In determining a person's honesty, integrity and reputation, FIT 2.1 provides that the FSA will have regard to matters including, but not limited to, those set out in FIT 2.1.3G. The guidance includes:

- (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)).

#### **FSA's policy for exercising its power to make a prohibition order**

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").

EG 9.4 sets out the general scope of the FSA's power 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.

EG 9.17 to 9.18 provide guidance on the FSA's exercise of its power to make a prohibition order against an individual who is not an approved person. The FSA will consider the severity of the risk posed by the individual and 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 such 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.

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 FIT 2.1 (Honesty, integrity and reputation), FIT2.2 (Competence and capability) and FIT 2.3 (Financial soundness);
- (2) the relevance and materiality of any matters indicating unfitness;
- (3) the length of time since the occurrence of any matters indicating unfitness; and
- (4) the severity of the risk which the individual poses to consumers and to confidence in the financial system.

#### **Cancellation of Part IV permission**

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.

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 the need to ensure that his affairs are conducted soundly and prudently (Threshold Condition 5: Suitability).

COND 2.5.4 G and COND 2.5.6 G give guidance in respect of whether a firm satisfies Threshold Condition 5. The FSA will have regard to whether, among other things, the firm is conducting its business with integrity and in compliance with proper standards (COND 2.5.4 G(2)(a)), including whether the firm has been open and co-operative in all its dealings with the FSA in accordance with Principle 11 of the FSA's Principles for Business, is ready, willing and organised to comply with the requirements and standards under the regulatory system (COND 2.5.6 G(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 2.5.6 G(4)).