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**FINAL NOTICE**

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To: **Henry Moser**

FSA

Reference

Number: **HNM01008**

Address: **Lake View  
Lakeside  
Cheadle  
SK8 3GW**

Date: **6 December 2012**

**ACTION**

1. For the reasons given in this notice, the FSA hereby imposes on Mr Henry Neville Moser ("Mr Moser") a financial penalty of £70,000.
2. Mr Moser agreed to settle at an early stage of the FSA's investigation. Mr Moser therefore qualified for a 30% (stage 1) discount under the FSA's executive settlement procedures. Were it not for this discount, the FSA would have imposed a financial penalty of £100,000 on Mr Moser.

## SUMMARY OF REASONS

3. Mr Moser, is the Chief Executive Officer (“CEO”) of Cheshire Mortgage Corporation Limited (“CMCL”) and the group of which it is a part (“the Group”) and has held the controlled functions CF3 (Chief Executive Officer) and CF1 (Director) since 31 October 2004. He also held the controlled function of CF8 (Apportionment and Oversight) from 31 October 2004 to 31 March 2009. The relevant period is 31 October 2004 to 31 December 2009 (the “Relevant Period”).
4. CMCL is a small mortgage lender that operates in niche market sectors, previously including lending to the impaired credit market. CMCL is the only regulated entity in the Group.
5. Between October 2004 and March 2009 Mr Moser (in breach of Statement of Principle 5) failed to take reasonable steps to ensure that the business for which he was responsible in his controlled function was organised so that it could be controlled effectively. In particular, Mr Moser failed to:
  - i. keep under review the effectiveness of a matrix model of management (that existed until August 2008) that meant that all the directors had input into key areas of the business but, for some areas of the business including Collections and Compliance, no one person had direct responsibility for them;
  - ii. establish a direct reporting line for the Collections Director (who was not a member of the Board) until August 2008;
  - iii. regularly review the competence, knowledge, skills and performance of the Collections Director, the Compliance Director and the Underwriting Director so as to ensure that they were and continued to be suitable to fulfil their roles; and
  - iv. give a clear job description and to apportion clear responsibilities to a particular director until the end of the Relevant Period, which director in practical terms had responsibility for areas of the business which were in apparent or potential conflict.

6. Further, Mr Moser failed (in breach of Statement of Principle 7) to take reasonable steps to ensure that the firm for which he was responsible always complied with the relevant requirements and standards of the regulatory system. In particular, Mr Moser failed to:
  - i. ensure that there was appropriate compliance resource within CMCL;
  - ii. ensure that the Compliance Director provided full reports to the Board and was sufficiently questioned about and challenged on his department's work and activities;
  - iii. ensure that, prior to August 2008, there was adequate compliance oversight of the Collections Department and, further, that this was rectified in 2008 prior to an increase in arrears;
  - iv. ensure there was an adequate and timely response to an audit report of the Collections Department in March 2008 that concluded that, as a consequence of certain significant issues with fees and charges, arrangements for control in place at the time in the Collections Department were unsatisfactory;
  - v. did not proactively arrange for a review or audit of the Compliance Department until December 2009;
  - vi. identify and remedy a historic culture in CMCL's Collections Department that incentivised cash collections from customers in arrears which resulted in a risk that some customers would not always have been treated fairly; and
  - vii. ensure compliance with the Underwriting Guidelines as he was on limited occasions involved in the underwriting process and on occasion waived standard requirements (sometimes without record).
7. Mr Moser accepts the FSA's findings. The FSA considers that the failings identified in this case have been mitigated to a considerable extent by Mr Moser's decision from 2008 to make positive wide-ranging changes to the organisational, governance and compliance arrangements at CMCL to achieve high regulatory standards and ensure that customers are treated fairly. His personal commitment to driving that change has

been confirmed and documented by the Skilled Person in its Follow-up Review which took place in September 2011. In addition, CMCL business represents a small part (approximately 10%) of the total business of the Group and was the only regulated entity in the Group.

8. Mr Moser is firmly committed to continuing this process of change; however he has decided, with the support of the Board, within the next three to six months to:
  - i. step down from his position as CEO of CMCL (withdrawing his CF3 (CEO) controlled function) thereby giving up his casting vote on the Board; and
  - ii. step down from his position as an executive director (withdrawing his CF1 (Director) controlled function) and become a non-executive director (a CF2 (Non-executive director) controlled function).
9. Mr Moser has not held the controlled function CF8 (Apportionment and Oversight) since March 2009.

## **DEFINITIONS**

10. The definitions below are used in this Final Notice:

“APER” means the FSA’s Statements of Principle and Code of Practice for Approved Persons;

“Board” means the board of directors of CMCL;

“CEO” means Chief Executive Officer;

“CMCL” means Cheshire Mortgage Corporation Limited;

“Collections Department” means the arrears handling department of CMCL;

“Collections Director” means the employee responsible for arrears handling at CMCL and the Group and holding that title;

“Collections Meetings” means the monthly meetings attended by the Collections Director, the Underwriting Director and certain senior underwriters at CMCL;

“Compliance Department” means the department responsible for compliance at CMCL and the Group;

“Compliance Director” means the employee responsible for compliance at CMCL and the Group and holding that title;

“COO” means Chief Operating Officer;

“Management Information” means information that is collected within the firm and used by senior management to identify areas of concern and to support decision making;

“Monarch Recoveries” means the Group’s in-house debt recovery company;

the “Act” means the Financial Services and Markets Act 2000;

the “FSA” means the Financial Services Authority;

the “Group” means the Group of companies of which CMCL is part;

the “Relevant Period” means the period between 31 October 2004 to 31 December 2009;

the “Skilled Person Report” means the report prepared pursuant to the requirement under section 166 of the Act into the regulated mortgage lending and arrears management practices at CMCL, dated 8 June 2010;

the “Skilled Person Follow-up Review” means the follow-up review to the section 166 report into the regulated mortgage lending and arrears management practices at CMCL, dated 9 September 2011, and voluntarily undertaken by CMCL;

the “Skilled Person” means the firm responsible for preparing the Skilled Person Report;

the “Tribunal” means the Upper Tribunal (Tax and Chancery Chamber);

“Underwriting Department” means the department that is responsible for underwriting at CMCL;

“Underwriting Director” means the director responsible for underwriting at CMCL and the Group; and

“Underwriting Guidelines” means the Underwriting and Processing Guidelines, which incorporate the Responsible Lending Policy.

## **FACTS AND MATTERS**

### **CMCL Business**

11. CMCL is a small mortgage lender that operates in niche market sectors, previously including lending to the impaired credit market. CMCL is part of a group of companies (the “Group”) and is the only regulated entity in the Group.
12. CMCL was authorised by the FSA on 31 October 2004 to conduct regulated mortgage business. During the Relevant Period, CMCL entered into approximately 3,200 FSA regulated mortgage contracts with a total amount of approximately £226 million.
13. The FSA has found that during the period between 31 October 2004 to 31 December 2009 (the “Relevant Period”) CMCL could not always demonstrate that sufficient steps had been taken to ensure that loans were always affordable for customers, that CMCL did not always treat customers fairly when they fell into arrears and did not always communicate regularly or accurately with customers. A Skilled Person Report into the regulated mortgage lending and arrears management practices at CMCL dated 8 June 2010 provides support for the FSA’s conclusions.
14. The FSA acknowledges that from 2008, the failures identified began to be addressed and that during the latter part of the Relevant Period, significant improvements were made in respect to these issues.

### **CMCL Management**

15. CMCL business represents approximately 10% of the total business of the Group.
16. Mr Henry Moser (“Mr Moser”) is the Chief Executive Officer (“CEO”) and a Director of CMCL (holding the controlled functions of CF3 and CF1 since 31 October 2004). He also held the approval for CF8 (Apportionment and Oversight) between 31 October 2004 and 31 March 2009.

17. As the CEO and most senior member of staff, Mr Moser was responsible for the conduct of the regulated business of CMCL.
18. As the CF8 holder and person responsible for apportionment and oversight until 31 March 2009, Mr Moser was responsible for:
  - i. ensuring that there was an appropriate apportionment of significant responsibilities amongst CMCL's directors; and
  - ii. establishing and maintaining systems and controls, including a clear organisational structure with well defined, transparent and consistent lines of responsibility and effective risk management.

### **Matrix management structure**

19. From 31 October 2004 until August 2008 Mr Moser, as CEO, supervised the activities of CMCL through a matrix management structure ("the matrix model"). The operation of the matrix model involved Board members and the Compliance Director providing input from their respective areas of expertise to different CMCL departments. This meant that while the Board had a collective responsibility for CMCL there were not always formal lines of responsibility.
20. The matrix model did not operate effectively at CMCL, in that no one person had direct responsibility for certain activities (in particular, in the key areas of arrears handling and compliance). Mr Moser accepted that until August 2008 there were not always defined reporting lines for management across all areas of the business.
21. The matrix model as a style of management developed as a result of CMCL starting life as a small firm and growing organically, without a specific decision having been taken to structure management in this way. Mr Moser did not review, or ensure the review of, the structure's effectiveness as CMCL's business grew over the Relevant Period, until July 2008 when the new director (CF1) and Chief Operating Officer ("COO") was appointed.

### **Inadequate reporting line for the Collections Director**

22. The department responsible for arrears handling of the Group, including CMCL, was the Collections Department. This department was responsible for (i) the administration of customer mortgage accounts that had fallen into arrears and (ii) the collection of arrears from customers.
23. The Board, overseen by Mr Moser, appointed the Collections Director prior to the Relevant Period, who was responsible for managing the Collections Department. The Collections Director did not hold a controlled function and was not a Board member.
24. Mr Moser did not consider whether the Collections Director should have a dedicated line of report until the new COO arrived in July 2008. Consequently, although under the matrix model any of the Board members could have input into the work of the Collections Department, no one person had specific responsibility for day-to-day oversight of the Collections Department or the Collections Director until July 2008 when the new COO took on this responsibility. At that time the Collections Director started to report directly into the new COO. Prior to this, it was left to the Collections Director to raise issues with individual Board members on an ad hoc basis or in the Collections meetings, a formal forum which took place approximately monthly to discuss individual arrears cases and which two other Board directors would attend.

### **Failure to review regularly the competence, skills and performance of staff**

#### ***Collections***

25. The Collections Director did not receive a formal documented appraisal until October 2008. Instead she met for an informal discussion with another director annually. When CMCL was small, there was less need for formality in the appraisal process. As CMCL grew, however, the need for greater formality surrounding appraisals should have been apparent.

#### ***Underwriting***

26. The Underwriting Director (who was not a member of the Board) was responsible for the management of the Underwriting Department of CMCL.



27. During the Relevant Period the Underwriting Director also did not receive any formal appraisals, although her performance would be managed informally.

### ***Compliance***

28. Mr Moser appointed the Compliance Director of CMCL prior to the start of the Relevant Period in advance of and in anticipation of mortgage contracts being regulated by the FSA. The Compliance Director was not a Board member, although he had an open invitation to Board meetings. Although he did not report to any one individual, he reported to the Board on specific compliance issues. However, no formal reviews or appraisals of his performance took place until October 2008 when he had his first formal appraisal.

### **Unclear apportionment and job description of a director**

29. In contrast to their job title, a particular director stated that they were actually more of a “commercial director” (as opposed to having sole responsibility for the business area specified in their job title). They said that their role at CMCL was “*approving applications, making sure that the lending policies [were] adhered to and working with the Compliance Department*”.

30. Mr Moser did not apportion clearly this director’s role and responsibilities. This director’s title did not wholly align with their actual responsibilities. Mr Moser also did not consider the potential conflict between the various areas of the business in which this director was involved.

### **Monitoring compliance with regulatory requirements**

31. As CEO Mr Moser was responsible for monitoring compliance with regulatory requirements through CMCL’s Compliance Director and Department. However, over the Relevant Period there were several serious weaknesses in the compliance and control framework at CMCL, including:

- i. inadequate information provided by Compliance in Board meetings;
- ii. inadequate questions of /challenges to the Compliance Director;

- iii. inadequate compliance oversight of the Collections Department;
- iv. an inadequate response to a predicted increase in arrears in 2007 and an actual increase in 2008;
- v. an inadequate response to the Collections audit of 2008;
- vi. that there was no audit of the Compliance Department until 2009; and
- vii. that the historic culture within the Collections Department was one where cash collection was incentivised.

These are expanded upon in greater detail below.

***Inadequate information provided by Compliance in Board meetings***

- 32. Until 2009 the only formal forum the Compliance Director had for reporting to the Board and Mr Moser about the compliance of CMCL's activities was through the monthly Board meetings. There was no separate Board meeting for CMCL (the only regulated entity within the Group) nor was there a dedicated (or at some meetings, any) portion of the meeting for CMCL matters.
- 33. The Compliance Director was not a member of the Board but he was a formal invitee to all Board meetings. From December 2004 to December 2008, he attended 59% of Board meetings and considered that compliance was not a focus of these meetings.
- 34. The Board packs and minutes of the meeting were brief and lacking in detail between 2004 and 2006 (and only included some compliance information). Until late 2006 the Compliance Director mostly listed the internal and external reviews of underwriting decisions that were taking place in a "Compliance Monitoring Schedule" which was attached to the Board meeting minutes but the Board minutes do not evidence much substantive discussion about the results of those reviews.
- 35. From October 2006 one of the principal tasks that the Compliance Department completed in respect of CMCL was a quarterly review of a sample of approximately 10% of the underwriting decisions taken during the quarter. This would result in a report that graded the decisions on the basis of specific criteria. These reports would

be discussed with the Underwriting Director, who would feed back comments to the Underwriting Department. Whilst the vast majority of files reviewed were graded either as A1 ("case meets underwriting criteria") or A2 ("case meets underwriting criteria – minor compliance weaknesses"), the reviews did raise some more substantial issues, such as assessment of affordability, plausibility of evidence relating to customer income and the sufficiency of documentation from self-certified customers. Despite these substantive issues the Compliance Director said that only occasionally, however, would he present these reports to the Board and he did not highlight the concerns sufficiently clearly or ensure that action was taken to address them.

36. In addition, the quarterly reviews did not take place for the second and third quarters of 2008 or the third quarter of 2009.

37. Due to the Compliance Director's failure to understand his responsibilities in respect of the Collections Department, the Compliance Director did not provide information to the Board in respect of compliance of the Collections Department (although the Collections Director did prepare a report for the Board that gave "an overview of the whole of the Department).

38. Mr Moser did not identify or remedy the above issues.

***Inadequate questions of / insufficient challenges to the Compliance Director***

39. CMCL commissioned two external compliance consultant reviews of underwriting files that took place during the Relevant Period: one in June 2005 (the "2005 compliance report") and the other in September 2006 (the "2006 compliance report"). The consultant graded the files on a scale where: A1 is "case meets criteria"; B2 is "case slightly outside criteria/missing information" and C3 is "case falls outside lending criteria".

40. In June 2005 it was found that: 59% of files were graded A1 and 41% were graded B2. There is no documentary evidence that this report was discussed with the Board as the minutes of the Board meeting dated 1 September 2005 were not prepared and the report is also not listed on the relevant agenda.

41. In September 2006 it was found that 60% were graded A1, 35% graded B2 and 5% graded C3. The Executive Summary of the 2006 compliance report stated “*the main issue that arose that are of current issue (sic) to the FSA was that robustness of the Clients Affordability Statement system in that we found repetitive and potentially unrealistic and unchallenged expenditure figures.*” The other significant issue raised was the lack of evidence on the files to show “*that the application and supporting evidence had been systemically underwritten*” as the underwriters did not always document how they arrived at a decision.
42. The findings of the 2006 compliance report were discussed with the Underwriting Director and the findings were reported to the Board on 19 October 2006 and a copy of the Executive Summary provided to Board members. There was a discussion of the compliance review at the December 2006 Board meeting. Those minutes do not record that the key issue relating to the affordability assessments was raised with the Board, but record that:
- i. “*... the underwriters could usually recall why certain decisions were made and why “outside criteria” funding was permitted, suggesting that there is no underlying risk...*”; and
  - ii. the Compliance Director and another director agreed to ensure that the outside-criteria lending would be addressed and reduced.
43. The same action point recurred in the Board meeting minutes for six months until May 2007, when it was closed with a statement that “*progress made and quarterly reports/external reviews will be discussed as and when they arise*”.
44. The Compliance Director considered that nobody at CMCL challenged him on compliance issues. Although the Board reports and minutes outlined above suggest the Compliance Department did not report the extent of the risks relating to the quality of the underwriting documentation and the assessment of expenditure, there is also no evidence that Mr Moser noted or understood the significance of this issue, challenged the Compliance Director when he reported that there was no risk or took steps to ensure that the Compliance Department had actually remedied the “significant” issue.

45. The issue of unchallenged expenditure figures was however discussed during this period by the Underwriting Director with the Compliance Department with a view to coming up with acceptable default minimums based on objective criteria, which were introduced in February 2008.

***Inadequate compliance oversight of the Collections Department***

46. The Collections Director was responsible for the arrears handling of the regulated business of CMCL during the Relevant Period. The Skilled Person in its report dated 8 June 2010 found that in 62 of the 75 reviewed cases (which were handled since 1 January 2008) there was at least one instance of material weakness, which resulted in the customer not being treated fairly at some point in the process.

47. Up until August 2008, the only formal management oversight of the Collections Department was during meetings with the Collections Director, the Underwriting Director and certain senior underwriters about individual arrears cases arising across the Group (the “Collections Meetings”). The majority of the discussions in the Collections Meetings related to new cases of arrears, cases of fraud, evictions or cases that were heading towards repossession. The Collections Director would raise accounts that had fallen into arrears which she felt were a “risk” to the business and give feedback to the attendees from the Underwriting Department. The meetings were held every one to two months (for example, six were held in 2008) and Mr Moser attended the majority of the meetings, until the new COO joined in August 2008.

48. The Compliance Director was responsible for the compliance of all of the CMCL’s activities; however, he admitted that he did not provide any compliance oversight of Collections until 2007.

49. Mr Moser should have been aware of this because:

- i. the Compliance Director did not address the Collections Department in his reports to Board meetings;
- ii. no compliance reviews were carried out by the Compliance Department in respect of the Collections Department until May 2009; and

- iii. the Compliance Director did not attend the Collections Meetings although Mr Moser often did.

***Inadequate response to increase in arrears – September 2008***

- 50. The Collections Meetings were held to identify any early trends in arrears, but Mr Moser considered that until 2007 there were no trends to identify as arrears levels were relatively low and stable. This view changed substantially in 2007 as arrears levels were predicted to increase given the worsening of the economic outlook and arrears levels did in fact start to increase in 2008. The number of staff in the Collections Department increased from 49 in 2007 to 68 by 2009 in anticipation of and in response to increased arrears levels. However, despite this significant increase in arrears there is no evidence that any steps were taken by Mr Moser to ensure that the compliance oversight of the Collections Department was/remained adequate, aside from increasing staff levels to maintain collection rates.
- 51. Mr Moser also did not request additional Management Information from the Collections and Underwriting Departments to understand the reasons for more customers falling into arrears and to ensure that those customers were treated fairly.
- 52. Mr Moser did however recruit a COO who joined CMCL in June 2008 and to whom the Collections Director then reported and a Collection Improvement Programme as part of the wider Change Programme commenced in October 2008.

***Inadequate response to warning signals in Collections audit***

- 53. An internal audit report of the Collections Department dated 26 March 2008 (the “Collections audit”) which was distributed to various parties (including Mr Moser) concluded that, as a consequence of significant issues relating to the application of arrears charges and fees, “arrangements for control” were “unsatisfactory”. It stated that “it is considered that present arrangements for control are unsatisfactory in the Collections area”. The responsibility for completing the remedial actions listed in the audit was left solely with the Collections Director (until August 2008 when the COO was appointed) and monitored by internal audit via the outstanding actions audit log and follow up reviews. There is no evidence that the remediation action undertaken by the Collections Director was overseen by Mr Moser or the Compliance Department

(or that Mr Moser considered the potential risks arising out of this lack of oversight) in relation to implementing the recommendations set out in the audit report.

54. The Collections audit was discussed during an Audit Committee meeting held on 1 May 2008 attended by Mr Moser, however no specific action points are noted except an Audit team member agreeing to revisit the issue concerning the non-application of fees and to report back at the end of June 2008 on progress.
55. Mr Moser had however recognised that, owing to the increase in its size, CMCL needed to improve its management structure and processes and for that reason he had been seeking to recruit a COO since the end of 2006. This had become more pressing by 2008 given the worsening economic outlook and anticipated increased levels of arrears. When the COO first arrived he was directed to focus his attention initially on the Collections Department and introduced a formal Change Programme for this area commencing in October 2008.
56. The Collections Improvement Programme, which was part of the more general Change Programme to improve the management of the Group's activities, was agreed by the Executive Directors in July 2008. The Change Programme also incorporated the recommendations of the Internal Audit report into its programme of works and it is recognised that positive changes were made to practices during the Relevant Period as a result of these changes.
57. The first compliance monitoring review of arrears handling, however, only took place in May 2009 (although a "first line of defence" quality assurance in Collections was introduced prior to this date as part of the Collections Improvement Programme). This review raised serious concerns as to whether CMCL's Collections staff were always treating customers fairly; for example, only one out of ten collections files reviewed contained a completed income and expenditure form. It was acknowledged in the review that compliance resource was recruited in February 2009 with a particular focus on the Collections Department, although it was also noted that it had "taken time to embed elements of the [Collections Improvement] programme."
58. Whilst changes were made to practices as a result of these initiatives and the FSA's visit in September 2009, the Skilled Person Report found that in 62 of the 75 cases

handled since 1 January 2008 (namely prior to the changes outlined above) that were reviewed by the Skilled Person there was at least one instance of material weakness occurring at some point in the handling of arrears, which weakness resulted in the customer not being treated fairly at some point in the process.

***Compliance Audit Report 2009***

59. Notwithstanding that Mr Moser ought to have been aware that the Compliance Department was not performing its function adequately, including by virtue of:

- i. the lack of adequate reports and the absence of Management Information provided by the Compliance Director to the Board or to Mr Moser;
- ii. the lack of reviews or reports of the Collections Department completed by the Compliance Department despite the increase in customers in arrears;
- iii. the fact that the Compliance Director was not invited to the Collections Meetings; and
- iv. the unsatisfactory audit of the controls in the Collections Department that raised significant issues relating to the application of fees and charges in March 2008,

an internal audit of the Compliance Department was not undertaken until November 2009 (the internal audit department having been created in 2007). The report was issued in December 2009 and distributed to, amongst others, Mr Moser. The primary scope of the audit was to evaluate and test controls relating to whether there was an effective legal and regulatory framework at CMCL. It concluded that “it is our opinion that systems, procedures and controls currently operating with regard to Group Compliance management are incomplete/ineffective for the aspects examined during this review”. It was also noted that Compliance would be revisited by internal audit within six months due to the “importance of compliance management to the Group’s future strategic and operational capability”.

60. Even after this audit was concluded Mr Moser did not review the suitability of the Compliance Director although the report made it clear that the COO was, by this stage, engaged in improving these areas. CMCL also introduced the Risk and



Governance Steering Committee of which Mr Moser was a member and implemented performance management of Compliance through this committee and the Executive meetings held on a weekly basis. The Risk and Governance Steering Committee was later replaced by a formal Executive Risk Committee and a formal Audit, Risk and Compliance Committee. A Compliance and Risk Director was also appointed in March 2011, to whom the Compliance Director now reports.

### *Collections*

61. The historic culture within the Collections Department was one that focussed on cash collection. On his arrival in 2008 the new COO recognised that this culture was driving the “wrong behaviours” and suggested a review of the collection bonus structure to ensure that it “incentivised correct behaviour”.
62. The Collections Department operated a bonus scheme for its staff based on the amount of money the staff member had collected in payments from arrears customers albeit certain breaches of procedure resulted in no bonus being payable.
63. The incentive schemes encouraged Collections staff to focus on obtaining an immediate cash payment from customers rather than fully exploring other forbearance options available to them. On three occasions, Mr Moser contributed to these incentive schemes and did not consider at the time the question of whether there were any risks in incentivising Collections staff in this way.
64. Depending upon the account circumstances, after a mortgage account had been in arrears for two months it could be transferred to Monarch Recoveries. Monarch Recoveries was the Group’s in-house debt recovery company. This was not, however, made clear in correspondence with clients. Mr Moser considered that this system would encourage customers in arrears to bring their account back to within “a contractual level” and considered that the involvement of an ostensibly separate debt collection agency would encourage the customer to pay. Mr Moser was aware that a fee of £150 was charged to the account for the transfer from collections to Monarch Recoveries, which figure was benchmarked against competitors who used to outsource this business to external agents. This system was set-up pre-2004 and was

in place until 2010 without any review being undertaken as to whether it was (or remained) appropriate.

***Mr Moser's involvement in underwriting decisions***

65. CMCL's Underwriting Guidelines set out the procedures by which mortgage applications are received and processed by the Underwriting Department. The Underwriting Guidelines contain a provision that "members of staff who are not part of the Training and Competency Regime will be unable to give advice or information to customers or deal with any applications for regulated mortgage contracts".
66. Mr Moser was not part of the Training and Competency Regime and had not undertaken any formal qualifications or industry training on the underwriting of residential mortgages.
67. Despite the requirements to the contrary in the Underwriting Guidelines, Mr Moser would on a limited number of occasions refer corporate customers of the Group's other unregulated lending companies to CMCL's underwriting department. Mr Moser considered that his personal knowledge, sometimes gained as a result of prior transactions with other Group companies, of these clients was sufficient to demonstrate that they were creditworthy. The Underwriting Director said that on these limited occasions the loan would have been agreed in principle by Mr Moser before it came to her.
68. An example of Mr Moser's introduction of a corporate client is illustrated in the example below:

*The M file*

Due to his personal knowledge of this customer and the proximity of the security property to Mr Moser's personal address, Mr Moser dispensed with the requirement for a valuation to be carried out on the property that Mr M wished to purchase and instead, upon the request of the underwriters, personally confirmed the value of the property three days before the loan was funded. On Mr Moser's instruction CMCL also dispensed with the standard assessment of an applicant's ability to repay the loan (i.e. the affordability check) on the basis that Mr Moser had prior knowledge of the

customer's business interests. Three days before the loan was funded, an underwriter made a file note declaring that Mr M was a high net worth individual, but this is not evidenced. Mr Moser's involvement in this file is noted in the quarterly review for the third quarter of 2007. The Compliance Department noted in the body of this report that this file is "Not graded" suggesting that Mr Moser's involvement meant that it was difficult to assess whether it was compliant or not.

69. The FSA has identified six specific instances of Mr Moser being involved within the underwriting process for corporate customers however the full extent of Mr Moser's influence over individual mortgage applications is not clear as there was no formal means by which his involvement in underwriting decisions was always recorded.

## **FAILINGS**

70. The regulatory provisions relevant to this Final Notice are referred to in Annex A.

### **Statement of Principle 5**

71. On the basis of the facts and matters described in paragraphs 22 to 30 above, the FSA considers that during the Relevant Period, Mr Moser breached Statement of Principle 5 in that he failed to take reasonable steps to ensure that the business for which he was responsible in his controlled function was organised so that it could be controlled effectively. In particular, Mr Moser failed to:

- i. keep under review the effectiveness of a matrix model of management that meant that directors had input into key areas of the business but no-one had direct responsibility for them;
- ii. establish a direct reporting line for the Collections Director (who was not a member of the Board or an attendee at Board meetings) until August 2008;
- iii. regularly review the competence, knowledge, skills and performance of the Collections Director, the Compliance Director and the Underwriting Director to ensure that they were and continued to be suitable to fulfil their roles; and
- iv. give a clear job description and to apportion clear responsibilities to a particular director until the end of the Relevant Period, which director in practical terms

had responsibility for areas of the business which were in apparent or potential conflict.

72. The FSA has clear rules regarding the way in which businesses must be controlled and organised. When CMCL became regulated on 31 October 2004, Mr Moser (in his capacity as CF8) should have taken reasonable steps to put in place an effective management structure, making it clear which individual had overall responsibility for each area of CMCL's business. It should also have been made clear which employees came within each line of report so that potential problems or weaknesses could be escalated appropriately. CMCL's matrix model was established when the firm was much smaller yet at no stage in the period 2004 to 2008 did Mr Moser assess or review its effectiveness or its compliance with the FSA's rules regarding the management of regulated entities. Such an assessment/review did not take place until the appointment of the new COO in July 2008.

73. Further, the FSA considers that individuals with significant management responsibilities should have their performance monitored and assessed regularly in order to ensure their continued suitability for their role. Mr Moser did not ensure that the performance of key CMCL management individuals (the Collections Director and the Compliance Director) was monitored appropriately or regularly, in particular after significant events such as an audit (which in certain instances raised concerns in respect of the areas for which those persons were responsible and thus indicated that their performance might not be acceptable).

### **Statement of Principle 7**

74. On the basis of the facts and matters set out in paragraphs 31 to 69 above, the FSA considers that during the Relevant Period, Mr Moser breached Statement of Principle 7 in that he failed to take reasonable steps to ensure that the business of the firm for which he was responsible complied with the relevant requirements and standards of the regulatory system. In particular, Mr Moser failed to:

- i. ensure that there was appropriate compliance resource within CMCL;

- ii. ensure that the Compliance Director provided full reports to the Board and was sufficiently questioned about and challenged on his department's work and activities;
- iii. ensure that, prior to August 2008, there was adequate compliance oversight of the Collections Department and, further, that this was rectified in 2008 when there was an increase in arrears;
- iv. ensure there was an adequate and timely response to an audit report of the Collections Department in March 2008 that concluded that systems of control were unsatisfactory;
- v. did not proactively arrange for a review or audit of the Compliance Department until December 2009;
- vi. identify and remedy a culture in CMCL's Collections Department that incentivised cash collections from customers in arrears which resulted in a risk that the customer would not always have been treated fairly; and
- vii. ensure compliance with the Underwriting Guidelines as he was on limited occasions involved in the underwriting process and, on occasion, waived standard requirements (sometimes without record).

75. Mr Moser, as holder of the CF3 function, had regulatory responsibility for the conduct of all of the activities of CMCL subject to the UK regulatory system. He had a responsibility to implement, monitor, review and (as appropriate) improve the compliance and control framework in place so that it identified and managed the risks faced by CMCL. However, Mr Moser instead left in place elements of the management and control structure that had existed within the Group prior to the regulation of regulated mortgage contracts in October 2004 and, despite the fact that the mortgage book grew during the Relevant Period and the number of customers in arrears increased from September 2008, and whilst it is acknowledged that he had been seeking a COO since 2006, he did not review the structure or take sufficient steps to ensure its suitability in light of regulatory requirements/standards until July 2008 when the COO actually arrived.

76. Mr Moser did not ensure that there was adequate focus on compliance within CMCL and there was no formal monitoring of the compliance function until the new COO took on this responsibility in August 2008.
77. Mr Moser failed to recognise that the Compliance Director did not fulfil his responsibilities in respect of the Collections Department until 2007 and, in any event, did not carry out a formal compliance review of Collections until May 2009.
78. Mr Moser was also aware that the response of the Collections Department to a predicted increase in arrears and an actual increase in arrears from September 2008, was to recruit more staff to ensure that collection levels were maintained; however, he did not recognise the risk arising out of that increase in staff without any increase in the resources of the compliance function. The Compliance Director did not flag the need for more resources to Mr Moser but Mr Moser should have been aware that more resource was necessary.
79. Even after the audit of the Collections Department in March 2008 graded systems and controls of the Collections Department as “unsatisfactory”, because of significant issues being identified relating to the applications of fees and charges, Mr Moser did not instigate an immediate review of the Collections Department’s practices by the Compliance Department.
80. In summary, Mr Moser failed to take steps to ensure that there was adequate oversight of the Collections Department by the Compliance Department throughout the Relevant Period. Mr Moser also failed to put in place clear reporting lines in respect of the Collections Director to allow for appropriate monitoring of CMCL’s Collections Department.
81. It was only after the new COO was appointed and the Change Programme was agreed in summer 2008 that formal oversight arrangements in respect of the Collections Department were put in place. It was not until the spring of 2009 that extra compliance resource was dedicated to the Collections Department (including greater focus on adherence to “treating customers fairly” principles within the Collections Department) and a compliance review of the Collections Department took place.

82. Mr Moser exercised significant influence over CMCL from the pre-regulation days (when CMCL was a small company) through to the end of the Relevant Period. Despite the fact that he insisted that repossession should be a last resort (and this was supported in the Skilled Persons report), he failed to:

- i. identify and remedy as quickly as he should have a cash collection culture within the Collections Department that sometimes led to customers not being treated fairly; and
- ii. remedy the wrong impression customers may have had that the in-house recovery company was an external third party agent that resulted in customers being charged £150 when their account was transferred to it.

83. Further, Mr Moser failed to take reasonable steps in ensuring compliance with the Underwriting Guidelines due to his occasional involvement in the underwriting process.

## **SANCTION**

### **Financial penalty**

84. The FSA hereby imposes a financial penalty of £100,000 (reduced to £70,000 for stage 1 settlement) on Mr Moser pursuant to section 66 of the Act because of his breach of Statements of Principle 5 and 7 in the manner outlined above at paragraphs 71 and 74 (i) to (vi).

85. The FSA's relevant policy on the imposition of financial penalties is set out in Chapter 6 of the version of the FSA's Decision Procedure and Penalties Manual ("DEPP") in force prior to 6 March 2010, which formed part of the FSA Handbook during the Relevant Period. All references to DEPP in this section are references to that version of DEPP. On 6 March 2010, the FSA adopted a new penalty-setting regime. As Mr Moser's misconduct as set out in paragraphs 71 and 74(i) to 71(vi) began in 2004 and ended in December 2009 (ie prior to the implementation of the new regime) the FSA has considered this case under the regime which applied before 6 March 2010. In determining the appropriate level of financial penalty the FSA has also had regard to Chapter 7 of its Enforcement Guide.

86. The principal purpose of a financial penalty is to promote high standards of regulatory conduct by deterring approved individuals who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour (DEPP 6.1.2G). A financial penalty is a tool that the FSA may employ to help it achieve its regulatory objectives.
87. The FSA will consider the full circumstances of each case when determining whether or not to impose a financial penalty. The FSA considers that a financial penalty would be an appropriate sanction in this case, given the serious nature of the breaches, the significant risks created for customers of CMCL and the need to send out a strong message of deterrence to others.
88. DEPP 6.5.2G sets out, as guidance, a non-exhaustive list of factors that may be of relevance in determining the level of a financial penalty. The FSA considers that the following factors are particularly relevant in this case.

#### **Deterrence**

89. The financial penalty will deter Mr Moser from further breaches of regulatory rules and Statements of Principle. In addition it will promote high standards of regulatory conduct by deterring other approved individuals from committing similar breaches and demonstrating generally the benefit of compliant behaviour.

#### **The nature, seriousness and impact of the breach in question**

90. In determining the appropriate sanction, the FSA has had regard to the seriousness of the breaches by Mr Moser, including the nature of the requirements breached, the number and duration of the breaches, the length of the Relevant Period, the number of vulnerable customers who may have been at risk and the fact that the breaches revealed failings in Mr Moser's conduct.
91. The FSA considers Mr Moser's failings to be serious because his failings persisted over a significant period of time and potentially impacted a number of vulnerable customers as CMCL's operations historically included mortgage lending in the credit impaired sector where a number of customers who already had an adverse credit status were put at further risk of financial detriment.



### **The financial resources and other circumstances of the individual**

92. There is no evidence to suggest that Mr Moser is unable to pay the financial penalty.

### **The amount of benefit gained or loss avoided as a result of the breaches**

93. The FSA has seen no evidence that Mr Moser set out to accrue additional profits or avoid a loss through non-compliance with regulatory standards.

### **Conduct following the breaches**

94. In deciding upon the appropriate disciplinary sanction, the FSA has taken account of the fact that Mr Moser has had a pivotal and critical role in driving and supporting the Change Programme, and that it was Mr Moser who brought in the COO who was responsible for the implementation of the Change Programme.

95. Mr Moser has played an important role in making positive wide-ranging changes to the organisational, governance and compliance arrangements at CMCL from 2008 onwards to achieve high regulatory standards and ensure that customers are treated fairly. His personal commitment to driving that change has been confirmed and documented, in particular by the Skilled Person in its Follow-up Review which took place in September 2011.

96. The FSA also notes the extensive co-operation Mr Moser has given during the review by the Skilled Person, his acceptance of the Skilled Person's findings and recommendations and that he has driven the swift implementation of the recommendations. Further, the FSA notes that Mr Moser has been supportive of and authorised the redress programme currently underway.

97. Finally Mr Moser has been open and fully co-operative with the FSA's investigation and has worked with the FSA to ensure early resolution of the matter.

98. All of the above mitigate the seriousness of the failings identified in this case.

### **Disciplinary record and compliance**

99. Mr Moser has not been the subject of previous disciplinary action by the FSA.

### **Other action taken by the FSA**

100. In determining the level of financial penalty, the FSA has taken into account penalties imposed by the FSA on other approved persons for similar behaviour.
101. The FSA, having regard to all the circumstances, considers the appropriate level of financial penalty to be £100,000 before any discount for early settlement.

### **PROCEDURAL MATTERS**

#### **Decision maker**

102. The decision which gave rise to the obligation to give this Notice was made by the Settlement Decision Makers.
103. This Final Notice is given under, and in accordance with, section 390 of the Act.

#### **Manner of and time for Payment**

104. The financial penalty must be paid in full by Mr Moser to the FSA by no later than 20 December 2012, 14 days from the date of the Final Notice.

#### **If the financial penalty is not paid**

105. If all or any of the financial penalty is outstanding on 21 December 2012, the FSA may recover the outstanding amount as a debt owed by Mr Moser and due to the FSA.

#### **Publicity**

106. 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.
107. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

**FSA contacts**

108. For more information concerning this matter generally, contact Kate Tuckley (direct line: 020 7066 7086 /email: kate.tuckley@fsa.gov.uk) of the Enforcement and Financial Crime Division of the FSA.

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**Bill Sillett**

Head of Department

FSA Enforcement and Financial Crime Division

## **Annex A**

### **Statements of Principle and Code of Practice for Approved Persons (“APER”)**

1. APER sets out the fundamental obligations of approved persons and sets out examples of conduct, which, in the opinion of the FSA, does not comply with the relevant Statements of Principle. It also sets out, in certain cases, factors to be taken into account in determining whether an approved person’s conduct complies with a Statement of Principle.
2. APER 3.1.3G provides that, when establishing compliance with, or a breach of, a Statement of Principle, account will be taken of the context in which a course of conduct was undertaken, including the precise circumstances of the individual case, the characteristics of the particular controlled function and the behaviour expected in that function.
3. APER 3.1.4G provides that an approved person will only be in breach of a Statement of Principle if they are personally culpable, that is, where their conduct was deliberate or where their standard of conduct was below that which would be reasonable in all the circumstances.
4. In this case, the FSA considers the most relevant of the Statement of Principle to be Statement of Principle 5 and 7.
5. Statement of Principle 5 states that:

“An approved person performing a significant influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled function is organised so that it can be controlled effectively.”
6. Statement of Principle 7 states that:

“An approved person performing a significant influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled function complies with the requirements and standards of the regulatory system.”

## **The FSA's policy on the imposition of financial penalties**

7. In considering the appropriate sanction, the FSA has had regard to its published guidance. The FSA's policy in relation to the imposition of financial penalties is set out in Chapter 6 of DEPP which forms part of the Handbook. It was previously set out in Chapter 13 of the Enforcement Manual (ENF), to which the FSA has had regard in this case.
8. The Decision Procedure and Penalties Manual (Financial Penalties) Instrument 2010, which came into force on 6 March 2010, made changes to DEPP. As the misconduct described in the Final Notice occurred prior to 6 March 2010, the FSA has had regard to the provisions of DEPP in force prior to 6 March 2010.
9. DEPP 6.1.2G provides that the principal purpose of imposing a financial penalty is to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches, and demonstrating generally the benefits of compliant behaviour.
10. The FSA will consider the full circumstances of each case when determining whether or not to take action for a financial penalty (DEPP 6.2.1G). DEPP 6.2.1G sets out guidance on a non-exhaustive list of factors that may be of relevance in determining whether to take action for a financial penalty, which include the following:-
  - (1) DEPP 6.2.1G(1): The nature, seriousness and impact of the suspected breach, including whether the breach was deliberate or reckless, the duration and frequency of the breach, the amount of any benefit gained or loss avoided as a result of the breach, the loss or risk of loss caused to consumers or other market users, and the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the breach.
  - (2) DEPP 6.2.1G(2): The conduct of the person after the breach, including how quickly, effectively and completely the person brought the breach to the attention of the FSA, and the degree of co-operation the person showed during the investigation of the breach.
  - (3) DEPP 6.2.1G(5): Action taken by the FSA in previous similar cases.

11. DEPP 6.5.1G(1) provides that the FSA will consider all the relevant circumstances of a case when it determines the level of financial penalty (if any) that is appropriate and in proportion to the breach concerned.
12. DEPP 6.5.2G sets out a non-exhaustive list of factors that may be relevant to determining the appropriate level of financial penalty to be imposed on a person under the Act. The following factors are relevant to this case:

**(1) Deterrence: DEPP 6.5.2G(1)**

When determining the appropriate level of penalty, the FSA will have regard to the principal purpose for which it imposes sanctions, namely to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant business.

**(2) The nature, seriousness and impact of the breach in question: DEPP 6.5.2G(2)**

The FSA will consider the seriousness of the breach in relation to the nature of the rule, requirement or provision breached. Relevant considerations include the duration and frequency of the breach, the loss or risk of loss caused to consumers, investors or other market users and the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the breach.

**(3) Whether the person on whom the penalty is to be imposed is an individual: DEPP 6.5.2G(3)**

When determining the amount of a penalty to be imposed on an individual, the FSA will take into account that individuals will not always have the resources of a body corporate, that enforcement action may have a greater impact on an individual, and further, that it may be possible to achieve effective deterrence by imposing a smaller penalty on an individual than on a body corporate. The FSA will also consider whether the status, position and/or responsibilities of the individual are such as to make a breach committed by the individual more serious and whether the penalty should therefore be set at a higher level.

**(4) The size, financial resources and other circumstances of the person on whom the penalty is to be imposed: DEPP 6.5.2G(5)**

The FSA may take into account whether there is verifiable evidence of serious financial hardship or financial difficulties if the person were to pay the level of penalty appropriate for the particular breach. The FSA regards these factors as matters to be taken into account in determining the level of a penalty, but not to the extent that there is a direct correlation between those factors and the level of penalty.

The purpose of a penalty is not to render a person insolvent or to threaten the person's solvency. Where this would be a material consideration, the FSA will consider, having regard to all other factors, whether a lower penalty would be appropriate. This is most likely to be relevant to a person with lower financial resources; but if a person reduces its solvency with the purpose of reducing its ability to pay a financial penalty, for example by transferring assets to third parties, the FSA will take account of those assets when determining the amount of a penalty.

**(5) Conduct following the breach: DEPP 6.5.2G(8)**

The FSA may take into account the conduct of the person in bringing (or failing to bring) quickly, effectively and completely the breach to the FSA's attention, and the degree of co-operation the person showed during the investigation of the breach by the FSA.

**(6) Other action taken by the FSA (or a previous regulator): DEPP 6.5.2G(10)**

Action that the FSA has taken in relation to similar breaches by other persons may be taken into account. As stated at DEPP 6.5.1G(2), the FSA does not operate a tariff system. However, the FSA will seek to apply a consistent approach to determining the appropriate level of penalty.