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**FINAL NOTICE**

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To: **Homeplan Finance UK Limited**

Of: **Sexton House,  
St Aidans Terrace,  
New Herrington,  
Houghton le Spring,  
Tyne and Wear  
DH4 4LZ**

Date: **4 November 2008**

**TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London, E14 5HS (the "FSA") gives Homeplan Finance UK Limited ("Homeplan") final notice of a decision to cancel the permission granted to the Firm to carry on regulated activities.**

**1. THE PENALTY**

1.1. The FSA gave Homeplan a Decision Notice on 3 November 2008 which notified it that for the reasons listed below and pursuant to section 45 of the Financial Services

and Markets Act 2000 (the "Act"), the FSA had decided to cancel the permission granted to Homeplan pursuant to Part IV of the Act ("Homeplan's permission")

- 1.2. Homeplan confirmed on 3 November 2008 that it will not be referring the matter to the Financial Services and Markets Tribunal.
- 1.3. Accordingly, for the reasons set out below and having agreed with Homeplan the facts and matters relied on, the FSA has today cancelled the Firm's Part IV permission.

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

- 2.1. By Decision Notices dated 3 November 2008 the FSA decided to withdraw the individual approvals of the two directors of Homeplan. The FSA has concluded, on the basis of this and the facts and matters described below, that Homeplan fails to satisfy the Threshold Conditions set out in Part 1 of Schedule 6 to the Act (the "Threshold Conditions"). Homeplan has inadequate resources in relation to the regulated activities that it has permission to carry on. Specifically, Homeplan has inadequate human resources, as the only two directors have been prohibited as outlined above, and therefore fails to satisfy Threshold Condition 4 (Adequate Resources). Further, Homeplan fails to satisfy Threshold Condition 5 (Suitability) as it no longer satisfies the FSA that it is fit and proper to conduct regulated activities. Specifically, Homeplan does not have a competent and prudent management.

### **Relevant statutory provisions**

- 2.2. The FSA's regulatory objectives are set out in section 2(2) of the Act and include the protection of consumers and market confidence.
- 2.3. 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.

- 2.4. 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.
- 2.5. Paragraph 4 of Schedule 6 to the Act sets out Threshold Condition 4 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.
- 2.6. Paragraph 5 of Schedule 6 to the Act sets out Threshold Condition 5 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**

- 2.7. In exercising its power to cancel a Part IV permission, the FSA must have regard to relevant provisions in the FSA Handbook. The main provisions relevant to the action specified above are set out below.

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

- 2.8. COND 2.4.1D(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.
- 2.9. COND 2.4.2G(1) provides 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.
- 2.10. 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.

- 2.11. 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.

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

- 2.12. 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.
- 2.13. COND 2.5.2G(1) 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 and nature of its regulated activities and the overall need to be satisfied that its affairs are and will be conducted soundly and prudently.
- 2.14. COND 2.5.3G(1) provides 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.
- 2.15. 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.

- 2.16. COND 2.5.4G(2) provides 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.
- 2.17. COND 2.5.6G(4) provides 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 the firm is connected with a person who has contravened any provisions of the Act or the regulatory system.
- 2.18. COND 2.5.7G(1) provides 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 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.

#### **Other relevant regulatory provisions**

- 2.19. In exercising its power to cancel a Part IV permission, the FSA must also have regard to relevant regulatory provisions and guidance, particularly in the Enforcement Guide.

#### The Enforcement Guide ("EG")

- 2.20. EG 8.13(1) provides that the FSA will consider cancelling a firm's Part IV permission using its own-initiative powers contained in section 45 of the Act where the FSA has very serious concerns about a firm, or the way its business is or has been conducted.

- 2.21. EG 8.14 provides that the grounds on which the FSA may exercise its power to cancel an authorised person's permission under section of the Act include where it appears to the FSA that the firm is failing, or is likely to fail, to satisfy the Threshold Conditions.

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

- 3.1. Homeplan was granted authorisation by the FSA on 31 October 2004 to conduct regulated mortgage business.
- 3.2. Homeplan has two directors who perform controlled functions in relation to its regulated activities.
- 3.3. By Decision Notices dated 3 November 2008 the FSA decided to withdraw the individual approvals granted to Homeplan's two directors, and prohibited them from performing any function in relation to any regulated activity carried on by any authorised or exempt person, on the basis that the FSA considers them not to be fit and proper persons.
- 3.4. Homeplan has no other persons approved to perform controlled functions in relation to the regulated activities that it has permission to carry on.

#### **Conclusions**

- 3.5. The facts and matters described above lead the FSA, having regard to its regulatory objectives which include the protection of consumers and market confidence, to conclude that:
- (1) Homeplan is failing to satisfy Threshold Condition 4 (Adequate Resources) as it does not have adequate human resources; and
  - (2) Homeplan is failing to satisfy Threshold Condition 5 (Suitability) as it no longer satisfies the FSA that it is a fit and proper person having regard to all the circumstances, including its connection with the two directors and the need to ensure that its affairs are conducted soundly and prudently.

**4. DECISION MAKER**

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

**5. IMPORTANT**

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

**Publicity**

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

**FSA contacts**

4.8 For more information concerning this matter generally, you should contact Catherine Harris at the FSA (direct line: 020 7066 4872) of the FSA.

Signed:

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