
FINAL NOTICE

To: **Ngozika Louise Ogboru**
Of: **JN Finance (UK) Ltd**
Date of Birth **11 November 1968**
Individual reference: **NLO00010**
Date **19 August 2010**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives you, Mrs Ngozika Louise Ogboru, final notice about the issue of a public censure against you, and an order prohibiting you from performing any function in relation to any regulated activity carried on by an authorised or exempt person or exempt professional firm.

1. ACTION

- 1.1. The FSA gave you a Decision Notice dated 26 May 2010. On 27 June 2010, you exercised your right to make a reference to the Upper Tribunal (Tax and Chancery Chamber) (the “Tribunal”), about the matters contained in this Notice. You later withdrew your reference to the Tribunal on 3 August 2010. The Tribunal gave consent to this withdrawal on 10 August 2010.
- 1.2. The FSA gave you a Further Decision Notice dated 17 August 2010 which notified you that the FSA had decided to:
- (1) make a prohibition order, pursuant to section 56 of the Financial Services and Markets Act 2000 (the “Act”), to prevent you from carrying out any function in relation to any regulated activity carried on by any authorised

person, exempt person, or exempt professional firm, in relation to any regulated activity (the “Prohibition Order”); and

- (2) publish a public censure against you, pursuant to section 205 of the Act for failing to comply with Statements of Principles 1, 4 and 7 of APER (the “Public Censure”).

1.3. Accordingly, the FSA has issued this Final Notice pursuant to section 390(7) of the Act. For the reasons set out below, the FSA hereby imposes the Prohibition Order on you and will issue the Public Censure against you.

1.4. The FSA would have imposed a financial penalty of £65,000 on you, pursuant to section 66 of the Act, but you have provided verifiable evidence that imposing such a financial penalty would cause you serious financial hardship. Consequently, the FSA will not impose any financial penalty on you.

2. REASONS FOR THE ACTION

Introduction

2.1. The FSA has concluded that:

- (1) You failed to take reasonable steps to ensure that JN Finance complied with the relevant requirements and standards of the regulatory system in breach of Statement of Principle 7. In particular, you failed:

- (i) to supervise JN Finance’s advisers adequately and check the mortgage applications they submitted to lenders on behalf of others. As a consequence, you failed to identify discrepancies in information contained in the applications, resulting in false and misleading applications being submitted to those lenders;

- (ii) to take reasonable steps to organise and control JN Finance effectively, specifically by allowing a former employee of JN Finance to submit mortgage applications on behalf of other customers through JN Finance for a period of almost five months after he had ceased to be an employee; and

- (iii) to put in place adequate systems and controls to ensure JN Finance met the FSA's capital resources requirements.
- (2) You were reckless in your failure to implement adequate systems and controls and to properly monitor your staff to prevent mortgage fraud at JN Finance. You were aware of circumstances indicating that there was a high risk of your firm being used for the purposes of financial crime, specifically mortgage fraud. In particular, your failings occurred despite you being aware that:
 - (i) JN Finance had been removed from a number of mortgage lenders' panels;
 - (ii) you had failed to prevent the submission of a false and misleading mortgage application through JN Finance on behalf of a customer in November 2006;
 - (iii) you had concerns about other advisers at JN Finance, in particular with regards to their compliance, yet you failed to adequately supervise them; and
 - (iv) advisers at JN Finance had been able to submit mortgage applications to lenders using your log-in details, without your prior knowledge; and
- (3) you were not competent to manage JN Finance's business. You acknowledged this and considered reducing JN Finance's permissions, yet you carried on conducting business knowing that you were not fit and proper or able to perform your Controlled Functions.

An example of your failings is that you unknowingly certified a bank statement as a true copy of the original and allowed it to be submitted to a mortgage lender as proof of income, despite the fact that the statement was a forgery and the original was held on the relevant customer file in your office. Your failure to prevent the submission of false and misleading information in support of a mortgage application to a lender on behalf of a customer, and the deliberate closing of your mind to obvious warning signs that JN Finance was being used to commit mortgage fraud,

was reckless and demonstrates a lack of integrity constituting a breach of Principle 1.

(4) You failed to disclose relevant information to the FSA relating to JN Finance's dissolution as a company registered at Companies House. This is information of which the FSA would reasonably expect to be notified and your failure therefore breached Statement of Principle 4.

2.2. As a result of the nature and seriousness of these breaches, the FSA has concluded that you have failed to meet minimum regulatory standards in terms of integrity, competence and capability, and that you are not fit and proper to perform any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

2.3. The FSA has therefore decided to issue a public censure against you, to impose a Prohibition Order on you and to give you this Final Notice.

2.4. This action supports three of the FSA's statutory objectives: reducing financial crime, maintaining market confidence and protecting consumers.

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS AND FSA GUIDANCE

3.1. Annex 1 below sets out the relevant statutory provisions, regulatory requirements and FSA guidance relied upon.

4. FACTS AND MATTERS RELIED ON

Background

4.1. Since 16 October 2006, JN Finance has been authorised by the FSA to conduct regulated activities in relation to mortgage broking. You have been the sole approved person at JN Finance since this date with approval to perform the controlled functions of Controlled Function ("CF") 1 (Director) and CF8 (Apportionment and Oversight).

4.2. JN Finance is authorised to conduct the following activities:

(1) advising on non-investment insurance contracts;

- (2) advising on regulated mortgage contracts;
- (3) agreeing to carry on a regulated activity;
- (4) arranging (bringing about) deals in non-investment insurance contracts;
- (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 non-investment insurance contracts.

4.3. Since 16 October 2006, you have employed five different advisers at JN Finance (including yourself). You have been the only person working at JN Finance since December 2008.

4.4. The FSA was made aware of concerns about you and JN Finance as part of the FSA's Information from Lenders project. The Information from Lenders project was launched in 2006 as a result of collaboration between the FSA and the Council of Mortgage Lenders. The project provides a portal for lending institutions to report mortgage intermediaries they suspect of being involved with mortgage fraud to the FSA.

4.5. The facts and matters set out in paragraphs 4.6 to 4.32 below, relate to the period 16 October 2006 to 18 November 2008 ("the Relevant Period").

Failure to ensure JN Finance complies with the relevant requirements and standards of the regulatory system

Systems and controls

4.6. As holder of significant influence functions CF1 and CF8, you had a duty to establish and maintain systems and controls to prevent JN Finance being used for financial crime.

4.7. You admitted during interview that you had concerns about mortgage applications submitted to lenders by other advisers at JN Finance. You suspected that one adviser had been dismissed from a network, and you considered another to be careless.

- 4.8. You admitted in interview that you were unable to manage the other advisers at JN Finance or ensure their compliance.
- 4.9. You admitted that you had not taken adequate steps to monitor and check a proportion of customers' mortgage applications submitted to lenders through JN Finance. You stated that you had not checked any files at all from the end of 2007 or beginning of 2008.

Failure to prevent submission of misleading information to lenders by other advisers

- 4.10. You accepted that mortgage applications containing false and misleading information had been submitted through JN Finance. The FSA has highlighted the following examples.

Customer A

- 4.11. Customer A applied for two separate mortgage applications through JN Finance. The first application stated that the customer was a self-employed web designer earning approximately £60,000. The second application stated that the customer was a civil servant earning £22,000. There were therefore inconsistencies between the employment and salary information on the two applications.
- 4.12. You submitted the first application, which was signed by you. You denied submitting the second application. However, the second application stated "Broker Firm: JN Finance Uk Limited; Name of Individual: Louise Ogboru" and you certified Customer A's credit card statement and passport on 30 October 2007, the same day that the customer signed the second application and it was submitted. The FSA therefore concludes that you submitted the second application.
- 4.13. Her Majesty's Revenue and Customs ("HMRC") confirmed that Customer A was employed by HMRC for the period from tax year ending April 2004 to tax year ending April 2007 and, in that period, had an annual income of between £20,765 and £22,565 before tax. The information from HMRC correlates closely to the information on the second application. The details of the customer's earnings and employment stated on the first application that you submitted therefore appear to be false and misleading.

- 4.14. The FSA considers that given you were involved in the submission of the second application, you would have been aware of the discrepancies between the two applications. You would have been aware that the first application contained false information and that you had failed to prevent JN Finance being used to commit mortgage fraud by Customer A when you applied for her first mortgage.

Customer B

- 4.15. You submitted two mortgage applications on behalf of Customer B, through JN Finance. A fact find was completed by a trainee adviser at JN Finance on 9 October 2007 which stated that the customer was self-employed and earned £41,000 in 2007. You submitted a mortgage application on 29 October 2007 on behalf of the customer which stated that the customer was self-employed and earned £56,000. There was therefore a discrepancy between the earnings information on the fact find and the mortgage application. You also submitted a second mortgage application for the customer which stated that the customer was self-employed and earned £42,000. This earnings information was similar to the fact find but did not correspond to the other mortgage application you had submitted.
- 4.16. The FSA has received employment and earnings information from HMRC which contradicts the statements of self-employment on the mortgage applications and fact find and the statements of earnings. The HMRC records show that the customer was employed throughout the period 2 October 2005 to 2009 in a variety of roles and earned £38,586.01.

Failure to control the submission of applications through JN Finance

- 4.17. Lenders provided you with log-in details, including passwords, allowing you access to an online facility for submitting mortgage applications electronically. You admitted during interview that other people, including other advisers at JN Finance, used your log-in details to submit mortgage applications on behalf of customers. JN Finance staff could use these log-in details to log in from inside or outside the office. You allowed advisers to use your log-in details so that you could identify which adviser had submitted a customer's application through JN Finance, though it is not clear that such identification was always possible.

- 4.18. You terminated the employment of one adviser in February 2008 because you were not happy with the quality of the business the adviser had submitted. However, this adviser continued to use your log-in details until June 2008. You failed to notice that this adviser was submitting business through JN Finance, using your log-in details, for almost five months. You only noticed this when a lender sent a fax to JN Finance for the attention of the adviser.

Failure to meet the capital resources requirements

- 4.19. You stated during interview that you are responsible for making sure that JN Finance meets its capital resources requirement. On 2 October 2008 you provided the FSA with a bank statement, showing that JN Finance was overdrawn by £1,701.21. JN Finance was required to have capital resources of the higher of £5,000 or 2.5% of its annual income. JN Finance was therefore failing to meet its capital resources requirement due to being overdrawn.
- 4.20. The FSA considers that you have failed to ensure that JN Finance complies with the relevant requirements and standards of the regulatory system by failing to monitor JN Finance's financial position and ensure that it met its capital resources requirement.

Conclusion

- 4.21. You have failed to ensure that JN Finance complies with the relevant requirements and standards of the regulatory system, in that:
- (1) you failed to monitor or control the use of your log-in details and thereby the submission of applications through JN Finance;
 - (2) you failed to monitor JN Finance's financial position and ensure that it meets its capital resources requirement; and
 - (3) you failed to make adequate checks of mortgage applications made by other advisers on behalf of clients and have admitted that you are not competent to handle compliance. Consequently, JN Finance has been used for the purpose of submitting false and misleading mortgage applications to lenders.

Circumstances to indicate a risk of JN Finance being used for financial crime

Removal from lenders' panels

- 4.22. JN Finance has been removed from at least three lenders' panels. The FSA received information from two lenders that they had removed JN Finance from the panel of brokers from which they were prepared to accept business. In interview, you stated that JN Finance had been removed from three lenders' panels and possibly a fourth and that this was a matter of concern for you, although you claim not to have found out the reason for removal.

Submission of a false and misleading mortgage application on behalf of Customer A

- 4.23. The FSA considers that because of your involvement in the case of Customer A, set out at paragraphs 4.11 to 4.14 above, you would have been aware that the first application you submitted for Customer A contained false and misleading information and that you had failed to prevent JN Finance being used to commit mortgage fraud by Customer A when she applied for her first mortgage. You would have been aware of the risk of JN Finance being used to submit further false and misleading mortgage applications.

Advisers at JN Finance

- 4.24. As set out at paragraph 4.7 above, you admitted during interview that you had concerns about mortgage applications submitted by other advisers at JN Finance. You suspected that one adviser had been dismissed from a network, and you considered another to be careless.

Your competence to manage JN Finance's business

- 4.25. You stated in interview that you were not a good manager, that you were weak and that you are not competent to handle compliance. As set out at paragraph 4.8 above, you admitted in interview that you were unable to manage the other advisers at JN Finance or ensure their compliance.
- 4.26. You also stated in interview that from February 2008 you had considered reducing JN Finance's permissions so that it was no longer authorised to conduct regulated mortgage business as you considered yourself not to be fit and proper. However, instead of doing so, you continued to conduct business in the knowledge that you

lacked the necessary competence and capability and in the awareness that JN Finance had been used to commit mortgage fraud.

Misleading information submitted to lenders

Customer C

- 4.27. Customer C applied for a mortgage through JN Finance in December 2007. The FSA discovered two bank statements on JN Finance's file for this customer. These statements both related to a single bank account in Customer C's name and covered the same time period. The two bank statements appeared identical on their face, but closer examination showed that a number of deposits and balances on the account differed. The value of the deposits was significantly higher on one statement than the deposits recorded on the same dates on the second statement.
- 4.28. The FSA has received information from the bank at which the account was held. This information indicates that the second statement with the lower deposits is the true statement. However, you certified the bank statement containing the higher deposits as being a true copy of the original and it was then faxed to the lender in support of the customer's application. The certified bank statement presented a false and misleading impression of Customer C's income to the mortgage lender.

Conclusion

- 4.29. As both the false bank statement and the original bank statement were on the file for Customer C, which did not contain many other documents, the FSA considers that you should have reviewed the file given the adviser was a trainee and was out of the office on the day you certified the false bank statement and that if you had done so you would have been likely to discover the discrepancies between the true and false bank statements and taken steps to prevent the false bank statement being submitted to the mortgage lender. Instead, despite having concerns over the quality of advice provided by the trainee, you failed to make adequate checks or review the file.
- 4.30. The FSA considers that, in light of the risks of mortgage fraud at JN Finance of which you were aware, a failure to identify the discrepancies between the true and false bank statements demonstrates recklessness and a lack of integrity contrary to the standards expected of an approved person.

Failure to deal with the FSA in an open and cooperative way

Dissolution of the firm

- 4.31. JN Finance was dissolved on 9 June 2009 and you failed to inform the FSA of the dissolution of JN Finance. Your role as CF8 of JN Finance required you to make any relevant disclosures to the FSA and it would have been reasonable for you to have assumed the significance of this information to the FSA.

Conclusion

- 4.32. The FSA considers that by failing to disclose any information relating to JN Finance's dissolution, you have failed to deal with the FSA in an open and co-operative way because this is information of which the FSA would reasonably have expected to be notified.

5. REPRESENTATIONS

- 5.1. You did not challenge the substantive facts alleged by the FSA, save for the matters referred to below. On the contrary, you acknowledged that, having read the FSA's allegations, you had failed to understand the extent of the requirements necessary to run a regulated business in a manner compliant with the FSA's rules and regulations. In doing so you stated that you felt you had let down the FSA, the business and yourself.
- 5.2. Of the matters alleged in this Notice which you challenged, you stated that you did not knowingly submit any fraudulent mortgages. While you accepted that you had signed the relevant documents, you represented that, in the circumstances you could not have known that the mortgages were fraudulently obtained.
- 5.3. In relation to the allegation that you did not inform the FSA of your removal from the panels of some lenders, you stated that you did not know at the time what you should have done in this regard.
- 5.4. You informed the FSA of the negative impact of the FSA's action on your business and personal life.

- 5.5. You accepted that you have neither the capability nor the resources to run a regulated mortgage business and you had now in any event ceased trading. You also apologised for any personal culpability for any of the issues raised in this matter.
- 5.6. Finally, you made representations on your financial circumstances, arguing that you would suffer severe financial hardship if required to pay the Financial Penalty. In particular you informed the FSA that you are on a low income and in a job on a short term contract which may not be renewed. While you are looking for a permanent job you are not hopeful of finding one. You also did not have any personal reserves of funds to enable you to pay any penalty.
- 5.7. The FSA has decided not to impose any financial penalty as it is now satisfied that the imposition of a financial penalty would cause you serious financial hardship.

6. CONCLUSIONS

Analysis of Breaches

- 6.1. By reason of the facts and matters referred to in paragraphs 4.6 to 4.21 above, the FSA considers that you have failed to act with competence and capability in your duty to ensure that JN Finance complies with the relevant requirements and standards of the regulatory system, in contravention of Statement of Principle 7. You have failed to implement adequate systems and controls at JN Finance and you have failed in particular: to monitor or control the use of your log-in details to a mortgage application submission facility; to make adequate checks of mortgage applications submitted by JN Finance's advisers; and to ensure JN Finance meets the FSA's capital resources requirements.
- 6.2. The FSA considers that you have been reckless in failing to adequately address the risks of mortgage fraud at JN Finance of which you were aware, set out in paragraphs 4.22 to 4.26, and that these risks crystallised in your involvement in the submission of false and misleading information in support of a mortgage application on behalf of a customer of JN Finance, as set out at 4.27 to 4.30. Your recklessness in failing to adequately address the risks of mortgage fraud at JN Finance constitutes a failure to demonstrate the requisite standard of integrity to be fit and proper. Your conduct in this regard also amounts to a breach of Statement of Principle 1.

- 6.3. By reason of the facts and matters referred to in paragraphs 4.31 to 4.32 above, the FSA considers that you have failed to deal with the FSA in an open and cooperative way, in contravention of Statement of Principle 4, by failing to disclose to the FSA that JN Finance had been dissolved.
- 6.4. The FSA has concluded that the nature of these matters, the period of time during which they occurred, and their gravity, directly impugn your competence and capability and honesty and integrity. The FSA considers that you pose a serious risk to lenders and consumers and to the FSA's statutory objectives of maintaining confidence in the financial system, protecting consumers and reducing financial crime.

7. Analysis of Sanctions

Financial penalty or public censure

In determining the appropriate sanctions the FSA has had regard to the Decision Procedure and Penalties Manual ("DEPP")

Deterrence: DEPP 6.4.2G (1)

- 7.1. The principal purpose of imposing a financial penalty or public censure is to promote high standards of regulatory 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. A financial penalty or public censure is a tool that the FSA may employ to help it achieve its regulatory objectives.

The seriousness of your breaches: DEPP 6.4.2G (3)

- 7.2. The FSA has had regard to the seriousness of the breaches, including the nature of the requirements and Principles breached, the number and duration of the breaches, the extent to which the breaches illustrated a lack of honesty and integrity, the extent to which the breaches revealed serious or systemic weaknesses in the management systems or internal controls, and the number of lenders exposed to a risk of loss.

The impact on the person concerned: DEPP 6.4.2G (8)

- 7.3. The FSA recognises that any financial penalty imposed on you is likely to have a significant impact on you as an individual.
- 7.4. You have provided evidence of your financial situation which indicates that your liabilities exceed your assets. The FSA is satisfied that you have provided sufficient evidence for it to conclude that the imposition of a financial penalty would cause you severe financial hardship.

Previous action taken in relation to similar failings: DEPP 6.4.2G (7)

- 7.5. In determining the appropriate sanction, the FSA has taken into account sanctions imposed by the FSA on other authorised persons and approved persons for similar behaviour. This was considered alongside the principal purpose for which the FSA imposes sanctions which is to set out a credible deterrence.
- 7.6. The FSA considers it appropriate to publish a public censure. The reasons for publishing a public censure under section 205 of the Act are that when you were an approved person:
- (1) you failed to take reasonable steps to ensure that JN Finance complies with the relevant requirements and standards of the regulatory system;
 - (2) you failed to act with integrity by your recklessness in failing to implement systems and controls to address risks of mortgage fraud at JN Finance which contributed to your involvement in an application on behalf of a customer for a regulated mortgage contract which was supported by false information; and
 - (3) you failed to disclose relevant information to the FSA.
- 7.7. The FSA would have sought to impose the Financial Penalty on you had it not been for the fact that imposing the Financial Penalty would cause you serious financial hardship.
- 7.8. In publishing a public censure the FSA has considered the need specifically to deter others from engaging in this type of activity.

Prohibition from performing any function in relation to any regulated activity

- 7.9. The FSA considers it necessary to prohibit you from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm in order to achieve its statutory objectives of maintaining market confidence in the financial system, protecting consumers and the reduction of financial crime.

8. DECISION MAKER

- 8.1. 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.

9. IMPORTANT

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

Publicity

- 9.2. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the FSA must publish such information about the matter to which this notice relates as the FSA considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to you or prejudicial to the interests of consumers.
- 9.3. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

- 9.4. For more information concerning this matter generally, you should contact Mario Theodosiou (direct line: 020 7066 5914/fax: 020 7066 5915) of the Enforcement and Financial Crime Division of the FSA.

Signed

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Tom Spender, Head of Department

FSA Enforcement and Financial Crime Division

ANNEX 1

1. Statutory Provisions

- 1.1. The FSA's statutory objectives, set out in section 2(2) of the Act, include maintaining market confidence; the protection of consumers; and the reduction of financial crime.

Public Censure

- 1.2. Section 66 of the Act provides that the FSA may take action against a person if it appears to the FSA that the person is guilty of misconduct and the FSA is satisfied that it is appropriate in all the circumstances to take action against it. Misconduct includes failure by an approved person to comply with a statement of principle issued under section 64 of the Act. The action that may be taken by the FSA includes the publication of a statement of the person's misconduct.
- 1.3. The FSA's Statements of Principle and Code of Practice for Approved Persons are a general statement of the fundamental obligations of approved persons under the regulatory system. They derive their authority from section 64 of the Act and reflect the FSA's regulatory objectives. The Statements of Principle relevant to your conduct and related guidance are set out in more detail at paragraphs 11.3 to 11.9 below.

Prohibition

- 1.4. Section 56 of the Act provides that if it appears to the FSA that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, exempt person or exempt professional firm, the FSA may make a prohibition order.
- 1.5. Section 56(2) of the Act provides that the FSA may make a prohibition order prohibiting an individual from performing a specified function, any function falling within a specified description, or any function. The prohibition order may relate to a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities (section 56(3)(a)).

2. Relevant FSA policy

- 2.1. In determining the level of the financial penalty and deciding to take the other action described in paragraph 1.1 above, the FSA has had regard to its guidance published in the FSA Handbook and its relevant published policies. The FSA's Decision Procedure and Penalties Manual ("DEPP") and Enforcement Guide ("EG") came into effect on 28 August 2007. Although the references in this Notice are to DEPP and EG, the FSA has also had regard to the appropriate provisions of the FSA's Enforcement Manual ("ENF"), which preceded DEPP and EG and applied during the majority of the Relevant Period.
- 2.2. The FSA's policy on the issue of public censures and the imposition of financial penalties is set out in Chapter 6 of the Decision Procedures and Penalties Manual ("DEPP"), which forms part of the FSA Handbook and came into force on 28 August 2007. It was previously set out in Chapter 13 of the Enforcement Manual ("ENF"). The FSA has had regard to both DEPP and ENF as both manuals applied at separate points during the Relevant Period. Both manuals set out the factors that may be of particular relevance in determining whether it is appropriate to issue a public censure. The criteria are not exhaustive and all relevant circumstances of the case will be taken into consideration. The principle purpose of a public censure is to promote high standards of regulatory conduct by deterring firms or individuals who have committed breaches from committing further breaches and by helping to deter other firms from committing similar breaches, as well as demonstrating generally the benefits of a compliant business.
- 2.3. The FSA may consider making a prohibition order and/or, in the case of an approved person, withdrawing their approval where it appears that an individual is not fit and proper to carry out functions in relation to regulated activities carried on by firms. The FSA may exercise these powers where it considers that to achieve any of its statutory objectives it is appropriate either to prevent an individual from carrying out any function in relation to regulated activities or to restrict the functions which he may perform. The FSA's policy in relation to the exercise of its powers to make a prohibition order and/or, in the case of an approved person, withdraw their approval is set out in Chapter 9 of EG.

- 2.4. EG 9.4 sets out the general scope of the FSA's powers in this respect, including 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.
- 2.5. EG 9.8 to 9.14 provides guidance on the FSA's exercise of its power to make a prohibition order against an approved person, withdraw their approval or both.
- 2.6. EG 9.9 provides that when deciding whether to make a prohibition order against an approved person and/or withdraw their approval 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 an individual's fitness and propriety are set out in the section of the FSA's Handbook entitled "FIT". FIT 2.1 (honesty, integrity and reputation), FIT 2.2 (competence and capability) and FIT 2.3 (financial soundness) (EG 9.9(2));
 - (2) whether and to what extent the approved person has failed to comply with the Statements of Principle issued by the FSA with respect to the conduct of approved persons (EG 9.9(3)(a));
 - (3) the relevance and materiality of any matters indicating unfitness (EG 9.9(5));
 - (4) the length of time since the occurrence of any matters indicating unfitness (EG 9.9(6));
 - (5) the particular controlled function the approved person is (or was) performing, the nature and activities of the firm concerned and the markets in which he operates (EG 9.9(7));
 - (6) the severity of the risk which the individual poses to consumers and to confidence in the financial system (EG 9.9(8))

(7) EG 9.12 provides that the following are examples of types of behaviour which have previously resulted in the FSA deciding to issue a prohibition order or withdraw the approval of an approved person:

- (a) providing false or misleading information to the FSA (EG 9.12(1));
- (b) severe acts of dishonesty (EG 9.12(3));
- (c) serious lack of competence (EG 9.12(4)); and
- (d) serious breaches of the Statements of Principle for approved persons (EG 9.12(5)).

3. Regulatory Requirements

Prudential sourcebook for Mortgage and Home Finance Firms and Insurance Intermediaries ("MIPRU")

3.1. In accordance with MIPRU 4.2.11R, a firm is required to have capital resources of the higher of £5,000 or 2.5% of its annual income.

APER

3.2. APER sets out the FSA's Statements of Principle in respect of approved persons and examples of conduct which, in the opinion of the FSA, do not comply with the relevant Statements of Principle. It further describes factors to be taken into account in determining whether an approved person's conduct complies with a Statement of Principle.

3.3. APER 3.1.3 G states 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, the precise circumstances of the individual case, the characteristics of the particular controlled function and the behaviour expected in that function.

3.4. APER 3.1.4 G states that an approved person will only be in breach of a Statement of Principle if they are personally culpable. Personal culpability arises where the approved person's conduct was deliberate or where their standard of conduct was below that which would be reasonable in all the circumstances.

3.5. In this case, the FSA considers the most relevant Statements of Principle, set out at APER 2.1.2 P, to be:

- (1) Statement of Principle 1 under which an approved person must act with integrity in carrying out his controlled function;
- (2) Statement of Principle 4 under which an approved person must deal with the FSA and with other regulators in an open and cooperative way and must disclose appropriately any information of which the FSA would reasonably expect notice;
- (3) Statement of Principle 7 under which an approved person performing a significant influence function must take reasonable steps to ensure that the business of the firm for which they are responsible in their controlled function complies with the relevant requirements and standards of the regulatory system.

3.6. APER 4.1 sets out examples of conduct which, in the opinion of the FSA, do not comply with Principle 1. This includes, but is not limited to, deliberately falsifying documents (APER 4.1.4(1) E):

3.7. APER 4.4 sets out examples of conduct which, in the opinion of the FSA, do not comply with Principle 4. This includes failing promptly to inform the FSA of information of which he is aware and which it would be reasonable to assume would be of material significance to the FSA (APER 4.4.7 E);

3.8. APER 4.7 sets out examples of conduct which, in the opinion of the FSA, do not comply with Principle 7. This includes where an approved person performing a significant influence function becomes aware of actual or suspected problems that involve possible breaches of relevant requirements and standards of the regulatory systems falling within his area of responsibility, then he should take reasonable steps to ensure that they are dealt with in a timely and appropriate manner (APER 4.7.13 G).

Fit and Proper Test for Approved Persons

3.9. 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 approved person.

- 3.10. In this case, the criteria set out in FIT are relevant in considering whether the FSA should exercise its powers to withdraw your approval and/or make a prohibition order against you in accordance with the guidance set out in EG 9.8 to 9.14.
- 3.11. FIT 1.3.1 G provides that the FSA will have regard to a number of factors when assessing a person's fitness and propriety. Two of the most important considerations will be the person's honesty, integrity and reputation, and their competence and capability.
- 3.12. In determining a person's honesty, integrity and reputation, FIT 2.1.1 G provides that the FSA will have regard to matters including, but not limited to, those set out in FIT 2.1.3 G. Those matters include:
 - (1) whether the person has contravened any of the requirements and standards of the regulatory system (FIT 2.1.3 G (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 2.1.3 G (13)).
- 3.13. In determining a person's competence and capability FIT 2.2G provides that the FSA will have regard to matters including, but not limited to, those set out in FIT 2.2.1 G. Those matters include:
 - (1) whether the person satisfies the relevant FSA training and competence requirements in relation to the controlled function the person performs or is intended to perform (FIT 2.2.1 G (1)); and
 - (2) whether the person has demonstrated by experience and training that the person is able, or will be able if approved, to perform the controlled function (FIT 2.2.1 G (2)).