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**FINAL NOTICE**

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To: **Mr John Vincent Burton**

Individual reference: **JVB01025**

Of: **Mortgage and Finance Club Limited  
45 Station Road  
London  
E12 5BP**

Date: 1 December 2006

**TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) has decided to take the following action:**

**1. ACTION**

- 1.1. The FSA gave you, Mr John Burton, a Decision Notice on 28 November 2006 which notified you that pursuant to section 56 of the Financial Services and Markets Act 2000 (“the Act”), the FSA decided to make a prohibition order against you to prevent you from carrying out any function in relation to regulated activities (“the Prohibition Order”).
- 1.2. You agreed on 21 November 2006 that you will not be referring the matter to the Financial Services and Markets Tribunal.

1.3. You agreed to settle at an early stage of the FSA's investigation on the basis of the Prohibition Order.

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

2.1. The FSA has considered, on the basis of the facts and matters described below, that you are not fit and proper to carry out any functions in relation to regulated activities carried on by authorised persons and that you should be prohibited from doing so.

2.2. The misconduct summarised below represents a failure by you to comply with the following Statements of Principle for Approved Persons:

- (1) Statement of Principle 2, under which an approved person must act with due skill, care and diligence in carrying out his controlled function;
- (2) Statement of Principle 5, under which 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;
- (3) Statement of Principle 6, under which an approved person performing a significant influence function must exercise due skill, care and diligence in managing the business of the firm for which he is responsible in his controlled function;
- (4) 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 he is responsible in his controlled function complies with the relevant requirements and standards of the regulatory system.

2.3. As a result of the misconduct, we consider that you failed:

- (1) to demonstrate a readiness and willingness to comply with the requirements and standards of the regulatory system, and with professional obligations and ethical standards, and

- (2) to satisfy the FSA that you are sufficiently competent and capable to perform controlled functions in relation to regulated activities.
- 2.4. These failures are so serious that we consider that you would not be able to satisfy the FSA of your ability to comply with regulatory requirements, professional obligations and ethical standards, and that if you continued to perform any functions in relation to regulated activities you would pose a risk to consumers, to confidence in the financial system, and to the fulfilment of the FSA’s financial crime objective.
- 2.5. The business practices that you adopted at MFCL led to you signing off mortgage applications containing false information. You admitted that, through your negligence, you unknowingly assisted in the submission of at least 100 t mortgage applications containing false information (**Statement of Principle for Approved Persons 2**).
- 2.6. Your negligence caused the business of MFCL and that of lenders to be used by third parties to commit financial crime. By your inability to identify serious and obvious risks from your business practices, the FSA has concluded that you fell below minimum standards required of approved persons (**Statement of Principle for Approved Persons 5**).
- 2.7. We understand that two lenders will no longer conduct business with MFCL because of the risks posed to them.
- 2.8. You performed significant influence functions at MFCL. The FSA found that there were major systemic failures within MFCL, and you accepted this as an accurate conclusion, and that you were accountable for these failures (**Statement of Principle for Approved Persons 5, 6 and 7**).

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

#### **Background**

- 3.1. You are the sole director of a mortgage intermediary called MFCL, where you perform the controlled functions of Director (“CF1”) and Apportionment and Oversight (“CF8”).

- 3.2. MFCL was authorised by the FSA on 31 October 2004 to carry on the following regulated activities in relation to regulated mortgage contracts:
- (1) advising on regulated mortgage contracts;
  - (2) agreeing to carry on a regulated activity;
  - (3) arranging (bringing about) regulated mortgage contracts; and
  - (4) making arrangements with a view to regulated mortgage contracts.
- 3.3. On 14 January 2005, MFCL was granted permission to carry on the following additional regulated activities in relation to non-investment insurance contracts:
- (1) advising on investments (except on Pension Transfers and Pension Opt Outs);
  - (2) arranging (bringing about) deals in investments; and
  - (3) making arrangements with a view to transactions in investments.
- 3.4. Since 31 October 2004, MFCL has conducted mortgage business as an intermediary, predominantly on a non-advised basis and acting as a satellite packager.
- 3.5. You were also separately authorised as Mr John Vincent Burton a sole trader (“CF7”) from 31 October 2004 but you applied to cancel your Part IV permission in this respect.

### **Conduct in issue**

- 3.6. The FSA’s Small Firms Division (“SFD”) received information from two sub prime lenders, which between them had received nearly 100 mortgage applications from MFCL that were found to be supported by false documentation (e.g. proof of address, employer references and accounting references).
- 3.7. SFD visited MFCL on 8 June 2006, and found that you had not maintained a business register. When you were presented with the allegations from the lenders, you said that six “advisers” were responsible for the mortgage applications, and that you had dismissed them in March 2006. You accepted that you had maintained no training

and competence records for the six advisers (**Statement of Principle for Approved Persons 5**).

3.8. On 14 June 2006, SFD obtained from MFCL 132 client files. At the same time, you agreed to the variation of MFCL's Part IV Permission to cease conducting regulated activities, pending completion of the FSA's enquiries, and that variation took effect on 27 June 2006.

3.9. Investigators were appointed on 31 August 2006; they reviewed the client files and other information and documents obtained by SFD and interviewed you.

3.10. Our findings from the review of client files included the following:

(1) you had certified client documents and submitted the mortgage applications in all 132 cases (although you maintain that you simply signed off work prepared by other people) (**Statement of Principle for Approved Persons 2**);

(2) in 21 of the 132 client files, the clients' incomes were purportedly verified by accountants' letters or certificates (that had been requested by letters signed by you) but, when approached by the FSA, the accountants said that they had no record of preparing accounts for those clients<sup>1</sup> (**Statement of Principle for Approved Persons 2**);

(3) you signed off two separate mortgage applications on the same date for the same client, but there were different income and occupation details on the respective applications, which suggests that at the least you did not check the documents (**APER Statement of Principle 2**).

3.11. During a taped interview with you, it was evident that:

(1) you had employed an unqualified mortgage adviser who had sourced mortgage products for clients (**Statement of Principle for Approved Persons 6**);

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<sup>1</sup> We checked 14 of the 21 cases and in each case the accountant had no record of completing accounts for the client in question, so we did not pursue the remaining 7 cases.

- (2) the only record of clients dealt with by MFCL, kept by you, was a commission book that had apparently gone missing (**Statement of Principle for Approved Persons 6**);
- (3) MFCL received business from a number of “mortgage advisers” and so in practice MFCL acted as a satellite packager. In these cases you represented to the lenders that MFCL was the mortgage intermediary although you had no dealings with the clients (**Statements of Principle for Approved Persons 5, 6 and 7**);
- (4) you undertook no due diligence about the services provided by the “mortgage advisers” including whether they were authorised or employed by authorised persons (**Statement of Principle for Approved Person 6**);
- (5) your normal practice was to certify documents received from the “mortgage advisers” as being true without seeing the original documents or meeting the clients (**Statement of Principle for Approved Persons 2**);
- (6) you had put in place no systems and controls to identify irregularities in mortgage applications submitted by the “mortgage advisers” and the business model followed by MFCL exposed it to being used for the purpose of committing financial crime (**Statement of Principle for Approved Persons 5**); and
- (7) you, as the sole director, accepted responsibility for the regulatory failures identified by the FSA, but do not accept that you knowingly assisted in the submission of mortgage applications containing false information.

3.12. Based on the extent of the issues and your personal involvement it seems unlikely that you were completely unaware of false information being used on a large scale to support mortgage applications submitted through MFCL, given that you signed off almost every mortgage application.

3.13. In summary, the evidence obtained by the FSA shows that you had personally certified and submitted almost every mortgage application submitted through MFCL since 31 October 2004. The majority of the applications were for interest-only

mortgages over 25 year terms, but there was a lack of verification of income data on the files. In the majority of the applications, clients' incomes were self-certified, with the average earnings of clients being £66,000. In some of the cases, the clients' incomes were supported by accountants' letters or certificates, all from a small number of accountancy practices and in the same limited periods, which suggests that they were dealt with in batches. Also, you did not appear to have any controls in place to monitor the business of MFCL, to ensure that it complied with regulatory requirements, and to combat the risk of the business being used to commit financial crime.

#### **4. ANALYSIS OF CONDUCT IN ISSUE**

4.1. The misconduct summarised above is considered to be serious because:

- (1) you certified clients' identification documents and processed mortgage applications without taking any steps to check whether they were authentic;
- (2) you accepted completed applications from other mortgage intermediaries and signed them off without taking any steps to check any details about the applications, without having met the clients, and without making any enquiries about the processes used by the mortgage intermediaries to obtain information from clients;
- (3) you failed to identify irregularities in mortgage applications which indicated transactions of a fraudulent nature, or have in place any systems to identify such irregularities and to help prevent the business being used to commit financial crime;
- (4) at the very least, you should have been aware of the possibility that false information about clients' was being submitted in support of mortgage applications approved by you personally at MFCL, but you failed in that respect; and
- (5) you expressed no intention of changing your processes or of adopting different business practices to safeguard against being used by third parties to commit financial crime.

### **Relevant period of breach**

- 4.2. The period of breach is from 31 October 2004, when MFCL became authorised.

## **5. RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND GUIDANCE**

### **Statutory provisions**

- 5.1. The FSA's statutory objectives, set out in section 2(2) of the Act, are: market confidence; public awareness; the protection of consumers; and the reduction of financial crime.
- 5.2. The FSA has the power pursuant to section 56 of the Act to make an order prohibiting you from performing a specified function, any function falling within a specified description or any function, if it appears to the FSA that you are not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person.
- 5.3. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description or all regulated activities.

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

- 5.4. The FSA will consider making a prohibition order where it appears that an individual is not fit and proper to carry out functions in relation to regulated activities carried on by authorised firms. The FSA may exercise these powers where it considers that to achieve any of its statutory objectives it is necessary to prevent an individual from carrying out any function in relation to regulated activities. The FSA policy in relation to the decision to make a prohibition order is set out in Chapter 8 of the Enforcement section of the FSA Handbook ("ENF").
- 5.5. In particular, ENF 8.4.2 sets out the general scope of the FSA's powers in this respect, which include the power to make a range of prohibition orders depending on the circumstances of each case and the range of regulated activities to which the individual's lack of fitness and propriety is relevant. The scope of the prohibition



order will depend on the range of activities the individual carries out. The FSA recognises that its decision to make a prohibition order will have a substantial impact on the individual concerned.

5.6. ENF 8.5 provides guidance in circumstances where the FSA has concerns about the fitness and propriety of an approved person. The FSA may consider whether it should exercise its powers to withdraw the person's approval or prohibit him from conducting regulated activities.

5.7. The FSA will usually consider making a prohibition order against an approved person only in the more serious cases of lack of fitness and propriety where it considers that the other powers available to it are not sufficient to achieve the FSA's regulatory objectives.

5.8. ENF 8.5.2 provides that when deciding whether to make a prohibition order against an approved person, the FSA will consider factors which include:

(1) **honesty, integrity and reputation:** this includes an individual's openness and honesty in dealing with consumers, market participants and regulators and ability and willingness to comply with requirements placed on him by or under the Act as well as with other legal and professional obligations and ethical standards; and

(2) **competence and capability;** this includes an assessment of the individual's skills to carry out the controlled function that he is performing.

5.9. The FSA will also consider whether and to what extent the approved person has:

(1) failed to comply with the Statements of Principle for Approved Persons;

(2) been knowingly concerned in a contravention by the relevant firm of a requirement imposed on the firm by or under the Act (including the Principles and other rules); and

(3) the relevance, materiality and length of time since the occurrence of any matters indicating unfitness;

- (4) the particular controlled function the approved person is performing, the nature and activities of the firm concerned and the markets in which he operates;
- (5) the severity of the risk which the individual poses to consumers and to confidence in the financial system; and
- (6) the previous disciplinary record and general compliance history of the individual including whether the FSA (or any previous regulator) has previously imposed a disciplinary sanction on the individual.

### **Regulatory requirements**

- 5.10. The section of the FSA handbook entitled FIT sets out the Fit and Proper test for Approved Persons. The purpose of FIT is to outline the main criteria for assessing the fitness and propriety of a candidate for a controlled function and FIT is also relevant in assessing the continuing fitness and propriety of an approved person.
- 5.11. In this instance the criteria set out in FIT are relevant in considering whether the FSA may exercise its powers to make a prohibition order against an approved person in accordance with ENF 8.5.
- 5.12. FIT 1.3 provides that the FSA will have regard to a number of factors when assessing the fitness and propriety of a person and the most important considerations will be the person's honesty integrity and reputation, competence and capability and financial soundness.
- 5.13. In determining a person's honesty, integrity and reputation FIT 2.1 provides that the FSA will have regard to matters including, but not limited to, those set out in FIT 2.1.3G. The guidance referred to includes 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.
- 5.14. In determining a person's competence and capability FIT 2.2 provides that the FSA will have regard to matters including but not limited to whether the person satisfies the relevant requirements of the FSA's Training and Competence sourcebook (TC) in

relation to the controlled function the person performs or is intended to perform, and 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.

## **6. ANALYSIS OF THE SANCTION**

6.1. For the following reasons, we consider that you are not fit and proper to perform any functions in relation to regulated activities.

6.2. As a result of the misconduct, we consider that you have failed:

(1) to demonstrate a readiness and willingness to comply with the requirements and standards of the regulatory system, and with professional obligations and ethical standards, and

(2) to satisfy the FSA that you are sufficiently competent and capable to perform controlled functions in relation to regulated activities.

6.3. These failures are so serious that we consider that you would not be able to satisfy the FSA of your ability to comply with regulatory requirements, professional obligations and ethical standards, and that if you continued to perform any functions in relation to regulated activities you would pose a risk to consumers, to confidence in the financial system, and to the fulfilment of the FSA's financial crime objective.

6.4. The FSA has considered whether you are a fit and proper person in accordance with the regulatory requirements and with regard to the relevant guidance. It had regard to your conduct in relation to mortgage applications containing false information submitted and your conduct within MFCL as set out above and this is a relevant matter in assessing your honesty, integrity and reputation. It is not satisfied that you are ready, willing and organised to comply with the standards and requirements of the regulatory system.

6.5. You hold a management position at MFCL and perform significant influence functions. In view of this and the fact that you operate mainly in the sub-prime market, in which customers may be particularly vulnerable to the risk of financial crime, you pose a risk to the financial system.

- 6.6. The FSA does not consider that you are competent and capable to carry out functions in relation to regulated activities based on the findings set out above.
- 6.7. The FSA considers that you have acted in breach of statements of principle for approved persons including in relation to your failure to ensure that MFCL was organised so that it could be controlled effectively and failure to exercise due skill care and diligence in carrying out your management functions at MFCL.
- 6.8. In view of the FSA's findings it has concluded that you are not fit and proper to carry on regulated activities.

## **7. DECISION MAKERS**

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

## **8. IMPORTANT**

- 8.1. This Final Notice is given to you in accordance with section 390 of the Act. The following statutory rights are important.

### **Publicity**

- 8.2. 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.
- 8.3. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

**FSA contacts**

- 8.4. For more information concerning this matter generally, you should contact Chris Walmsley (direct line: 020 7066 5894) of the Enforcement Division of the FSA.

Jonathan Phelan

Head of Department

FSA Enforcement Division