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**FINAL NOTICE**

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To: **Mr Michael Worthington**

**TMW1047**

Date: 19 September 2008

**TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") gives you final notice about a decision to publish a statement of misconduct about Michael Worthington.**

**1. THE PENALTY**

- 1.1. The FSA gave Michael Worthington a Decision Notice on 16 September 2008 which notified Mr Worthington that pursuant to section 66 of the Financial Services and Markets Act 2000 ("the Act"), the FSA had decided to publish a statement of misconduct in respect of Mr Worthington's failure to comply with Principles 5, 6 and 7 of the Statement of Principles for Approved Persons ("APER").
- 1.2. Mr Worthington confirmed on 9 September 2008 that he will not be referring the matter to the Financial Services and Markets Tribunal.
- 1.3. Were it not for Mr Worthington's present financial circumstances, the misconduct described in this notice would have merited a significant financial penalty of £150,000. However, on 17 December 2007 Mr Worthington was made bankrupt.
- 1.4. Accordingly, for the reasons set out below and having agreed with Mr Worthington the facts and matters relied on, Mr Worthington has agreed not to apply to hold any controlled functions involving significant management influence in the future.

**2. REASONS FOR THE ACTION**

- 2.1. Mr Worthington breached Principles 5, 6 and 7 of APER in his capacity as an approved person who held the following controlled functions: Chief Executive (CF3) and Apportionment and Oversight (CF8) in relation to Lifestyle Finance Limited ("Lifestyle/the Firm") from 31 October 2004 until 17 May 2007 when the Firm went into administration ("the Relevant Period").

2.2. The breaches, which are described in more detail below, arise because Mr Worthington:

- (1) Failed to take reasonable steps to ensure that the business of the Firm for which he was responsible as Chief Executive complied with the relevant requirements and standards of the regulatory system (APER 7) by failing to take reasonable steps to:
  - (a) Oversee the establishment and maintenance of appropriate systems and controls, in particular those relating to compliance and sales practices.
  - (b) Monitor compliance with the relevant requirements and standards of the FSA's Principles for Businesses and the Mortgage Conduct of Business Rules.
- (2) Failed to take reasonable steps to ensure that the business of the Firm for which he was responsible in his controlled function of apportionment and oversight was organised so that it could be controlled effectively (APER 5) by failing to take reasonable steps to:
  - (a) Monitor and supervise or arrange for the monitoring and supervision of the Firm's compliance function.
  - (b) Review the competence, knowledge, skills and performance of staff to assess their suitability to fulfil their duties.
- (3) Failed to exercise due skill, care and diligence in managing the business of the Firm for which he was responsible as Chief Executive (APER 6) by failing to take reasonable steps to:
  - (a) Ensure that the Past Business Review initiated by the Firm in December 2005 was completed within a reasonable timescale. The Past Business Review was initiated because of failings identified by the compliance department in relation to the Firm's selling practices and sales processes. Mr Worthington failed to ensure adequate resources were available to the Firm to carry out the Past Business Review.
  - (b) Ensure that the Firm's compliance department was adequately resourced with sufficient experienced and qualified staff.
  - (c) Adequately control the Firm's expenditure on salaries and funding of associated companies which diverted funds away from the compliance department and Past Business Review, despite being aware that both areas were under-resourced.

2.3. As a result, Mr Worthington is personally culpable for the above failings and his conduct fell below the standard required under the regulatory system.

2.4. The FSA views Mr Worthington's conduct as serious because:

- (1) The failings in the business of the Firm for which he was responsible during the Relevant Period were widespread. The failure to put in place and operate in accordance with appropriate formalised and written procedures in relation to regulated mortgage business and the failure to adequately resource and monitor the Firm's compliance department seriously undermined the Firm's ability to ensure the suitability of its regulated mortgage advice and complete the Past Business Review.
- (2) The Firm's failure to complete the Past Business Review means that any customers who have been mis-sold mortgages remain unidentified and without redress.
- (3) The failings happened over a prolonged period.

### **3. RELEVANT STATUTORY PROVISIONS**

3.1. Section 66 of the Act provides that:

- (1) *The Authority may take action against a person under this section if*
  - (a) *It appears to the Authority that he is guilty of misconduct; and*
  - (b) *The Authority is satisfied that it is appropriate in the circumstances to take action against him.*
- (2) *A person is guilty of misconduct if, while an approved person*
  - (a) *He has failed to comply with a statement of principle issued under section 64.*
- (3) *If the Authority is entitled to take action under this section against any person, it may*
  - (a) *impose a penalty on him of such amount as it considers appropriate; or*
  - (b) *publish a statement of his misconduct.*

3.2. The statements of principle issued under section 64 of the Act and relied on by the FSA in this matter are contained in APER. In particular:

*Principle 5 of APER*

*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.*

*Principle 6 of APER*

*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.*

*Principle 7 of APER*

*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.*

#### **4. RELEVANT GUIDANCE**

4.1. In deciding to take the action described above the FSA has had regard to guidance published in the FSA Handbook, in particular at:

- (1) in determining whether Mr Worthington's conduct amounts to a breach of APER, the FSA has had regard to the guidance and examples given in APER 4.5, 4.6 and 4.7. This guidance and the statements of principle relied on by the FSA in this matter are set out in full in Appendix A to this notice. In particular, the FSA has taken into account APER 4.5.8E, 4.5.9E, 4.6.3E, 4.6.5E, 4.6.6E, 4.6.8E, 4.6.9E, 4.7.3E, 4.7.4E, 4.7.5E, 4.7.7E, 4.7.8E and 4.7.10E; and
- (2) in deciding to take this action, the FSA has had regard to the guidance set out in 6.2.1G and sections 6.2G and 6.4G of the FSA's Decision Procedure and Penalties Manual ("DEPP"), which is part of the FSA's Handbook. DEPP 6.2.1G states that the FSA will consider the full circumstances of each case and that the criteria listed are not exhaustive. In particular, DEPP 6.2.4G states that the FSA will only take disciplinary action against an approved person where there is evidence of personal culpability on his part and where the standard of behaviour of the individual fell below that which would be reasonable in all the circumstances.

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

5.1. Lifestyle carried on business from Rotherham, South Yorkshire as a mortgage broker specialising in the sub-prime market. The Firm traded from 1 June 2002 to 17 May 2007, the date the Firm went into administration on the petition of a fixed charge creditor.

5.2. The Firm was authorised from 31 October 2004 to 25 May 2007 to advise on and arrange regulated mortgage contracts and to make arrangements and to agree to carry on a regulated activity in respect of regulated home finance. The Firm was also authorised to advise on and arrange deals in investments, to make arrangements in respect of insurance mediation and to assist in the administration of insurance.

5.3. Throughout the Relevant Period Mr Worthington was approved to perform Controlled Functions 3 and 8.

##### **Failing to take reasonable steps to ensure the appropriate monitoring and supervision of the Firm's compliance function**

5.4. Mr Worthington held the Apportionment and Oversight Function and was responsible for apportioning and overseeing compliance responsibilities within the Firm.

5.5. Prior to 11 November 2005, Mr Worthington delegated the monitoring and supervision of the compliance function without ensuring that it was delegated to suitable individuals. In particular, Mr Worthington did not take reasonable steps to properly assess the competence, knowledge, skills and performance of key individuals in the compliance department. One individual was appointed to a key compliance role despite having no compliance knowledge or previous compliance experience prior to

their appointment. Employees carrying out the task of checking the suitability of customer files had no formal training or guidance in how to check suitability of cases or previous experience in assessing suitability of sales of mortgage contracts.

- 5.6. As a result, prior to 11 November 2005, the Firm lacked sufficient staff with appropriate compliance knowledge and skills to adequately monitor and supervise the Firm's compliance function and there was no monitoring or supervision of the compliance department by Mr Worthington or other senior management.

**Failing to ensure that the Past Business Review was completed within a reasonable timescale**

- 5.7. On 11 November 2005 an experienced compliance officer joined the Firm and instigated a review of the entire systems and controls of the Firm. At a Board meeting on 16 December 2005, the compliance officer presented the review findings as compiled in the Risk Assessment, Detection and Resolution Register. The findings indicated that there were issues with, amongst other matters, the Firm's selling processes in that:

- (1) There was no sales process or best advice guidance issued to the sales advisers or the compliance staff.
- (2) The system used by sales advisers was inadequate to record the advice given so that it failed to retain records of sufficient information about customers and the advice given to demonstrate the suitability of advice.
- (3) Customers had been recommended interest-only mortgages or mortgages extending the term into retirement to make them affordable at the date of completion but without an assessment of affordability over the entire term of the mortgage.
- (4) Sub-prime mortgages had been sold to customers with no adverse credit history and customers had self-certified mortgages with no reason for self-certification recorded on the customer file.

- 5.8. As a result of the review findings, the compliance department initiated a Past Business Review in respect of a sample of past cases. A total of 1,564 mortgage transactions were completed between 31 October 2004 to 31 December 2005 and a 2% sample of these transactions was selected for review as a Phase 1 pilot. The sample was targeted towards higher-risk sales, for example, interest-only mortgages. In all cases the customer files contained insufficient information to demonstrate the suitability of the recommended product.

- 5.9. Failure rate was defined by the compliance department as those cases identified as representing a high risk of customer detriment. As the failure rate from the Phase 1 pilot was 16%, the Firm decided to extend the review to a second phase. The Phase 2 pilot, completed in June 2006, identified a failure rate of 24% in the files reviewed.

- 5.10. Mr Worthington was aware that the compliance department was overstretched as a result of the Past Business Review. Senior staff raised the lack of progress made at Board meetings. A database was set up in early 2007 to collect details of customers

but the Firm's records were so inadequate that a questionnaire was devised to send to clients to ask them for details of their mortgage and advice provided to them by the Firm. At the date of administration, the Firm had sent approximately 25% of customers a questionnaire asking for details of the mortgage they had been sold by the Firm.

- 5.11. Mr Worthington failed to ensure that the Past Business Review was given appropriate priority over other business concerns. He also failed to properly address how a large scale Past Business Review could be carried out with limited resources. As at February 2007, Mr Worthington was aware that the Past Business Review database had not been fully populated, key information relating to individual customers had not been inputted and even with a fully resourced team, the Firm estimated that the review would take a further six months.
- 5.12. The firm identified 1,629 customer cases requiring review and as at February 2007, only 91 cases (6%) had been reviewed. The average failure rate was 17% taking into account Phase 1 and 2 and other cases reviewed outside Phases 1 and 2. The average redress payable in respect of a suitability complaint was estimated by the Firm at £1,457, giving the Firm a potential liability of £569,687.
- 5.13. Mr Worthington was aware that no real progress was ever made in identifying customers who had been mis-sold a mortgage so that they could be provided with redress.

**Failing to take reasonable steps to oversee the establishment and maintenance of appropriate systems and controls to comply with the relevant requirements and standards of the regulatory systems in relation to sales of regulated mortgage contracts**

- 5.14. The Firm did not put any documented sales processes or procedures in place until 5 March 2006. This failure to establish and maintain appropriate sales processes and procedures resulted in a risk that customers were being sold unsuitable products. From March 2006 there were written sales procedures and guidance in place and sales advisers were given initial training on the new sales procedures. However, from 31 October 2004 until the new sales processes were in place on 5 March 2006, Mr Worthington failed to take reasonable steps to ensure that the Firm had any appropriate systems or procedures in place so that the Firm's sales advisers had a clear understanding of the regulatory requirements aimed at ensuring that customers received suitable advice.

**Failing to adequately monitor compliance with the relevant requirements and standards of the regulatory system in respect of its sales of regulated mortgage contracts**

- 5.15. During a visit to the Firm in May 2005, FSA Supervision noted that the compliance department was overstretched. The compliance department had insufficient staff with appropriate compliance knowledge and experience throughout the Relevant Period.
- 5.16. Mr Worthington was aware that the compliance department was overstretched throughout the Relevant Period as this was raised with him by the compliance department on a regular basis at Board meetings. Nonetheless Mr Worthington

delegated to the compliance department the training of sales advisers, the Past Business Review and suitability checks on sales.

- 5.17. Even though the Past Business Review highlighted problems with potentially unsuitable sales, Mr Worthington did not take reasonable steps to ensure that the compliance department was adequately resourced such that it could properly monitor the compliance of sales at the Firm, either by increasing resources within the Firm or outsourcing certain work such as the Past Business Review.
- 5.18. The Compliance Department Report to the Board dated January 2006 stated that in respect of file monitoring it was unable to undertake a simple assessment of cases checked against those written in that month because of the difficulty in extracting meaningful information from the computer programme used to record sales information. It also noted that “the quality of cases from advisers was poor in relation to the standard of work.”
- 5.19. After the introduction of a written sales procedure in March 2006 there were still continuing issues with suitability of sales. A Compliance Report to the Board for the period August to September 2006 stated that the percentage of cases rejected was a cause for concern and that those cases needed reviewing from a quality aspect both in terms of whether advisers should have signed them up in the first place and also whether this had resulted in inappropriate cases being processed.

During January 2007 the Firm set the sales force a “re-mortgage fees challenge” with a target for completed business of £410,639 for the month. During that month the total fees achieved were £420,727, exceeding the target by £10,097 with only 22 days of the challenge gone. There was no evidence that implementing the sales challenge was intended to encourage non-compliance. However, a Compliance Report to the Board in February 2007 stated that of the cases assessed from January 2007, 34% were assessed as red, meaning customers had potentially been provided with unsuitable advice. The Compliance Report noted that much of that business raised a small amount of capital with the cost of fees equal to or exceeding the amount being raised. The Compliance Report stated that this raised issues with regards to how the original cases have been sold and whether customers had been treated fairly.

**Failing to adequately review the knowledge, experience and performance of staff to assess their suitability to fulfil their duties**

- 5.20. Mr Worthington failed to ensure that there was an effective recruitment selection process and training programme in place for the Firm’s sales advisers.
- 5.21. The Firm’s Risk Assessment, Detection and Resolution Register dated 17 January 2006 noted that there were inadequate systems and controls to ensure that new sales advisers and employees had adequate skills and knowledge for their roles, to determine the training needs of new employees and to assess the competence of employees. It also noted that there was insufficient management information to take a risk-based approach and to assess the adequacy of procedures for ensuring that individuals assessed as competent remained competent, and for ensuring that levels of supervision were adequate.

- 5.22. Following the findings identified in the Risk Assessment, Detection and Resolution Register, a training and competence scheme was drafted. However, its implementation was adversely affected by the fact that the compliance department was under-resourced and often did not have time to identify the need for and/or carry out training because of the competing demands of carrying out suitability checks on sales advisers' files and the Past Business Review.

**Failing to adequately control the Firm's expenditure on salaries and the funding of associated companies, which diverted funds that could have been applied to resource the compliance department and Past Business Review**

- 5.23. The issue of adequately resourcing the compliance department and the Past Business Review was repeatedly raised at Board meetings. The Firm had difficulty in recruiting suitable compliance staff. However, Mr Worthington failed to ensure salaries, remuneration and dividend payments for existing staff were kept to an appropriate and commercially justified level. Had he done so, the Firm would have had available additional monies for recruiting additional compliance staff or engaging outside assistance to progress with the Past Business Review.
- 5.24. The Notes to the audited financial statements of Lifestyle for the year ended 31 December 2005 stated that the directors' loan accounts (monies the directors owed to the Firm) were £329,575 overdrawn as at 31 December 2005. £151,474 of this amount was attributed to the loan account of Mr Worthington.
- 5.25. The Firm declared a dividend of £209,000 for the year ended 31 December 2005; this reduced Mr Worthington's overdrawn loan account balance by £104,500.
- 5.26. The Notes to the Firm's audited financial statements for the year ended 31 December 2005 stated that total directors' remuneration for 2005 was £298,279. The February 2007 management accounts for Lifestyle indicated that total directors' remuneration for the financial year 2006 was £518,959, an increase of 74% on the figures for 2005. Mr Worthington was paid a total salary of £100,171 between September 2006 and February 2007.
- 5.27. In addition, two members of staff were paid a salary of £100,000 per annum. Neither member of staff had the knowledge and experience relevant to their roles to make the salary commercially justifiable.
- 5.28. The impact on the financial performance of the Firm of the cash withdrawals through the director's loan accounts, dividend payments and high salaries was to reduce the Firm's cash reserves. This meant that there was less cash available to utilise in the operations of the business. The directors' loan accounts were an asset that the Firm could not readily realise. Mr Worthington had no provision in place to repay his loan account unless the financial performance of Lifestyle was such that the Firm could continue to afford to pay him a bonus or declare a dividend, which would reduce his overdrawn balance.
- 5.29. Lifestyle also funded the operations of related businesses in which Mr Worthington was an owner and/or director in 2006 by making payments on behalf of these businesses notwithstanding the fact that the Firm experienced a downturn in business,



on-going cash flow problems and capital adequacy concerns. There was no evidence that the related businesses were ever able to repay those monies.

- 5.30. A detailed plan for the Past Business Review was submitted to the Board in September 2006. Phase 2 of the pilot study had been completed in June 2006 and it showed a potential liability for compensation to customers in respect of mis-selling. Despite these warnings of this potential liability, at no point were any monies set aside to fund either the payment of external compliance staff to ensure the timely completion of the Past Business Review or the payment of compensation that might be due to customers.
- 5.31. Outsourcing of the Past Business Review was considered by the Firm, and the conclusion was that it would be financially prohibitive, but that costs should be controlled wherever possible so that financial resource could be reserved for remedial action and redress. However, in practice the payment of excessive remuneration and the continued financial support of related business interests took away from the Firm funds that could have been applied to the Firm's compliance staffing and Past Business Review concerns.

#### **Principle 6 of APER**

- 5.32. Principle 6 of APER provides:

*“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.”*

- 5.33. As a result of Mr Worthington's failure to take effective action as set out in paragraphs 4.7 to 4.13, the Past Business Review was not properly progressed and remained incomplete as at the date of administration of the Firm. Consequently, there is a risk that a substantial number of the Firm's customers were mis-sold mortgages but remain unidentified and unlikely to receive any redress. Accordingly, Mr Worthington's failure to adequately progress the Past Business Review was a breach of Principle 6 of APER.
- 5.34. Mr Worthington failed to act with due skill, care and diligence in considering whether sales challenges may impact on existing mis-selling issues. In failing to ensure that the compliance department had enough appropriately qualified staff to carry out the necessary compliance checks and training, Mr Worthington breached Principle 6 of APER.
- 5.35. There was no evidence to suggest that Mr Worthington paid himself a substantial salary and dividends in order to avoid funding the Past Business Review. However, in failing to control remuneration and dividend payments and financial support for other related but non-regulated businesses, and in failing to make provision for the costs of the Past Business Review as set out in paragraphs 4.24 to 4.32, Mr Worthington failed to use due skill, care and diligence in prioritising and applying the Firm's available cash flow to the business areas that were under-resourced.

#### **Principle 7 of APER**

5.36. Principle 7 of APER provides:

*“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.”*

5.37. As set out in paragraphs 4.14 to 4.23, Mr Worthington breached Principle 7 of APER by failing to take reasonable steps to oversee the maintenance and establishment of appropriate systems and controls to ensure that sales to customers complied with regulatory requirements.

5.38. Mr Worthington’s failure to ensure that the Firm could adequately monitor compliance with regulatory requirements and standards led to a continual failure of the Firm to be fully compliant with regulatory requirements throughout the Relevant Period and accordingly Mr Worthington breached Principle 7 of APER.

### **Principle 5 of APER**

5.39. Principle 5 of APER provides 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.”*

5.40. By failing to either adequately monitor and supervise the compliance function himself and/or adequately assess the competence, knowledge, skills and performance of staff to whom he had delegated those responsibilities, as set out in paragraphs 4.4 to 4.6 above, Mr Worthington breached Principle 5 of APER.

## **6. DECISION MAKERS**

6.1. 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.

## **7. IMPORTANT**

7.1. This Final Notice is given to Mr Worthington in accordance with section 390 of the Act.

### **Publicity**

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

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

**FSA contacts**

- 7.4. For more information concerning this matter generally, you should contact Liz Ludlow (Tel: 020 7066 1474) of the Enforcement Division of the FSA.

**Georgina Philippou  
Head of Department  
FSA Enforcement Division**