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FINAL NOTICE

To: **Michael Wilkinson Mortgages (Michael Wilkinson trading as)**

Address: **92 Laund Road
Huddersfield
HD3 3TY**

FRN: **304531**

Dated: **2 February 2017**

ACTION

1. For the reasons set out in this Final Notice, the Authority hereby takes the following action against Mr Wilkinson.
2. The Authority gave Mr Wilkinson the Decision Notice, which notified Mr Wilkinson that, for the reasons given below and pursuant to section 55J of the Act, the Authority had decided to cancel Mr Wilkinson's Part 4A permission.
3. On 21 June 2016, Mr Wilkinson referred the matter to the Tribunal. On 16 January 2017, Mr Wilkinson gave notice of the withdrawal of his reference and, on 23 January 2017, the Tribunal consented to the withdrawal.
4. Accordingly, the Authority has today cancelled Mr Wilkinson's Part 4A permission.

DEFINITIONS

5. The definitions below are used in this Final Notice (and the Annex):

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

“the appropriate resources Threshold Condition” means the threshold condition set out in Paragraph 2D of Schedule 6 of the Act;

“the Authority” means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority;

“COND” means the Threshold Conditions part of the Handbook;

“the Decision Notice” means the Decision Notice given to Mr Wilkinson dated 24 May 2016;

“EG” means the Enforcement Guide;

“the Handbook” means the Authority’s Handbook of rules and guidance;

“the March 2015 RMAR” means the RMAR submitted by Mr Wilkinson to the Authority for the period ended 1 March 2015;

“MIPRU” means the Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries, part of the Handbook;

“Mr Wilkinson” means Michael Wilkinson trading as Michael Wilkinson Mortgages;

“Mr Wilkinson’s Part 4A permission” means the permission granted to Mr Wilkinson pursuant to Part 4A of the Act;

“the Principles” means the Authority’s Principles for Businesses;

“RMAR” means Retail Mediation Activities Return;

“the suitability Threshold Condition” means the threshold condition set out in Paragraph 2E of Schedule 6 of the Act;

“SUP” means the Supervision Manual, part of the Handbook;

“the Threshold Conditions” means the threshold conditions set out in Schedule 6 to the Act;

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

“the Warning Notice” means the Warning Notice given to Mr Wilkinson dated 27 April 2016.

RELEVANT STATUTORY AND REGULATORY PROVISIONS

6. The statutory and regulatory provisions relevant to this Final Notice are set out in the Annex.

SUMMARY OF REASONS

7. The Authority has concluded, on the basis of the facts and matters and conclusions described in the Warning Notice and the Decision Notice, that Mr Wilkinson is failing to satisfy the Threshold Conditions, in that:

- a. he has provided inaccurate and misleading information to the Authority, and he is therefore failing to satisfy the suitability Threshold Condition; and
- b. his financial resources are not adequate in relation to the regulated activities he carries on, and he is therefore failing to satisfy the appropriate resources Threshold Condition.

FACTS AND MATTERS RELIED ON

8. Mr Wilkinson was authorised by the Authority on 31 October 2004 to conduct regulated home finance business, and he was further permitted from 14 January 2005 to conduct general insurance mediation business. Mr Wilkinson is not permitted to hold client money.
9. Based on the scope of Mr Wilkinson's Part 4A permission (as set out in paragraph 8 above), the general capital resources requirement applicable to Mr Wilkinson is set out in MIPRU 4.2.2R, which requires that he must at all times maintain capital resources equal to or in excess of his relevant capital resources requirement. The specific capital resources requirement applicable to Mr Wilkinson is set out in MIPRU 4.2.11R.
10. MIPRU 4.2.11R imposes on Mr Wilkinson a capital resources requirement that is the higher of £5,000 or 2.5% of the annual income from his insurance mediation and home finance mediation business. Based on Mr Wilkinson's annual income (£42,094 according to his annual accounts to 31 August 2014, 2.5% of which figure is £1,052.35), he has a capital resources requirement of £5,000.

Provision of inaccurate and misleading financial information to the Authority

11. The Authority has been in correspondence with Mr Wilkinson since April 2015 in respect of his capital resources position and concerns that Mr Wilkinson had been reporting inaccurate information in his RMARs. The Authority requested that Mr Wilkinson provide documentary evidence to support the financial information reported by Mr Wilkinson in the March 2015 RMAR, in order that the Authority could verify the accuracy of the information reported in the March 2015 RMAR and assess whether Mr Wilkinson was meeting the capital resources requirement. However, Mr Wilkinson has not, to date, provided satisfactory and verifiable evidence to support the financial information he reported in the March 2015 RMAR.
12. The financial information specified in the RMARs submitted by Mr Wilkinson since 1 September 2012 reported that he had the following capital resources as at each period end:

Table 1

Reporting period ended	Capital resources reported in RMARs	Amount by which reported capital resources exceeded the required level of capital resources
1 September 2012	£6,109	£1,109
1 March 2013	£6,066	£1,066
1 September 2013	£5,007	£7
1 March 2014	£5,335	£335
1 September 2014	£6,433	£1,433
1 March 2015	£7,139	£2,139
1 September 2015	£7,072/£6,972 ¹	£2,072/£1,972

13. The financial information reported by Mr Wilkinson in his annual accounts included the following financial information:

Table 2

Balance sheet as at	Net liabilities reported in accounts	Amount by which the net liabilities position was below required level of capital resources	Difference between capital resources level reported in annual accounts and RMARs
31 August 2012	(£8,206)	£13,206	£14,315
31 August 2013	(£6,847)	£11,847	£11,854
31 August 2014	(£2,049)	£7,049	£8,482

14. There are material discrepancies between the financial information reported by Mr Wilkinson in his annual accounts (as specified in Table 2 above) and the corresponding RMARs (as specified in Table 1). In addition, there are similarities in the financial information reported by Mr Wilkinson in each of his RMARs since at least the RMAR for the period ended 1 September 2012. These circumstances, taken together with the fact that Mr Wilkinson has not produced verifiable evidence to support financial information reported in the March 2015 RMAR, indicate that Mr Wilkinson has, since at least 1 September 2012, reported inaccurate information in his RMARs.

¹ The total capital reserves reported in data item RMA-A of the RMAR for the period ended 1 September 2015 is different to the capital resources reported in data item RMA-D1 of the RMAR for the period ended 1 September 2015. However, both figures reported a capital resources surplus.

15. The financial information reported by Mr Wilkinson in his RMARs, since at least 1 September 2012, is also misleading in that it stated to the Authority that Mr Wilkinson was meeting the capital resources requirement at the relevant dates, whereas, based on the financial information reported by Mr Wilkinson in his annual accounts, he had not maintained adequate capital resources to meet the capital resources requirement.

Inadequate capital resources

16. The financial information reported by Mr Wilkinson in his annual accounts (as set out in Table 2 above) demonstrates that Mr Wilkinson has had capital resources significantly below his capital resources requirement from 1 September 2012 to 1 September 2014. In addition, as Mr Wilkinson has failed to provide verifiable evidence to support the financial information reported in the March 2015 RMAR, the Authority is not satisfied that Mr Wilkinson is currently meeting the capital resources requirement.

FAILINGS

17. From the facts and matters described above the Authority, having regard to its operational objectives, has reached the following conclusions:
- a. by providing inaccurate and misleading information in his RMARs, Mr Wilkinson has breached SUP 15.6.1R in failing to take reasonable steps to ensure that all information given to the Authority in accordance with any rule in any part of the Handbook (including Principle 11 (Relations with regulators) is factually accurate;
 - b. Mr Wilkinson is failing to comply with Principle 11, which requires him to deal with his regulators in an open and cooperative way and to disclose to the Authority appropriately anything relating to the firm of which the Authority would reasonably expect notice;
 - c. in failing to provide accurate financial information to the Authority in his RMARs, Mr Wilkinson has failed to satisfy the Authority that he is ready, willing and organised to comply with the requirements and standards under the regulatory system;
 - d. Mr Wilkinson has therefore failed to satisfy the Authority that his business is, and will be, managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner or that he is a fit and proper person having regard to all the circumstances;
 - e. Mr Wilkinson is therefore failing to satisfy the suitability Threshold Condition;
 - f. Mr Wilkinson has, since at least 1 September 2012, failed to maintain adequate capital resources to meet the capital resources requirement applicable to him as set out in MIPRU 4.2.2R and 4.2.11R(1); and
 - g. Mr Wilkinson is therefore in breach of Principle 4 (Financial prudence) and is failing to satisfy the appropriate resources Threshold Condition.

DECISION MAKER

18. The decision which gave rise to the obligation to give this Final Notice was made by the Regulatory Decisions Committee.

IMPORTANT

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

Publicity

20. The Authority must publish such information about the matter to which this Final Notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to Mr Wilkinson or prejudicial to the interest of consumers.
21. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Authority Contact

22. For more information concerning this matter generally, please contact Dilip Vekariya at the Authority (direct line: 020 7066 5520).

John Kirby
Enforcement and Market Oversight Division

ANNEX

RELEVANT STATUTORY PROVISIONS

1. The Authority's operational objectives established in section 1B of the Act include protecting and enhancing the integrity of the UK financial system and securing an appropriate degree of protection for consumers.
2. The Authority is authorised by section 55J of the Act to cancel an authorised person's Part 4A permission, where it appears to the Authority that it is failing to satisfy the Threshold Conditions.
3. The appropriate resources Threshold Condition provides, in relation to a person ("A") carrying on or seeking to carry on regulated activities which do not consist of or include a PRA-regulated activity, that:

"The resources of A must be appropriate in relation to the regulated activities that A carries on or seeks to carry on."

4. The suitability Threshold Condition provides, in relation to a person ("A") carrying on or seeking to carry on regulated activities which do not consist of or include a PRA-regulated activity, that:

"A must be a fit and proper person having regard to all the circumstances, including-

[...]

(c) the need to ensure that A's affairs are conducted in an appropriate manner having regard in particular to the interests of consumers and the integrity of the UK financial system;

(d) whether A has complied and is complying with requirements imposed by the FCA in the exercise of its functions, or requests made by the FCA, relating to the provision of information to the FCA and, where A has so complied or is so complying, the manner of that compliance;

[...]

(f) whether A's business is being, or is to be, managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner..."

RELEVANT HANDBOOK PROVISIONS

5. In exercising its power to cancel a Part 4A permission, the Authority must have regard to guidance published in the Handbook. The relevant main considerations in relation to the action specified above are set out below.

Relevant Principles

6. Principle 4 (Financial prudence) of the Principles, states that a firm must maintain adequate financial resources.

7. Principle 11 (Relations with regulators) of the Principles, states that a firm must deal with its regulators in an open and cooperative way, and must disclose to the appropriate regulator anything relating to the firm of which the regulator would reasonably expect notice.

Relevant Rules

8. SUP 15.6.1R states that:

"A firm must take reasonable steps to ensure that all information it gives to the FCA in accordance with a rule in any part of the Handbook (including Principle 11) is:

- (1) factually accurate or, in the case of estimates and judgments, fairly and properly based after appropriate enquiries have been made by the firm..."

9. MIPRU 4.2.2R states that:

"A firm must at all times maintain capital resources equal to or in excess of its relevant capital resources requirement."

10. MIPRU 4.2.11R(1) states that:

"If a firm carrying on insurance mediation activity or home financial mediation activity (and no other regulated activity) does not hold client money or other client assets in relation to these activities, its capital resources requirement is the higher of:

- (a) £5,000; and
(b) 2.5% of the annual income from its insurance mediation activity or home finance mediation activity (or both)."

Guidance concerning the relevant Threshold Conditions

11. Guidance on the Threshold Conditions is set out in COND.

COND 2.4 – Appropriate resources: Paragraph 2D of Schedule 6 of the Act

12. COND 2.4.1AUK(3) states that the matters which are relevant in determining whether a firm has appropriate financial resources include the provision the firm makes in respect of liabilities.

13. COND 2.4.2G in giving guidance on the interpretation of 'appropriate resources' interprets the term 'appropriate' 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; for example, capital, provisions for liabilities, holding of or access to cash and other liquid assets, human resources and effective means by which to manage risks.

COND 2.5 – Suitability: Paragraph 2E of Schedule 6 of the Act

14. COND 2.5.1AUK(1) reproduces the relevant statutory provision that the person concerned must satisfy the Authority that he is a fit and proper person having regard to all the circumstances, including amongst other things, whether their

business is being, or is to be, managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner (COND 2.5.1AUK(1)(f)).

15. COND 2.5.6G(1) states that examples of particular considerations to which the Authority may have regard when assessing whether a firm will satisfy, and continue to satisfy the suitability Threshold Condition include whether the firm has been open and co-operative in all its dealings with the Authority and is ready, willing and organised to comply with the requirements and standards under the regulatory system.

OTHER RELEVANT REGULATORY PROVISIONS

16. The Authority's policy in relation to its enforcement powers is set out in the Enforcement Guide (EG), certain provisions of which are summarised below.
17. EG 8.1.1 reflects the provisions of section 55J of the Act that the Authority may use its own-initiative power to cancel the permission of an authorised firm where a firm is failing or is likely to fail to satisfy the Threshold Conditions (EG 8.1.1(1)).
18. EG 8.5.1(1) states that the Authority will consider cancelling a firm's Part 4A permission using its own initiative powers contained in Section 55J of the Act in circumstances where the Authority has very serious concerns about the firm, or the way its business is or has been conducted.
19. EG 8.5.2 sets out examples of the types of circumstances in which the Authority will consider cancelling a firm's Part 4A permission. Such examples include the:
 - a. failure to have or maintain adequate financial resources or a failure to comply with regulatory capital requirements (EG 8.5.2(3));
 - b. provision of false information in regulatory returns (EG 8.5.2(4)); and
 - c. failure to co-operate with the Authority which is of sufficient seriousness that the Authority ceases to be satisfied that the firm is fit and proper, for example failing without reasonable excuse to provide material information reasonably required by the Authority (EG 8.5.2(8)(b)).