Financial Services Authority

FINAL NOTICE

To: **The Minel Group Limited**

Of: **14 Hood Street**
Newcastle Upon Tyne
Tyne and Wear
NE1 6JD

Date: **16 October 2007**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") gives final notice about a decision to impose a financial penalty on The Minel Group Limited.

1. ACTION

1.1. The FSA gave The Minel Group Limited ("Minel") a Decision Notice on 16 October 2007 which notified Minel that, pursuant to section 206 of the Financial Services and Markets Act 2000 ("the Act"), the FSA had decided to impose a financial penalty of £10,500 on Minel in respect of breaches of Principle 2 (skill, care and diligence), Principle 3 (management and control) and Principle 9 (suitability of advice) of the FSA's Principles for Businesses and FSA Rules between 9 November 2004 and 9 December 2005 ("the relevant period").

1.2. The penalty also takes into account the fact that Minel has breached the following FSA Rules:

(1) FSA Rule 8.5.22R(1) in the part of the FSA Handbook entitled Mortgages: Conduct of Business ("MCOB");

(2) FSA Rules 3.1.1R and 3.2.6R in the part of the FSA Handbook entitled Senior Management Arrangements, Systems and Control ("SYSC"); and

(3) FSA Rules 2.3.1R and 2.6.1R in the part of the FSA Handbook entitled Training and Competence ("TC").

1.3. Minel agreed to settle at an early stage of the FSA's investigation. It therefore qualified for a 30% (stage 1) discount under the FSA's executive settlement procedures. The FSA would otherwise have imposed a financial penalty of £15,000 on Minel.

1.4. Minel agreed that it would not be referring the matter to the Financial Services and Markets Tribunal.

1.5. Accordingly, for the reasons set out below and having agreed with Minel the facts and matters relied on, the FSA imposes a financial penalty of £10,500.

2. REASONS FOR THE ACTION

2.1. The FSA has imposed a financial penalty on Minel in respect of **breaches of Principles 2, 3 and 9** that occurred in the relevant period. These breaches relate to Minel's persistent record keeping failures and systems and controls deficiencies in connection with the sale of lifetime mortgage contracts. These failings are set out in more detail in paragraphs 4.2 to 4.18 below.

2.2. In summary, the FSA has made the following findings:

(1) Minel failed to record sufficient information about customers' personal and financial circumstances to demonstrate that customers could afford to enter a lifetime mortgage contract and that the contract was appropriate to their needs. Minel also failed to make sufficient records demonstrating suitability of, and the reasons for, its recommendations. Minel therefore breached MCOB 8.5.22R(1) and failed to act with due skill, care and diligence (in breach of **Principle 2**);

(2) Minel failed to implement procedures for controlling its lifetime mortgage business to reduce the risk of mis-selling. Minel's failure to implement control systems in relation to its lifetime mortgage business led to the failures detailed above. Minel also failed to implement systems and controls to test the ongoing

competence of its lifetime mortgage adviser. As a result Minel was unable to identify and meet the training needs of the adviser. Minel therefore failed to take reasonable care to organise and control its affairs responsibly and effectively (in breach of **Principle 3**); and

(3) taking into account Minel's record keeping deficiencies and its failure to establish risk management systems for controlling its lifetime mortgage business and to test the ongoing competence of its lifetime mortgage adviser, Minel failed to demonstrate that it had taken reasonable care to ensure the suitability of its advice (in breach of **Principle 9**).

3. RELEVANT STATUTORY PROVISIONS AND REGULATORY REQUIREMENTS

3.1. The FSA's statutory objectives are set out in Section 2(2) of the Act. The relevant objectives for the purpose of this case are public awareness and the protection of consumers.

3.2. Section 138 of the Act provides that the FSA may make such rules applying to authorised persons as appear to be necessary or expedient for the purpose of protecting the interests of consumers.

3.3. Section 206 of the Act provides:

"If the Authority considers that an authorised person has contravened a requirement imposed on him by or under this Act, it may impose on him a penalty, in respect of the contravention, of such an amount as it considers appropriate".

3.4. Under the FSA's rule-making powers, the FSA has published in the FSA Handbook the "Principles for Businesses" which apply either in whole, or in part, to all authorised persons. These Principles are a general statement of the fundamental obligations of firms under the regulatory system and reflect the FSA's regulatory objectives. Breaching a Principle makes a firm liable to disciplinary action.

3.5. The Principles and Rules which are relevant to this matter are set out below.

FSA's Principles for Businesses

3.6. **Principle 2** (skill, care and diligence) provides that:

"A firm must conduct its business with due skill, care and diligence".

3.7. **Principle 3** (management and control) provides that:

"A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems".

3.8. **Principle 9** (suitability of advice) provides that:

"A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely on its judgement".

MCOB

3.9. **MCOB 8.5.2R** provides that a firm must take reasonable steps to ensure that it does not make a personal recommendation to a customer to enter into a regulated lifetime mortgage contract, or to vary an existing regulated lifetime mortgage contract, unless the regulated lifetime mortgage contract is, or after the variation will be, suitable for that customer.

3.10. **MCOB 8.5.4R(1)** provides that, for the purposes of MCOB 8.5.2R, a regulated lifetime mortgage contract will be suitable if, having regard to the facts disclosed by the customer and other relevant facts about the customer of which the firm is or should reasonably be aware, the firm has reasonable grounds to conclude that:

(a) the benefits to the customer outweigh any adverse effect on: (i) the customer's entitlement (if any) to means-tested benefits; and (ii) the customer's tax position (for example the loss of an Age Allowance);

(b) alternative methods of raising the required funds such as, in particular: (i) a home reversion scheme; or (ii) (where relevant) a local authority (or other) grant are less suitable;

(c) where the regulated lifetime mortgage contract requires that payments are made to the mortgage lender (for example an interest-only mortgage), the customer can afford to enter into the regulated lifetime mortgage contract;

(d) the regulated lifetime mortgage contract is appropriate to the needs, objectives and circumstances of the customer; and

(e) the regulated lifetime mortgage contract is the most suitable of those that the firm has available to it within the scope of the service provided to the customer.

3.11. **MCOB 8.5.22R(1)** provides that a firm must make and retain a record:

(a) of the customer information, including that relating to the customer's needs and circumstances, that it has obtained for the purposes of MCOB 8.5, and

(b) that explains why the firm has concluded that any personal recommendation given in accordance with MCOB 8.5.2R satisfies the suitability requirements in MCOB 8.5.4R(1).

SYSC

3.12. **SYSC 3.1.1R** provides that a firm must take reasonable care to establish and maintain such systems and controls as are appropriate to its business.

3.13. **SYSC 3.2.6R** provides that a firm must take reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system.

TC

3.14. **TC 2.3.1R** provides that if a firm's employee engages in or oversees an activity with or for private customers, the firm must:

(1) at intervals appropriate to the circumstances, determine the training needs of those employees and organise appropriate training to address these needs; and

(2) ensure that training is timely, planned, appropriately structured and evaluated.

3.15. **TC 2.6.1R** provides that a firm must have appropriate arrangements in place to ensure that an employee who has been assessed as competent to engage in or oversee an activity maintains competence.

4. FACTS AND MATTERS RELIED UPON

4.1. Minel is a small mortgage and general insurance intermediary, its main business being commercial and buy-to-let mortgages. Minel has been regulated by the FSA since 31 October 2004. Its authorised business includes advising on and arranging insurance and regulated mortgage contracts.

Thematic Work

4.2. The matter arose from the Lifetime Mortgage thematic project as a result of concerns identified during two thematic visits by the FSA's Supervision Division ("Supervision") on 12 May 2005 and 23-24 February 2006.

4.3. During the first visit on 12 May 2005, Supervision reviewed five customer files and identified poor record keeping in all five cases. The following failings were identified:

(1) Minel had not obtained sufficient information about its customers' circumstances, needs and preferences;

(2) There was nothing on file to demonstrate product research and that the least expensive product had been recommended, or what the customers' requirements were such that the product recommended was suitable; and

(3) There was no evidence that individual advisers were being monitored for ongoing competence and no training needs or procedural improvements were identified by Minel.

4.4. A letter detailing the findings was sent to Minel on 9 June 2005. Minel was instructed to obtain and record sufficient information on customer files in future prior to making a recommendation and to demonstrate adequate research to support its recommendation.

4.5. Supervision revisited Minel on 23–24 February 2006 and reviewed a total of 12 customer files. Supervision found no improvement in Minel's record keeping procedures since the visit on 12 May 2005 and also identified the following additional failings:

(1) Minel had no procedures for controlling its lifetime mortgage business and the quality of advice provided so its senior management did not appear to have the ability to assess whether customers were being properly advised and/or treated fairly; and

(2) Despite acknowledging that lifetime mortgages was a higher risk product, Minel did not have any specific training and competency procedures for training staff or ensuring effective monitoring of competence.

4.6. The findings were detailed in a letter to Minel on 5 June 2006. Minel was required to formalise its cessation of lifetime mortgage business until appropriate systems and controls were in place. Minel was also instructed to review all 12 customer files to assess whether the advice given was suitable and, where this was not the case, appropriate redress was to be given.

4.7. Minel concluded from its own review that it had treated all customers fairly and that the products selected were suitable for the customers. However, Minel did not speak to any of the customers involved during the review and placed ultimate responsibility on the customers and their solicitors to assess whether the recommended products were appropriate to their needs and circumstances.

4.8. The matter was referred to the FSA's Enforcement Division ("Enforcement") on 21 February 2007.

Enforcement Investigation

4.9. As part of its investigation, Enforcement reviewed a sample of 15 customer files, which were selected at random from Minel's business register, and interviewed key staff at Minel.

4.10. The investigation covered Minel's record keeping procedures and systems and controls, and focussed on the main consumer risk issues:

(1) Establishing the adequacy of the information obtained from the customers;

(2) Assessing whether a suitable recommendation could have been made from the information on file; and

(3) Assessing Minel's systems and controls for ensuring the suitability of advice.

4.11. Enforcement found evidence of record keeping failures and systems and controls deficiencies to support the concerns identified by Supervision.

Record Keeping Failures

4.12. Based on the file review and interviews, Enforcement concluded that insufficient information had been recorded on Minel's customer files as required by MCOB 8.5.22R(1). In particular, Minel failed to record sufficient information about its customers' personal and financial circumstances to establish the customers' needs and objectives and to demonstrate the suitability of lifetime mortgage contracts for its customers to satisfy the requirements of MCOB 8.5.2R and MCOB 8.5.4R(1). Specifically:

(1) Minel recorded insufficient information about its customers' income to establish that they could afford to pay the interest and avoid interest rolling up. Specifically Minel did not record customers' entitlement to means tested benefits and where the loan was for home improvements, Minel failed to record any consideration as to the availability of home improvement grants;

(2) Minel failed to record whether alternatives to lifetime mortgages had been discussed or why it was rejected or not available. Instead, Minel relied upon the assumption or the fact that customers had already researched lifetime mortgages and considered other options. Minel did not record any information demonstrating that a lifetime mortgage contract was the best option for these customers;

(3) Minel failed to clearly show that customers were made aware of the risks and consequences of what they were entering into. There was no evidence on the files that the implications of adding debt to a secured loan, with interest accruing through its lifetime, were adequately explained to the customers. Where customers asked for the maximum possible loans, there was no evidence by Minel to quantify or assess their needs; and

(4) Minel failed to keep records to explain why its recommendation was suitable or evidence that the least expensive product had been recommended. Minel also did not issue Suitability Letters on a routine basis therefore it was difficult to establish the suitability of recommendations.

4.13. These failures are serious in that they hindered the ability of Minel's senior management to check the suitability of recommendations to enter into lifetime mortgage contracts. It also meant that lenders may have entered into lifetime mortgage contracts where all relevant information about the customers' financial position may not have been made available. Furthermore it had the potential of hindering any independent assessments carried out by third parties such as the FSA.

4.14. By failing to ensure that sufficient personal and financial information about customers was recorded, Minel breached MCOB 8.5.22R(1) and failed to act with due skill, care and diligence (Principle 2).

SYSC Failures

4.15. Based on interviews, Enforcement concluded that Minel did not have adequate and effective systems and controls in place to control its lifetime mortgage advisory process. In particular the following failings were identified:

(1) *Failure to establish risk management systems* - Minel failed to implement procedures for gathering and retaining customer information and for controlling the sale of lifetime mortgages and the quality and suitability of advice provided. Specifically there were no formal compliance procedures in place for its lifetime mortgage business (despite there being procedures in place for other regulated mortgage products); and

(2) *Failure to ensure the competence of advisers* - Minel failed to implement adequate systems and controls to test the ongoing competence of its lifetime mortgage adviser as required by TC 2.3.1R and TC 2.6.1R. There was no formal T&C scheme in place and, therefore, no method by which the adviser could be adequately monitored and assessed for competence and training needs.

4.16. These failings reflect a failure by Minel to take reasonable care to establish and maintain: (i) such systems and controls as are appropriate to its business, and (ii) effective systems and controls for compliance with applicable requirements and standards under the regulatory system, as required under SYSC 3.1.1R and 3.2.6R.

4.17. In the absence of adequate risk management systems for its lifetime mortgage business, Minel failed to take reasonable care to organise and control its affairs responsibly and effectively (Principle 3).

4.18. Enforcement also concluded that, having regard to Minel's record keeping deficiencies together with its failure to establish risk management systems for checking the quality and suitability of lifetime mortgage advice provided and for assessing the ongoing competence of its lifetime mortgage adviser, Minel failed to demonstrate that it had taken reasonable care to ensure the suitability of its advice (Principle 9).

5. ANALYSIS OF THE SANCTION

5.1. The FSA's policy on 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. The principal purpose of a financial penalty is to promote high standards of regulatory conduct by deterring firms who have committed breaches from committing further breaches and helping to deter other firms from committing similar breaches, as well as demonstrating generally the benefits of compliant business.

5.2. In determining whether a financial penalty is appropriate, and if so, its level, the FSA is required to consider all the relevant circumstances of a case. DEPP 6.5.2 sets out a non-exhaustive list of factors that may be of relevance in determining the level of a financial penalty.

5.3. The FSA considers that the following factors are particularly relevant in this case.

DEPP 6.5.2(1): Deterrence

5.4. A financial penalty would strengthen the message to the industry that recording keeping and monitoring of advice is vital and help raise basic standards.

DEPP 6.5.2(2): The nature, seriousness and impact of the breach in question

5.5. In determining the appropriate sanction, the FSA has had regard to the seriousness of the breaches, including the nature of the requirements breached, the duration and frequency of the breaches, whether the breaches revealed serious failings in the firm's systems and controls and the number of customers who were affected and/or placed at risk of loss. For the reasons set out below the FSA considers that the breaches in this case are of a serious nature.

5.6. Minel's failings are viewed as being serious because:

(1) Insufficient personal and financial information (including evidence and reasons for recommendations) was recorded on customer files which meant that it was not possible for Minel to demonstrate that it had considered the interests of its customers and that they had been treated fairly in terms of the suitability of advice;

(2) The absence of procedures for controlling the sale of lifetime mortgage contracts and the quality of advice given, together with the record keeping deficiencies, meant that it was not possible for Minel to ensure the suitability of its advice;

(3) The failure to make and retain sufficient customer information and demonstrate adequate research to illustrate product suitability, and put in place adequate training and competence procedures, is viewed by Enforcement as being particularly serious because the FSA drew attention to such failings by letter to Minel dated 9 June 2005, after the first visit by Supervision, but Minel failed to address these deficiencies; and

(4) Despite the FSA's letter of 5 June 2006, following Supervision's second visit, instructing Minel to take appropriate remedial action, Minel has failed to address properly the issues concerning advice provided during the relevant period.

5.7. The FSA has taken into account the following steps taken by Minel which have served to mitigate the seriousness of its failings:

(1) Although the poor standards of poor record keeping meant that it was difficult to identify whether advice provided by Minel was suitable and to ascertain the extent of any consumer detriment, the lifetime mortgage adviser was appropriately qualified and appeared to be competent in terms of technical knowledge;

(2) In order to address the risk of unsuitable recommendations having been made to customers, Minel is committed to appointing an external compliance consultant to undertake a past business review of its lifetime mortgage business during the relevant period with a view to:

(a) identifying any unsuitable recommendations;

(b) assessing any loss to customers; and

(c) paying any redress where unsuitable advice has led to loss;

(3) Minel has agreed to vary its Part IV permission to formally cease advising on and arranging lifetime mortgages (to this extent Minel has already confirmed in a letter dated 26 June 2006 that it has ceased conducting lifetime mortgages);

(4) Minel has appointed an external compliance consultant to change its supervision model going forward; and

(5) Minel has co-operated with the FSA investigation in that it has provided information when requested and attended compelled interviews.

DEPP 6.5.2(3): The extent to which the breach was deliberate or reckless

5.8. The FSA has found no evidence to show that Minel acted in a deliberate or reckless manner.

DEPP 6.5.2(5): The size, financial resources and other circumstances of the firm

5.9. In determining the level of penalty, the FSA has been mindful of the need to ensure that the interests of customers are protected and has sought to ensure that the level of the financial penalty is not set at a level that would effectively prohibit Minel from carrying out a past business review and providing the redress where appropriate. Taking account of these factors, and having considered Minel's latest financial statement, the FSA considers that a penalty of £15,000 (subsequently discounted by 30% to £10,500 for early settlement) is appropriate.

DEPP 6.5.2(6): The amount of benefit gained or loss avoided

5.10. The FSA found no evidence that Minel sought to profit or avoid loss as a result of the identified failings.

DEPP 6.5.2(8): Conduct following the breach

5.11. The FSA has taken into account Minel's co-operation with the FSA's investigation and its stated commitment to ensuring that it will comply with FSA's requirements on an ongoing basis. Minel has agreed to a review of past business and to take any further remedial steps considered to be appropriate.

5.12. Minel had also ceased conducting lifetime mortgages and has employed an external compliance consultant to remodel its compliance procedures in order to have the robust systems and controls to comply with regulatory requirements going forward.

DEPP 6.5.2(9): Disciplinary record and compliance history

5.13. Minel has not been the subject of previous disciplinary action.

DEPP 6.5.2(10): Other action taken by the FSA

5.14. In determining the level of financial penalty, the FSA has taken into account penalties imposed by the FSA on other authorised persons for similar behaviour.

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.

7. IMPORTANT

7.1. This Final Notice is given to Minel under section 390 of the Act. The following statutory rights are important.

Manner of and timing for payment

7.2. The financial penalty must be paid in full by Minel to the FSA by no later than 30 October 2007, 14 days from the date of this Final Notice.

If the financial penalty is not paid

7.3. If all or any of the financial penalty is outstanding on 30 October 2007, the FSA may recover the outstanding amount as a debt owed by Minel and due to the FSA.

Publicity

7.4. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Final Notice relates. Under those provisions, the FSA must publish such information about the matter to which this Final 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 Minel or prejudicial to the interests of consumers.

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

FSA contacts

7.6. For more information concerning this matter generally, please contact Angela Stephens of the Enforcement Division of the FSA (direct line: 020 7066 4714).

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Georgina Philippou

Head of Department

FSA Enforcement Division