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**FINAL NOTICE**

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To: **Mortgageland Limited**

Of: **87-89 Saffron Hill  
London  
EC1N 8QU**

Date: **21 May 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 about Mortgageland Limited.**

**1. ACTION**

- 1.1. The FSA gave Mortgageland Limited ("the Firm") a Decision Notice on 13 May 2008 which notified the Firm that pursuant to section 205 of the Financial Services and Markets Act 2000 ("the Act"), the FSA had decided to publish a statement in respect of breaches by Mortgageland Limited ("Mortgageland/the Firm") of Principle 7 (Communication with clients), Principle 3 (Management and control), and Principle 9 (Customers: relationships of trust) of the FSA Principles for Businesses ("FSA Principles") and Mortgage Conduct of Business Rules that occurred between 31 October 2004 and 31 October 2006 ("the relevant period").
- 1.2. The Firm confirmed on 2 April 2008 that it will not be referring the matter to the Financial Services and Markets Tribunal.
- 1.3. Accordingly, for the reasons set out below and having agreed with the Firm the facts and matters relied on, the FSA publishes a statement about the contravention by the Firm of Principles 3, 7 and 9 of the FSA Principles and the FSA Rules listed below during the relevant period.

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

### **Background**

- 2.1. The FSA publishes a statement in respect of breaches by Mortgageland of FSA Principles 3, 7 and 9 and the FSA Rules detailed in section 3 below.
- 2.2. The breaches of the FSA Principles and Rules that are the subject of this Final Notice relate to failings arising from Mortgageland's sale of and advice on regulated mortgage products and the communication of mortgage-related financial promotions during the relevant period.
- 2.3. These breaches are set out in detail at paragraphs 4.10 to 4.24 below. In summary, during the relevant period, Mortgageland:
  - (1) failed to ensure that its financial promotions were clear, fair and not misleading;
  - (2) failed in all cases to ensure that its financial promotions were approved either by, or on the advice of, someone with the appropriate level of expertise;
  - (3) failed to obtain from customers appropriate details of their needs and circumstances which justified the suitability of the recommendations made; and
  - (4) failed to record:
    - (a) appropriate details of customers' needs and circumstances which justified the suitability of the recommendations made; and
    - (b) an explanation of the reasons why the Firm believed the personal recommendation complied with the suitability requirements.
- 2.4. Mortgageland's failings are considered to be serious due to:
  - (1) The potential impact on its customers, many of whom were recorded as having adverse credit histories and/or were consolidating debts;
  - (2) Mortgageland's failure to correct one of the breaches despite receiving external compliance advice that this was necessary; and
  - (3) The high volume of non-compliant financial promotions which were issued by Mortgageland.
- 2.5. Mortgageland's failings are mitigated by the following:
  - (1) No determination has been made that the failings identified had resulted in customers taking out unsuitable mortgages;

- (2) Once made aware of the FSA's concerns, Mortgageland amended its financial promotions and took steps to remedy the other failings;
- (3) Mortgageland has agreed that if it communicates mortgage related financial promotions in the future an individual with appropriate expertise will conduct the required confirmation exercise;
- (4) Mortgageland has indicated its intention to join a network as an Appointed Representative and to take advantage of the training and compliance resources that would be available to it as a result; and
- (5) Mortgageland has been open and co-operative with the FSA and agreed the facts quickly ensuring resolution of the matter.

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

#### **Provisions of the Act**

- 3.1. Section 205 of the Act provides:

*If the Authority considers that an authorised person has contravened a requirement imposed on him by or under this Act, the Authority may publish a statement to that effect.*

- 3.2. Mortgageland is an authorised person for the purposes of section 205 of the Act. A requirement imposed on a firm includes the FSA Principles and Rules made under section 138 of Act. The relevant FSA Principles and Rules are referred to below and the Rules are set out in Annex 1 to this notice.

#### **Principles for Businesses**

- 3.3. The FSA Principles relevant to this case are:

- (1) Principle 3 – Management and control: A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
- (2) Principle 7 – Communications with clients: A firm must pay due regard to the information needs of its clients, and communicate information to them in a manner which is clear, fair and not misleading.
- (3) Principle 9 – Customers: relationships of trust: A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment.

- 3.4. The FSA Principles are a general statement of the fundamental obligations of firms under the regulatory system and reflect the FSA's regulatory objectives.

- 3.5. In addition to the FSA Principles, the following Rules, which are contained in the part of the FSA Handbook entitled Mortgages: Conduct of Business ("MCOB"), are also relevant in assessing the standards required by the FSA Principles: Rules 3.6.3 R (1), 3.6.17 R (1)(b), 3.6.27 R, 3.9.1 R (2), 4.7.2 R, 4.7.4 R (1)(a), 4.7.17 R (1)(a) and

4.7.17 R (1)(b). These Rules and related Guidance and Evidential provisions are set out in Annex 1 to this Notice.

- 3.6. The FSA's Principles and Rules constitute requirements imposed on authorised persons under the Act; breaching a Principle and/or a Rule makes a firm liable to disciplinary sanctions.

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

##### **Background to the Firm**

- 4.1. Mortgageland has been trading as a retail mortgage intermediary based in London since 1999. During regulation<sup>1</sup> the Firm has employed one or two advisers and, for a time, a trainee adviser, along with up to four support staff.

- 4.2. Mortgageland became 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.

- 4.3. On 14 January 2005, Mortgageland was granted permission to carry on the following additional regulated activities in relation to non-investment insurance contracts<sup>2</sup>:

- (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.

- 4.4. During the relevant period Mortgageland arranged approximately 56 mortgages.

##### **Thematic Review**

- 4.5. During 2006 the FSA's Small Firms Division and the Financial Promotions Department of the Retail Themes Division undertook thematic work to review the marketing literature of a number of mortgage brokers that promote their services to customers with lower incomes or poor credit ratings.

- 4.6. Concerns about Mortgageland's financial promotions were identified and the Firm was visited on 31 October 2006. The visit highlighted additional concerns in relation to Mortgageland's mortgage advice and systems and controls, particularly in relation to its sales processes and record keeping. As a result of these concerns, investigators

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<sup>1</sup> The FSA has regulated mortgage activities since 31 October 2004.

<sup>2</sup> The FSA has regulated insurance activities since 14 January 2005.

were appointed to investigate on behalf of the FSA. In the course of the investigation, the FSA's investigators found evidence of breaches in the four areas detailed below.

### **Financial promotions**

- 4.7. When communicating a financial promotion, a firm must comply with Principle 7 which requires a firm to pay due regard to the information needs of its clients and communicate with them in a way that is clear, fair and not misleading. In addition, a mortgage firm must comply with the provisions in Chapter 3 of MCOB that set out the requirements a mortgage firm must adhere to when communicating qualifying credit promotions. These requirements are intended to ensure that potential clients are given information that is sufficiently clear for the purposes of properly assessing a qualifying credit promotion.
- 4.8. Furthermore, Principle 3 states that a firm must take reasonable care to organise and control its affairs. This includes having appropriate systems and controls for the preparation and approval of financial promotions to ensure that a firm's financial promotions comply with the provisions in Chapter 3 of MCOB.
- 4.9. Mortgageland used two financial promotions during the relevant period, which were replicated a total of 68 times: 15 times in The Independent newspaper, 8 times in the Evening Standard, once in each of the Daily Mirror and Metro, and 43 times in various smaller advertisers, regional or specialist publications.
- 4.10. One of the two financial promotions set out the services provided by Mortgageland and included a reference to mortgages for those with County Court judgments ("CCJs"), loan arrears or defaults. Because the Firm had included reference to these particular circumstances, it should have given equal prominence in the promotions to the APR rate quoted as the reference to CCJ, arrears or defaults, which it failed to, (in breach of MCOB 3.6.17 R (1)(b) and MCOB 3.6.3 R (1)). At the FSA's request this issue was corrected from March 2005, but prior to this correction the financial promotion had been published 14 times.
- 4.11. In the second promotion, Mortgageland failed to:
  - (1) indicate the level of the broker fee; and
  - (2) disclose that the broker fee was higher and included an amount to cover other fees which were paid by the Firm on the customer's behalf;
  - (3) (in breach of MCOB 3.6.3 R (1) and MCOB 3.6.27 R). This financial promotion was published 38 times between 31 October 2004 and October 2006.
- 4.12. The failure to indicate the level of the broker fee was brought to the attention of the Firm by the FSA and as a result, since October 2006, the financial promotions have included the following statement: *"Fees charged on completion are between 0-10%, this is typically 2% of the loan and is inclusive of fees paid on your behalf. No loan – no fee."*

- 4.13. In relation to this breach, an aggravating factor is that Mortgageland received external compliance advice recommending a similar change in December 2005, but failed to act on that advice.
- 4.14. The failure to disclose that the broker fee included an amount to cover other fees paid by the Firm on the customer's behalf was potentially misleading. Statements in the promotion indicated a lack of valuation, broker's administration, and solicitor's fees, but it was not clear that the lack of such fees was offset by Mortgageland charging a broker fee which totalled more than the cost of the valuation, broker's administration, and solicitor's fees. Since October 2006, again after discussion with the FSA, the word "*upfront*" has been added to each of the phrases. For example, "*NO upfront valuation fee*".
- 4.15. As a result of the conduct detailed in paragraphs 4.10 to 4.14 above, Mortgageland did not communicate with its customers in a way which was clear, fair and not misleading and therefore acted in breach of Principle 7 of the FSA Principles.

### **Management and control**

- 4.16. Mortgageland failed to ensure that financial promotions that had been previously approved remained compliant when used subsequently. Although financial promotions were notionally signed-off every time they were issued, this was not done by someone with the expertise to approve the promotions without taking professional advice (in breach of MCOB 3.9.1 R (2)). While compliance consultants were engaged on an ongoing basis, after the initial approval advice was provided in October 2004 and December 2005, subsequent consultants were only once informally asked to assess the compliance status of the financial promotions in or around January 2006.
- 4.17. In failing to ensure compliance was confirmed by an individual with appropriate expertise Mortgageland failed to take reasonable care to organise and control its affairs responsibly and effectively in breach of Principle 3 of the FSA Principles.

### **Fact-finding**

- 4.18. Principle 9 requires a firm to take reasonable care to ensure the suitability of its advice. In accordance with this Principle, the FSA considers that a firm should take reasonable steps to obtain from a customer all information likely to be relevant for the purposes of assessing suitability.
- 4.19. Mortgageland failed to obtain from customers appropriate details of customers' needs and circumstances which justified the suitability of the recommendations made. The information which was not always obtained in full related to customer expenditure details to assess affordability. The Firm obtained other information, including the amount the customer was currently paying in rent or mortgage payments, and limited expenditure information. However, Mortgageland did not take reasonable steps to obtain from a customer all information likely to be relevant when assessing affordability.
- 4.20. The Firm therefore failed to take reasonable steps to ensure that it did not make a personal recommendation to a customer to enter into a regulated mortgage contract

unless the regulated mortgage contract is suitable for that customer (in breach of MCOB 4.7.2 R and MCOB 4.7.4 R (1)(a), relying on MCOB 4.7.7 E (1)(a)).

- 4.21. It must be noted that the sample of customer files reviewed by the FSA did not indicate any advice given that was obviously unsuitable as a result of this breach. The Firm has also confirmed that it has now remedied this issue. Nevertheless, Mortgageland failed to take reasonable care to ensure the suitability of its advice for customers who were entitled to rely upon its judgment and therefore contravened Principle 9 of the FSA Principles.

### **Record keeping**

- 4.22. During the relevant period Mortgageland failed to record appropriate details of customers' needs and circumstances which justified the suitability of the recommendations made. The information which was, at least at times, omitted included customers' plans to repay the mortgage (for example by selling the property when the customer reaches retirement age), and customers' income and expenditure details to assess affordability. While the Firm contended that in all cases it had discussed the customer's plans for repayment, such discussions were not always recorded in the customer file, in breach of MCOB 4.7.17 R (1)(a).
- 4.23. Mortgageland also failed to record an explanation of the reasons why the adviser believed the personal recommendation made complied with the suitability requirements, in breach of MCOB 4.7.17 R (1)(b). This is particularly evident in some cases of mortgages extending into retirement, and some cases involving self-certification of income.
- 4.24. As a result of the conduct detailed in paragraphs 4.22 and 4.23 above, Mortgageland did not take reasonable care to organise and control its affairs responsibly and effectively and therefore acted in breach of Principle 3 of the FSA Principles.

## **5. ANALYSIS OF THE PROPOSED SANCTION**

- 5.1. When exercising its powers the FSA seeks to act in a way which it considers most appropriate for the purpose of meeting its regulatory objectives as set out in section 2(2) of the Act. The FSA considers that issuing a public censure in respect of the Firm meets the regulatory objectives of protection of consumers and public awareness.
- 5.2. In deciding to take the action proposed, the FSA has had regard to the guidance published in the FSA Handbook, in particular as set out in Chapter 12 of the Enforcement Manual and Chapter 6 of the Decision Procedure and Penalties Manual, which form part of the FSA Handbook of Rules and Guidance. The principal purpose of issuing a public censure is to enable the FSA to pursue its regulatory objectives by highlighting the requirements and standards of conduct expected of firms and approved persons, and demonstrating that those standards are being effectively enforced, so helping to maintain confidence in the financial system.
- 5.3. Having regard to the matters summarised above, to the guidance set out in the FSA Handbook of Rules and Guidance and to the FSA's statutory objectives of the protection of consumers and public awareness, the FSA considers it proportionate and

appropriate in all the circumstances to take disciplinary action against the Firm for its failings in respect of its sale of advised regulated mortgage contracts.

#### **The nature, seriousness and impact of the breach in question**

- 5.4. In determining the appropriate sanction, the FSA has had regard to the seriousness of the contraventions, including the nature of the requirements breached, the number and duration of the breaches, and to the number of customers who were exposed to risk of loss. For the reasons set out at paragraph 2.4 above, and the fact that the breaches occurred over periods ranging from approximately five months to almost two years, the FSA considers that the breaches identified in this case are of a serious nature.

#### **The extent to which the breach was deliberate or reckless**

- 5.5. The FSA has not determined that Mortgageland deliberately contravened regulatory requirements.

#### **The size, financial resources and other circumstances of the firm**

- 5.6. In determining the level of penalty, the FSA has been mindful of the size and financial situation of the firm.

#### **The amount of benefit gained or loss avoided**

- 5.7. The FSA has not determined that Mortgageland deliberately set out to accrue additional profits or avoid a loss through the way it sold mortgage products.

#### **Conduct following the breach**

- 5.8. After Mortgageland was informed by the FSA of its concerns it immediately amended its financial promotions and procedures in certain respects to ensure that it adhered to the regulatory requirements going forward.
- 5.9. Mortgageland intends to become an Appointed Representative within a large network in order to take advantage of the regulatory support this would afford the Firm and ensure regulatory compliance in future.
- 5.10. During the FSA's investigation Mortgageland has co-operated fully.

#### **Disciplinary record and compliance history**

- 5.11. Mortgageland has not been the subject of previous disciplinary action.

#### **Other action taken by the FSA**

- 5.12. In determining the level of financial penalty, the FSA seeks to ensure consistency. The FSA has in the past taken action against firms for similar failings and this has been taken into consideration.



## **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 the Firm 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 Jeremy La Niece of the Enforcement Division of the FSA (direct line: 020 7066 1346 / fax: 020 7066 1347).

**Georgina Philippou**

**FSA Enforcement Division**

## ANNEX 1 – Mortgages and Home Finance

### Conduct of Business Sourcebook Rules

#### **Non-real time qualifying credit promotions: clear, fair and not misleading**

##### **MCOB 3.6.3 R (1)**

A firm must be able to show that it has taken reasonable steps to ensure that a non-real time financial promotion is clear, fair and not misleading.

##### **MCOB 3.6.17 R**

###### Annual percentage rate (APR)

(1) A firm must ensure that if a non-real time financial promotion contains either price information for specific qualifying credit, or makes reference (either explicitly or implicitly) to the availability of credit for customers who might otherwise consider their access to credit restricted, the promotion also:

(a) states the APR;

(b) gives the APR, and the accompanying statement in (3), with no less prominence than any price information or reference (either explicitly or implicitly) to the availability of credit for customers who might otherwise consider their access to credit restricted; and

(c) positions the APR after any other rate of charge relating to the qualifying credit, clearly distinguishing it from any such rate but without interjecting other information in between the APR and any other rate of charge.

(2) A firm must calculate the APR in accordance with MCOB 10 (Annual percentage rate).

(3) The APR must be expressed as follows, with X being the APR calculated for the particular qualifying credit: 'The overall cost for comparison is X% APR'

### **MCOB 3.6.27 R**

#### Fees for advice or arranging

If a non-real time financial promotion of qualifying credit relates to the controlled activities of advising on or arranging qualifying credit and a fee may be charged for these activities, a firm must ensure that a prominent indication is given of:

(1) the amount of the fee (if known); or (2) a representative fee based upon the business expected to arise from the promotion.

### **MCOB 3.9 R**

#### Confirmation of compliance : financial promotions of qualifying credit or home reversion plans

##### **MCOB 3.9.1R**

(1) Before a firm communicates or approves a non-real time financial promotion of qualifying credit or of a home reversion plan it must confirm that the financial promotion complies with the rules in this chapter.

(2) A firm must arrange for the confirmation exercise in (1) to be carried out by an individual or individuals with appropriate expertise.

### **Suitability**

#### **MCOB 4.7.2 R**

A firm must take reasonable steps to ensure that it does not make a personal recommendation to a customer to enter into a regulated mortgage contract, or to vary an existing regulated mortgage contract, unless the regulated mortgage contract is, or after the variation will be, suitable for that customer (see MCOB 4.3.4 R (2), MCOB 4.3.5 G and MCOB 4.3.6 G).

#### **MCOB 4.7.4 R – For the purposes of MCOB 4.7.2R:**

(1) a regulated 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 customer can afford to enter into the regulated mortgage contract;

**MCOB 4.7.7 E (1) (a)**

(1) In assessing whether a customer can afford to enter into a particular regulated mortgage contract, a firm should give due regard to the following:

(a) information that the customer provides about his income and expenditure, and any other resources that he has available;

...

**MCOB 4.7.17 R - Record keeping**

(1) 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 4.7; and

(b) that explains why the firm has concluded that any personal recommendation given in accordance with MCOB 4.7.2 R satisfies the suitability requirements in MCOB 4.7.4 R(1). This explanation must include, where this is the case, the reasons why a personal recommendation has been made on a basis other than that described in MCOB 4.7.13 E(1).