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## FINAL NOTICE

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To: **New Forest Mortgage Company Limited**

Of: 1st Floor, 4 Lansdowne Crescent  
Bournemouth  
BH1 1RX

Date: **10 November 2008**

**TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives you final notice about an order cancelling your Part IV permission.**

### **1. THE ORDER**

- 1.1 The FSA gave you, New Forest Mortgage Company Limited (“You”/“The Firm”), a Decision Notice **10 November** (the “Decision Notice”) which notified you that the FSA had decided to cancel your Part IV permission, pursuant to section 45 of the Financial Services and Markets Act 2000 (the “Act”).
- 1.2 Mr Peter King (“Mr King”) on your behalf agreed that you would not be referring the matter to the Financial Services and Markets Tribunal.

- 1.3 Accordingly, for the reasons set out below, the FSA hereby cancels your Part IV permission pursuant to section 45 of the Act, which takes effect from 10 November 2008.

## **2. REASONS FOR THE ORDER**

### **Summary**

By reason of the facts and matters set out below, the FSA has concluded that the Firm is failing to satisfy Threshold Conditions 4 and 5 of the Threshold Conditions set out in Schedule 6 to the Act (the “T.C.s”) by reason of its connection with Mr King.

By a Decision Notice 10 November 2008, having concluded that Mr King is not a fit and proper person, pursuant to Section 63 of the Act, the FSA has decided to withdraw the individual approval granted to him to perform controlled functions in relation to regulated activities carried on by the Firm and to prohibit him from carrying out any regulated activities under Section 56 of the Act.

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

### **Statutory provisions**

- 3.1 The FSA's statutory objectives, set out in Section 2(2) of the Act, include market confidence and the reduction of financial crime.
- 3.2 Section 41 and Schedule 6 to the Act set out the Threshold Conditions which are conditions that the FSA must ensure a firm will satisfy, and continue to satisfy, in relation to regulated activities for which it has permission.
- 3.3 Paragraph 4 of Schedule 6 to the Act states that the resources of the person concerned must, in the opinion of the FSA, be adequate in relation to the regulated activities that he seeks to carry on or carries on (Threshold Condition 4: Adequate Resources).
- 3.4 Paragraph 5 of Schedule 6 to the Act states that the person concerned must satisfy the FSA that he is a fit and proper person having regard to all the circumstances including (a) his connection with any person; (b) the nature of any regulated activity that he

carries on or seeks to carry on; and (c) the need to ensure that his affairs are conducted soundly and prudently (Threshold Condition 5: Suitability).

- 3.5 The FSA is authorised pursuant to Section 45(2) of the Act to cancel an authorised person's Part IV permission where it appears that an authorised person is failing, or likely to fail, to satisfy the Threshold Conditions.

**FSA's policy on exercising its power to cancel a Part IV permission**

- 3.6 The FSA's policy on exercising its power to cancel a Part IV permission is set out in Chapter 8 of the Enforcement Guide ("EG").
- 3.7 EG 8.13(1) states that the FSA will consider cancelling a firm's Part IV permission in circumstances including where the FSA has very serious concerns about a firm, or the way its business is or has been conducted.
- 3.8 EG 8.14 sets out general grounds for the exercise of the Section 45 power to cancel a Part IV permission. It states that the grounds on which the FSA may exercise its power to cancel an authorised person's permission under Section 45 of the Act are set out in Section 45(1) (which includes, where it appears to the FSA that the authorised person is failing, or is likely to fail, to satisfy the threshold conditions in relation to one or more, or all, of the regulated activities for which the authorised person has Part IV permission).

**Guidance concerning Threshold Condition 4: Adequate resources (Paragraph 4, Schedule 6 to the Act) – COND 2.4**

- 3.9 COND gives guidance on the Threshold Conditions set out in Schedule 6 to the Act (COND 1.2.1G).
- 3.10 COND 2.4.1D states that the resources of the person concerned must, in the opinion of the FSA, be adequate in relation to the regulated activities that he seeks to carry on, or carries on.
- 3.11 COND 2.4.2G(2) provides that the FSA will interpret the term 'adequate' 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 such as, for example, human resources and effective means by which to manage risks.

- 3.12 COND 2.4.3G(1) provides that when assessing this Threshold Condition, the FSA may have regard to any person appearing to it to be, or likely to be, in a relevant relationship with the firm, in accordance with Section 49 of the Act (Persons connected with an applicant); for example, a firm's controllers, its directors or partners, other persons with close links to the firm, and other persons that exert influence over the firm which might pose a risk to the firm's satisfaction of the Threshold Conditions and would, therefore, be in a relevant relationship with the firm.
- 3.13 COND 2.4.4G(1) states that the FSA will have regard to all relevant matters which includes at (d) whether the firm has taken reasonable steps to identify and measure any risks of regulatory concern that it may encounter in conducting its business and has installed appropriate systems and controls and appointed appropriate human resources to measure them prudently at all times.

**Guidance concerning Threshold Condition 5: Suitability (paragraph 5, Schedule 6 to the Act) – COND 2.5**

- 3.14 COND 2.5.1D states that the person concerned must satisfy the FSA that he is a fit and proper person having regard to all the circumstances including (a) his connection with any person; (b) the nature of any regulated activity that he carries on or seeks to carry on; and (c) the need to ensure that his affairs are conducted soundly and prudently.
- 3.15 COND 2.5.2G provides that Threshold Condition 5 requires the firm to satisfy the FSA that it is 'fit and proper' to have Part IV permission having regard to all the circumstances, including its connection with other persons, the range of its regulated activities and the overall need to be satisfied that its affairs are and will be conducted soundly and prudently.
- 3.16 COND 2.5.3G further provides that the emphasis of the Threshold Conditions is on the suitability of the firm itself (the suitability of each person who performs a controlled function will be assessed by the FSA under the approved persons regime). However, COND 2.5.3G(2) permits the FSA, when assessing this Threshold

Condition in relation to a firm, to have regard to any person appearing to it to be, or likely to be, in a relevant relationship with the firm, as permitted by Section 49 of the Act (Persons connected with the applicant). The guidance in COND 2.5.3G(2) also refers to COND 2.4.3G, which sets out examples of persons in a relevant relationship with the firm, including a firm's controllers, its directors or partners, other persons with close links to the firm and other persons that exert influence on the firm which might pose a risk to the firm's satisfaction of the Threshold Conditions and would, therefore, be in a relevant relationship with the firm.

3.17 COND 2.5.4G provides that in determining whether the firm will satisfy and continue to satisfy Threshold Condition 5, the FSA will have regard to all relevant matters arising including whether a firm has or will have a competent and prudent management (COND 2.5.4G(2)(b)) and whether it can demonstrate that it conducts, or will conduct, its business with integrity and in compliance with proper standards (COND 2.5.4G(2)(a)).

3.18 COND 2.5.6G, in giving guidance on the interpretation of whether a firm will satisfy and continue to satisfy Threshold Condition 5 in respect of conducting its business with integrity and in compliance with proper standards, gives examples of relevant matters which include:

- (1) whether the firm has been open and co-operative in all its dealings with the FSA, and is ready willing and organised to comply with the requirements under the regulatory system (COND 2.5.6G(1));
- (2) whether the firm has contravened, or is connected with any person who has contravened any provisions of the Act or the regulatory system (COND 2.5.6G(4)); and
- (3) whether the firm has taken reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system applicable to it (COND 2.5.6G(6)).

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

##### **Background**

4.1 The Firm became authorised by the FSA on 31 October 2004. It is currently permitted to carry on the following regulated activities:

- (a) Insurance Mediation: Advising on and arranging deals in investments.
- (b) Regulated Home Finance: Agreeing to carry on a regulated activity. Advising on and arranging regulated mortgage contracts.

4.2 Mr King is the sole director of the Firm and is responsible for the day-to-day activities and running of the Firm. He is the only approved person at the Firm and the only person responsible for insurance mediation at the Firm. He has been approved to perform the following significant influence controlled functions:

- CF1 (Director); and
- CF8 (Apportionment and Oversight)

4.3 If Mr King's approval is withdrawn (on the basis that he is not fit and proper) there will be no one who will be involved in insurance mediation at the Firm who is approved to carry out controlled functions.

4.4 In these circumstances, the Firm will be failing to satisfy the threshold conditions set out in Schedule 6 to the Act (the "Threshold Conditions") in that, in the opinion of the FSA, the Firm will not have adequate resources in relation to the regulated activities it seeks to carry on. Specifically, the Firm will not have adequate human resources (Threshold Condition 4).

4.5 In addition, the Firm will not be able to satisfy the FSA that it is fit and proper having regard to all the circumstances, including its connection with Mr King and the overall need to ensure that its affairs are conducted soundly and prudently (Threshold Condition 5).

## **5. ANALYSIS OF SANCTION**

5.1 The FSA has considered whether it is satisfied that the Firm, as the Authorised Person, is a "fit and proper person" in accordance with Threshold Conditions 4 and 5

to remain authorised to carry on regulated activities, having regard in particular to its connection with Mr King and the overall need to be satisfied that its affairs are and will be conducted soundly and prudently.

5.2 The FSA has concluded that the matters set out above demonstrate that the Firm has failed to satisfy the FSA that:

- With regard to its connection with Mr King its resources are adequate in relation to the regulated activities that it seeks to carry on, or carries on (Threshold Condition 4); and
- With regard to its connection with Mr King it can demonstrate that it conducts, or will conduct, its business with integrity and in compliance with proper standards (Threshold Condition 5).

5.3 The facts and matters described above lead the FSA, having regard to its regulatory objectives which include maintaining confidence in the financial system and helping to reduce financial crime, to conclude that the Firm is not a “fit and proper person” in accordance with Threshold Conditions 4 and 5 to remain authorised to carry on regulated activities and that the Firm’s Part IV permission should be cancelled.

## **6. DECISION MAKERS**

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

## **7. PUBLICITY**

7.1 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.

### **FSA Contacts**

7.2 For more information concerning this matter generally, you should contact Paul Howick of the Enforcement Division of the FSA (direct line: 020 7066 7954).

Signed:

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**Jonathan Phelan**  
**Head of Department**  
**FSA Enforcement Division**