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## FINAL NOTICE

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To: [Redacted]

Date of Birth: [redacted]

Date: [Redacted] 2008

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

### **1. THE ACTION ACTION**

1.1. The FSA gave [redacted] a Decision Notice on [redacted] 2008 which notified him that pursuant to section 66 of the Financial Services and Markets Act 2000 ("the Act"), the FSA proposes to impose a financial penalty of £30,000 on him for breaches of the FSA's Statements of Principle for Approved Persons ("APER") in his role as director of [redacted] ([redacted]/"the Firm") between [redacted] ("the relevant period") by:

(1) failing as an approved person performing significant influence functions, to act with due skill, care and diligence in managing the business of the firm for which he was responsible in his controlled functions in contravention of APER 6; and

(2) failing to take steps to ensure that the business of the firm for which he was responsible in his controlled functions complied with the relevant requirements and standards of the regulatory system in contravention of APER 7.

1.2. This penalty also takes into account the fact that by his conduct, [redacted] was knowingly concerned in the contravention of Rules 4.72R, 4.7.4R, 4.7.6R and 4.7.17R in the part of the Handbook entitled Mortgages and Home Finance: Conduct of Business (“MCOB”). The details of these rules are set out in Annex 1 to this notice.

1.3. [Redacted] agreed to settle at an early stage of the FSA’s investigation. He therefore qualified for a 30% (stage 1) discount under the FSA’s executive settlement procedures. Were it not for this discount the FSA would have imposed a financial penalty of £42,800.

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

2.1. During the relevant period, [redacted] was approved to perform the following controlled functions at [redacted]:

- (1) Director (CF1) since [redacted];
- (2) Apportionment and Oversight (CF8) since [redacted]; and
- (3) Significant Management (CF29) since [redacted].

2.2. His role included giving mortgage advice to customers.

2.3. Based on the review of a sample of 20 out of 113 self certified mortgaged completed between June 2006 and June 2007 and a review of [redacted] systems and controls between January 2006 and April 2008, the FSA has concluded that during the relevant period, [redacted] conduct fell short of the FSA’s prescribed regulatory standards for approved persons. In particular, [redacted] breached APER in that he failed to ensure that [redacted]:

- (1) carried out straightforward checks which would enable it to ascertain the accuracy of information provided by customers and help prevent it from being used to commit financial crime by third parties;

- (2) adequately assessed and recorded customers' needs and preferences;
- (3) adequately assessed affordability and suitability of recommended mortgage contracts, and therefore exposed customers to the risk of receiving unsuitable advice;
- (4) made and retained adequate records to demonstrate how particular mortgage contracts were considered to be suitable; and
- (5) supervised and monitored its mortgage advisers.

2.4. The FSA acknowledges that [redacted] co-operated with the investigation and moved quickly to agree the facts and matters with the FSA. The FSA also takes into consideration the fact that [redacted] intends to carry out mortgage advisory activities only as Appointed Representative of an approved firm.

2.5. By virtue of the matters referred to above, the FSA has concluded that in all the circumstances, it is appropriate to impose a financial penalty on [redacted].

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

#### **Relevant Statutory Provisions**

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 66 of the Act provides:

*“(1) The Authority [The FSA] 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; or*

(b) *he has been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person by or under this Act*

(3) *If the Authority is entitled to take action under this section against a person, it may –*

(a) *impose a penalty on him of such amount as it considers appropriate...”*

- 3.3. The FSA issued APER under section 64 of the Act to codify the conduct expected of approved persons.
- 3.4. APER 6 provides that an approved person performing a significant influence function must act with due skill, care and diligence in managing the business of the firm for which he is responsible in his controlled functions.
- 3.5. APER 7 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 complies with the relevant requirements and standards of the regulatory system.

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

- 4.1. [Redacted] was approved by the FSA to perform the controlled functions of CF1 (Director), CF8 (Apportionment and Oversight) and CF29 (Significant Management) at [redacted], as discussed in paragraph 2.1 above. [Redacted] was [redacted] at the Firm. However, he provided mortgage advice to customers and was jointly responsible for the day-to-day running of the Firm.
- 4.2. [Redacted] was responsible for the day-to-day management of the Firm's [redacted] office which generated business leads and attended appointments made with customers. All completed client files were stored at the [redacted] office where compliance monitoring was performed.

4.3. [Redacted] did not personally source and recommend products for clients of the Firm as this was done by his co-director, [redacted]. However, as a director and in his capacity as CF8 function holder, [redacted] was jointly responsible for the arrangements for recommending products and was responsible for apportionment and oversight of the activities of the Firm.

### **Due skill care and diligence**

4.4. [Redacted] failed to ensure that [redacted] organised and operated its business in accordance with proper standards. He failed to ensure checks which would enable [redacted] to verify the information provided by customers were carried out. For example, as a director and the person responsible for appointment and oversight, [redacted] failed to ensure that obvious discrepancies in the applications were identified and dealt with, such as:

- (1) where a customer provided blank pay slips as proof of identity, there was no further attempt to ascertain the amounts earned;
- (2) a customer's bank statement indicated that the customer was in receipt of child tax credits, yet the fact find disclosed that she had no children living with her; and
- (3) two other applicants declared that they had been self-employed for almost two years and earned a joint income of £50,000. However, they were each receiving disability benefit of £170 a month, had 6 months of mortgage arrears, were facing eviction and had other debts.

4.5. As the person responsible for the significant management and apportionment and oversight at the Firm, [redacted] failed to take reasonable steps to ensure that [redacted] had adequate systems and controls in place to enable its mortgage advisory business to be controlled effectively.

4.6. [Redacted] failed to establish systems and controls to ensure that [redacted] conducted regular compliance assessments of its junior advisers. Junior advisers conducted fact find interviews via the telephone, yet the calls were not monitored to assess whether calls were conducted in a compliant manner. [Redacted] conducted some monitoring

of the completed fact finds from the [redacted] office, however this monitoring was inadequate and isolated from the overall compliance monitoring conducted from the [redacted] office. Furthermore, [redacted] decided that the Firm should wrongly categorise its advisers as Appointed Representatives, which hindered the adequacy of any monitoring and supervision of these advisers.

- 4.7. [Redacted] failed to ensure the Firm had formalised anti-money laundering procedures in place and that personnel were provided with anti-money laundering training.
- 4.8. [Redacted] failed to establish adequate and formalised procedures for dealing with complaints at [redacted]. As a consequence, staff received no training on complaints handling. Customers who may have had a complaint were therefore at a material risk of not having their complaints dealt with, or even recorded, adequately. The lack of complaints handling procedures also meant that [redacted] staff would have been unable to identify complaints and/or deal with them appropriately.

### **Suitability of advice**

- 4.9. [Redacted] failed to take reasonable steps to implement procedures to ensure that [redacted] gave suitable advice to customers. [Redacted] failure led the Firm, in a number of instances, to recommend unsuitable products to its customers. More generally, [redacted] inability to establish systems for the provision of advice meant that [redacted] was unable to demonstrate that the products it recommended were suitable for its customers.
- 4.10. As a result of [redacted] failure to arrange adequate systems the Firm failed to obtain and record sufficient Know Your Customer (“KYC”) information to establish customers’ needs and objectives at the time the recommendation was being made to customers. For example 5 of 20 cases reviewed contained no clear reasons why its customers had self-certified their income.
- 4.11. The lack of procedures meant that the Firm also failed to record and therefore to demonstrate reasons for the particular recommendations it made to its customers. In addition, “Reasons Why” file notes contained insufficient information to explain why

a particular product, lender or term had been recommended having regard to customers' needs, preferences and personal and financial information.

- 4.12. 95% of the files reviewed did not contain any evidence of research options or clear reasons for the recommended product. In some instances, there were no suitability letters. In others, a suitability letter was on the customer file, but contained insufficient and/or inaccurate information.
- 4.13. Under [redacted] management, [redacted] assessment and recording of the affordability of recommended mortgage contracts was inadequate. For example:
  - (1) none of the files (100%) reviewed contained sufficient evidence in support of the income stated or any evidence of an assessment of the plausibility of income and/or expenditure;
  - (2) 10 files involved interest only mortgages. Of these 10 files, only 3 (30%) contained evidence of discussions and disclosure of a capital repayment vehicle, although all files contained a KFI giving risks of such products.
  - (3) there is no evidence of the consideration of a capital repayment vehicle in respect of customers who were borrowing into retirement on an interest only mortgage basis;
  - (4) 15 of the 20 files (75%) involved re-mortgaging for reasons of debt consolidation, but in only 3 of the 15 files (20%) did [redacted] appear to consider the appropriateness of debt consolidation and the implications of securing short term debts in this way; and
  - (5) 6 out of 20 (33.3%) files involved lending into retirement. There was some evidence of consideration of post-retirement income in 4 of those 6 files. However, with the exception of one file, it was not possible to establish whether such post-retirement income was plausible.
- 4.14. Under [redacted] management, [redacted] failed to record adequate KYC or make affordability assessments, which exposed [redacted] customers to the risk of receiving unsuitable advice.

## 5. ANALYSIS OF BREACHES

- 5.1. The failures summarised above represent a failure by [redacted] to comply with Statements of Principle 6 and 7 for Approved Persons while he performed controlled functions of significant influence at [redacted].
- 5.2. By failing to implement adequate systems and controls to ensure that [redacted] recommendations were based on sufficient information as to customers' needs and financial circumstances [redacted] failed to establish whether [redacted] recommendations of mortgage products were in fact suitable for customers.
- 5.3. [Redacted] failure to establish systems to ensure that straightforward checks were carried out meant that [redacted] and [redacted] could not identify and act upon any anomalies in mortgage applications. [Redacted] failure increased the risk of [redacted] being used by third parties to commit financial crime. Accordingly, [redacted] acted without due skill, care and diligence in managing the business of [redacted].
- 5.4. [Redacted] file reviewing procedures were insufficient to adequately monitor advisers. [Redacted] also failed to adequately supervise and monitor [redacted] mortgage advisers.
- 5.5. The consequences of [redacted] misconduct are serious in that [redacted] exposed its customers to risk of financial detriment, in that they were recommended potentially unsuitable mortgage products.
- 5.6. The nature and extent of these failures, particularly in light of [redacted] role and particular responsibilities are such that the FSA considers that [redacted] was knowingly concerned in the contravention by the Firm of the FSA's Principles for Businesses and detailed MCOB Rules. The details of these rules are set out in Annex 1 to this notice.
- 5.7. [Redacted] failed to ensure that adequate KYC, suitability and affordability assessments and formalised anti-money laundering procedures were in place at the Firm. His failure to ensure that [redacted] carried out straightforward checks increased the risk of the Firm being used by third parties to commit financial crime. In these

circumstances, [redacted] gave no apparent consideration to the consequences of the behaviour and the extent of the risks to customers.

## **6. ANALYSIS OF THE SANCTION**

- 6.1. In concluding that [redacted] failed to comply with APER 6 and 7, the FSA considers that he is personally and jointly responsible for the failures summarised in this Notice, and that his conduct falls well below the standard expected of approved persons performing significant influence functions.
- 6.2. Accordingly, the FSA considers it necessary to impose a financial penalty on [redacted].
- 6.3. 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 and came into force on 28 August 2007. It was previously set out in Chapter 13 of the Enforcement Manual ("ENF"), to which the FSA has had regard in addition to DEPP as both manuals applied to separate times during the relevant period. The manuals set out the factors that may be of particular relevance in determining the appropriate level of financial penalty for a firm or approved person. The criteria are not exhaustive and all relevant circumstances of the case will be taken into consideration. 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.
- 6.4. In determining whether a financial penalty is appropriate, and, if so, its level, the FSA is required to consider all relevant circumstances of a case. The FSA will consider a non- exhaustive list of factors that may be of relevance in determining the level of a financial penalty.
- 6.5. The FSA considers that the following factors are particularly relevant in this case.

### **Deterrence**

- 6.6. A financial penalty would deter [redacted] from further breaches of regulatory rules and Principles. Equally, other senior managers will be deterred from following

[redacted] practices and this will promote the message to the industry that the FSA expects senior managers to maintain high standards of regulatory conduct.

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

- 6.7. 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 or systematic 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.
- 6.8. [Redacted] failings are viewed as being serious because:
  - (1) the failings impacted customers who were financially vulnerable;
  - (2) failures in information gathering were widespread and systemic in nature; and
  - (3) due to the insufficient fact finding, recording of customers' personal and financial information (including evidence and reasons for recommendations) and verification of self-certified income, it was not possible for [redacted] to demonstrate that [redacted] had considered the interests of its customers or that its customers had been treated fairly in terms of the affordability and suitability of recommendations.
- 6.9. The FSA has taken into account the following matters which have served to mitigate the seriousness of [redacted] failings:
  - (1) [redacted] accepts that there were management and control failures in relation to [redacted] monitoring of sales and co-operated fully with the FSA investigation;
  - (2) [redacted] voluntarily engaged external compliance consultants and commenced an overhaul of the Firm's procedures; and
  - (3) [redacted] intends to carry out mortgage advisory activities only as an Appointed Representative of an approved firm.

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

6.10. The FSA has considered the extent to which [redacted] actions were reckless or deliberate. The FSA has concluded that the contraventions by [redacted] were not deliberate. However, the FSA considered that in some respects [redacted] gave no apparent consideration to the consequences of the behaviour and the extent of the risks to customers, particularly with regard to:

- (1) the Firm's failures in relation to KYC and suitability and affordability assessments;
- (2) the lack of anti money-laundering procedures in place at the Firm;
- (3) the lack of formal training of personnel; and
- (4) the failure to carry out straightforward checks which would have decreased the risk of the Firm being used by third parties to commit financial crime.

### **Financial resources and other circumstances of the individual**

6.11. In determining the level of penalty, the FSA has been mindful of [redacted] financial circumstances. The FSA considers that a penalty of £30,000 (reduced from £42,800 as a result of a discount of 30% for early settlement) is appropriate.

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

6.12. In setting the level of the penalty the FSA has had regard to the need for the penalty to be an incentive for [redacted] (and other senior managers and individuals) to comply with regulatory standards.

### **Conduct following the breach**

6.13. The FSA has taken into account [redacted] co-operation with the FSA's investigation. He intends to carry out mortgage advisory activities only as an Appointed Representative of an approved firm.

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

6.14. [Redacted] has not been the subject of previous disciplinary action.

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

6.15. 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.

## **7. DECISION MAKERS**

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

## **8. IMPORTANT**

8.1. This Final Notice is given to [redacted] in accordance with section 390 of the Act.

### **Manner of and time for payment**

8.2. [Redacted] must pay to the FSA £5,000 of the financial penalty within 14 days of the date on which this Final Notice is given to him. The remaining balance of the financial penalty must be paid to the FSA by no later than 10 November 2009.

### **If the financial penalty is not paid**

8.3. If all or any part of the financial penalty is outstanding after the agreed date of payment, the FSA may recover the outstanding amount as a debt owed by [redacted] and due to the FSA.

### **Confidentiality and publicity**

8.4. 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.

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

#### **FSA contacts**

- 8.6. For more information concerning this matter generally, please contact Francesca Harte at the FSA (direct line: 020 7066 1482 / fax: 020 7066 1483).

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Georgina Philippou

Project Sponsor, for and on behalf of the FSA

## Annex 1

### FSA's Principles for Businesses

**Principle 2** (Due skill, care and diligence) provides that: “*A firm must act with due skill, care and diligence*”.

**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*”.

### Statements of Principle and Code of Practice for Approved Persons

APER sets out the Statements of Principle in respect of approved persons. APER also describes conduct which, in the opinion of the FSA, does not comply with the relevant Statements of Principle. It further describes factors to be taken into account in determining whether an approved person’s conduct complies with a Statement of Principle.

APER 3.1.3G states that when establishing compliance with, or a breach of, a Statement of Principle, account will be taken of the context in which a course of conduct was undertaken, the precise circumstances of the individual case, the characteristics of the particular controlled function and the behaviour expected in that function.

APER 3.1.4G states that an approved person will only be in breach of a Statement of Principle if they are personally culpable, that is, in a situation where their conduct was deliberate or where their standard of conduct was below that which would be reasonable in all the circumstances.

In determining whether your conduct amounts to a breach of a Statement of Principle, the FSA has had regard to the guidance and examples in APER 4.6 and APER 4.7, in particular:

(1) In the opinion of the FSA, conduct of the type described below does not comply with Statement of Principle 6.

(a) APER 4.6.3E Failing to take reasonable steps to adequately inform himself about the affairs of the business for which he is responsible; and

(c) APER 4.6.8E Failing to supervise and monitor adequately the individual or individuals to whom responsibility for dealing with an issue or authority for dealing with a part of the business has been delegated.

(2) In the opinion of the FSA, conduct of the type described in below does not comply with Statement of Principle 7.

(a) APER 4.7.3E Failing to take reasonable steps to implement adequate and appropriate systems of control to comply with the relevant requirements and standards of the regulatory system in respect of its regulated activities. In the case of an approved person who is responsible, under SYSC 2.1.3R(2), with overseeing the firm's obligation under SYSC 3.1.1R, failing to take reasonable care to oversee the establishment and maintenance of appropriate systems and controls.

(b) APER 4.7.4E Failing to take reasonable steps to monitor compliance with the relevant requirements and standards of the regulatory system in respect of its regulated activities.

(c) APER 4.7.10E In the case of an approved person performing a significant influence function responsible for compliance under SYSC 3.2.8R failing to take reasonable steps to ensure that appropriate compliance systems and procedures are in place.

## **MCOB**

MCOB 4.7.2R 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 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.

MCOB 4.7.4R(1) provides that, for the purposes of MCOB 4.7.2R, 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:

1. the customer can afford to enter into the regulated mortgage contract;
2. the regulated mortgage contract is appropriate to the needs and circumstances of the customer; and
3. the regulated 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.

8.7. MCOB 4.7.6R provides that in relation to MCOB 4.7.4 R(1)(a) and (b), where a firm makes a personal recommendation to a customer to enter into a regulated mortgage contract where a main purpose is to consolidate existing debts it must also

take account of the following, where relevant, in assessing whether the regulated mortgage contract is suitable for the customer:

1. the costs associated with increasing the period over which a debt is to be repaid;
2. whether it is appropriate for the customer to secure a previously unsecured loan; and
3. where the customer is known to have payment difficulties, whether it would be more appropriate for the customer to negotiate an arrangement with his creditors than to take out a regulated mortgage contract.

MCOB 4.7.8G provides that a firm may generally rely on any information provided by the customer for the purposes of MCOB 4.7.4 R(1)(a) unless, taking a common-sense view of this information, it has reason to doubt it.

MCOB 4.7.17R requires a firm to make and retain a record of customer information obtained and to information which explains why the firm concluded that any personal recommendation satisfied the suitability requirements.