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## FINAL NOTICE

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To: **Yvonne Spring**  
Of: Collier Row  
Romford  
Essex  
Date: 2 July 2007

**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 withdraw your approval.**

### **1. ACTION**

- 1.1. The FSA gave you, Mrs Yvonne Spring ("Mrs Spring") a Decision Notice on 2 July 2007 which notified you that pursuant to section 63 of the Financial Services and Markets Act 2000 ("the Act"), the FSA had decided to withdraw the approval granted to you, because it considers that you are not a fit and proper person, in terms of your "competence and capability", to perform the controlled functions to which your individual approval relates.
- 1.2. You agreed on 25 June 2007 that you will not be referring the matter to the Financial Services and Markets Tribunal.

- 1.3. You agreed to settle at an early stage of the FSA's investigation on the basis of the FSA's decision to withdraw your approval.
- 1.4. Accordingly, for the reasons set out below and having agreed with you the facts and matters relied on, the FSA hereby makes this Notice to withdraw your approval.

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

- 2.1. The FSA has concluded, on the basis of the facts and matters described below, that you are not a fit and proper person to perform the functions to which your approval, pursuant to section 59 of the Act, relates.
- 2.2. While acting in your capacity as director of an authorised firm called Earlybird Finance Ltd ("the Firm"), you failed to act with competence and capability in that you failed to ensure that the Firm had appropriate systems and procedures in place for the nature of the business. Your conduct raises serious concerns that you have failed to comply with the Statements of Principle for Approved Persons. In particular:-
  - (1) You failed to ensure that the Firm had any formal vetting procedure in place for its introducers (in breach of Statement of Principle 7).
  - (2) You failed to ensure the quality of business being submitted to the Firm by its introducers and to identify trends of anomalies in the business originating from introducers (in breach of Statement of Principle 7).
  - (3) You failed to ensure there was any verification by the Firm of the factual accuracy of information provided by customers and contained in mortgage applications submitted to lenders by the Firm (in breach of Statement of Principle 7).

- (4) Consequently, the Firm submitted mortgage applications to lenders which contained false and misleading information (in breach of Statement of Principle 2).
  - (5) You failed to identify, from numerous anomalies in the information provided by introducers and clients, that the Firm was at risk of being used to facilitate financial crime. In your view it is the responsibility of lenders, but not mortgage brokers, to identify potentially fraudulent mortgage applications (in breach of Statement of Principle 7).
- 2.3. You have accepted that, as managing director of the Firm, you are responsible for the day-to-day business. You are the sole mortgage adviser at the Firm and you accept responsibility for the misconduct summarised in this Notice.
- 2.4. The conduct represents a failure by you to comply with the following Statements of Principle for Approved Persons:
- (1) Statement of Principle 2, under which an approved person must act with due skill, care and diligence in carrying out their controlled functions; and
  - (2) Statement of Principle 7, under which an approved person performing a significant influence function must take reasonable steps to ensure that the business of the firm for which they are responsible in their controlled functions complies with the relevant requirements and standards of the regulatory system.
- 2.5. The conduct summarised above raises serious concerns about your competence and capability, such that your individual approval should be withdrawn.
- 2.6. The FSA has considered on the basis of the facts and matters described in this Notice, that you have failed to comply with the Statements of Principles for Approved Persons and that you are not fit and proper to perform functions to which

your individual approval relates. Your misconduct raises serious concerns about your competence and capability and the FSA has concluded that your individual approval should be withdrawn.

### **3. RELEVANT 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 59 of the Act provides that a person shall not perform a controlled function unless the FSA approves the performance by that person of the controlled function. The FSA may grant an application for approval if the FSA is satisfied under section 61 of the Act that the person in respect of whom the application is made is a fit and proper person to perform the function to which the application relates.

3.3. The FSA has the power pursuant to section 63 of the Act to withdraw an approval given under section 59, if the FSA considers that the approved person is not a fit and proper person to perform the function to which the approval relates.

### **4. RELEVANT RULES AND GUIDANCE**

4.1. In deciding to take this action, the FSA has had regard to guidance published in the FSA handbook. The FSA's policy in relation to the decision to withdraw an individual's approval is set out in Chapter 7 of the Enforcement Manual ("ENF"), which is part of the FSA's Handbook of rules and guidance.

4.2. The guidance that the FSA considers to be most relevant to this case is set out below.

#### **The Enforcement Manual ("ENF")**

4.3. ENF 7.5 sets out the FSA's policy on withdrawal of approval from approved persons. ENF 7.5.1G provides that the FSA may withdraw its approval only if it considers that the person in respect of whom the approval was given is not a fit and proper person to

perform the function to which the approval relates.

- 4.4. ENF 7.5.2G states that the FSA recognises that its decision to withdraw approval will often have a substantial impact on those concerned and when considering whether to withdraw approval the FSA will take account of all the relevant factors, including, but not limited to the following:

- (1) ENF 7.5.2G – the relevant criteria for assessing the fitness and propriety of approved persons in terms of competence and capability includes having the necessary skills to carry out the controlled function that they are performing;
- (2) ENF 7.5.2G (3) whether, and to what extent, the approved person has:
  - (a) failed to comply with the Statements of Principle; or
  - (b) been knowingly concerned in a contravention by a relevant firm of a requirement imposed on the firm by or under the Act (including the Principles and other rules);
- (3) ENF 7.5.2G(4) the relevance, materiality and length of time since the occurrence of any matters indicating unfitness; and
- (4) ENF 7.5.2G(5) the severity of risk which the person poses to consumers and confidence in the financial system.

### **The Fit and Proper Test for Approved Persons**

- 4.5. The section of the FSA Handbook, Fit and Proper Test for Approved Persons (“FIT”) sets out the Fit and Proper test for Approved Persons. The purpose of FIT is to outline the main criteria for assessing the continuing fitness and propriety of an approved person.

- 4.6. In this instance, the criteria set out in FIT are relevant in considering whether the FSA may exercise its powers to withdraw approval of an individual in accordance with ENF 7.5.2G.
- 4.7. FIT 1.3 provides that the FSA will have regard to a number of factors when assessing the fitness and propriety of a person and one of the most important considerations is the person's competence and capability. FIT 1.3.3 states that the guidance will be applied in general terms when the FSA is determining a person's fitness and propriety and it would be impossible to produce a definitive list of all the matters relevant to a particular determination.
- 4.8. In determining a person's competence and capability FIT 2.2 provides guidance that the FSA will have regard to matters including but not limited to whether the person satisfies the relevant requirements of the FSA's Training and Competence sourcebook ("TC") in relation to the controlled function the person performs or is intended to perform, and whether the person has demonstrated by experience and training that the person is able, or will be able if approved, to perform the controlled function.

#### **The Statements of Principle and Code of Conduct for Approved Persons**

- 4.9. The Statements of Principle and Code of Practice for Approved Persons ("APER") set out the Statements of Principle in respect of approved persons and conduct which, in the opinion of the FSA, do 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.
- 4.10. APER 3.1.3G stipulates 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.

4.11. 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.

4.12. In this case, the FSA considers the most relevant Statements of Principle to be:

- (1) Statement of Principle 2 under which an approved person must act with due skill, care and diligence in carrying out their controlled function; and
- (2) Statement of Principle 7 under which an approved person performing a significant influence function must take reasonable steps to ensure that the business of the firm for which they are responsible in their controlled function complies with the relevant requirements and standards of the regulatory system.

4.13. APER 4.2 sets out examples of behaviour which do not comply with Statement of Principle 2. In particular, APER 4.2.4E states that providing inaccurate or inadequate information to a firm does not comply with Statement of Principle 2.

4.14. APER 4.7 gives examples of conduct which does not comply with Statement of Principle 7. This includes failing to take reasonable steps to:

- (1) implement adequate and appropriate systems of control to comply with the relevant requirements and standards of the regulatory system in respect of the Firm's regulated activities (APER 4.7.3E);
- (2) monitor compliance with the relevant requirements and standards of the regulatory system in respect of the Firm's regulated activities (APER 4.7.4E); and
- (3) adequately inform themselves about the reason why significant breaches (whether suspected or actual) of the relevant requirements and standards of the regulatory system in respect of its regulated activities may have arisen (taking into account of the systems and procedures in place) (APER 4.7.5E) .

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

### **Background**

- 5.1. You were approved by the FSA on 31 October 2004 to perform the controlled functions of CF1 (Director) and CF8 (Apportionment and Oversight) at the Firm. You are the managing director of the Firm and, as the sole mortgage adviser, you submitted applications to lenders on behalf of the Firm's clients and you had responsibility for the day-to-day running of the Firm.
- 5.2. The Firm is a mortgage broker and a packager and its main business is the arrangement of sub-prime mortgage contracts for clients who are unable to obtain "high street" mortgages. The Firm started trading in or around 2000 at which time it was supervised by the Mortgage Code Compliance Board. From 31 October 2004, the Firm was granted permission by the FSA to carry on the following activities in



relation to regulated mortgage contracts:

- (1) advising on regulated mortgage contract;
- (2) agreeing to carry on a regulated activity;
- (3) arranging regulated mortgage contracts; and
- (4) making arrangements.

5.3. From 14 January 2005, the Firm was granted permission to carry out the following insurance mediation activities:

- (1) advising on investments (except on Pension Transfer and Pension Opt Outs);
- (2) arranging (bringing about) deals in investments; and
- (3) making arrangements with a view to transactions in investments.

5.4. Between 2004 and 2006 most of the Firm's clients were obtained from introducers who were not authorised or approved persons. In 2006, the Firm reduced the number of introducers from whom it accepted business to four introducer appointed representatives ("IAR").

5.5. The FSA conducted an investigation into the Firm, the main focus of which was the apparent failure to prevent the Firm from being used to submit fraudulent mortgage applications to lenders.

5.6. In the course of the investigation, the FSA carried out reviews of a sample of 27 of the Firm's customers' files and examined the Firm's procedures. You also attended a compelled tape recorded interview at the FSA in October 2006. The FSA's preliminary investigation findings were provided to you in February 2007 and your responses have been taken into account in the FSA's findings, as summarised in this Notice.

5.7. The FSA has established the following facts and matters:

- (1) You were the Managing Director of the Firm. You were solely responsible for the day-to-day running of the business. As the sole mortgage adviser you were responsible for submitting mortgage applications to lenders for the Firm's clients. You were responsible for ensuring that the Firm complied with regulatory requirements.
- (2) A large number of discrepancies were found on the Firm's client files examined by the FSA. The discrepancies related to financial and personal information for the clients that were pertinent to the accuracy of the mortgage applications being submitted to lenders. This included information relating to client incomes, credit histories and employment status.
- (3) A significant proportion of the Firm's files (4 out of 27) were found to contain false documents.
- (4) The discrepancies on the client files had not been identified by you. There was no evidence to suggest that any steps were taken by you to investigate the accuracy of the information on file.
- (5) There were no systems and procedures in place at the Firm to identify the discrepancies on the client files. You admitted that the applications containing anomalous information and documents had been accepted by the Firm and been submitted in the applications to lenders without further enquiries being made.
- (6) You accepted that you did not examine conflicting information about client's financial circumstances and that you relied on the relevant lender to verify the factual accuracy of mortgage applications. You told the FSA that you had been naive by failing to investigate the accuracy of some of your clients' financial information submitted in their mortgage applications.
- (7) There were no appropriate systems and procedures in

place at the Firm to take appropriate measures to prevent financial crime. You admitted that you were unaware of the risks posed to the Firm by its introducers and clients.

(8) You admitted there was no formal vetting procedure in place for the Firm's introducers. You did not take action to address the quality of introducers and their business until the FSA intervened in 2006.

(9) Subsequent to the FSA's intervention, you admitted that there was a lack of any system in place at the Firm to monitor business submitted by introducers and to identify any potentially false documents and information. It was not therefore possible to identify trends in fraudulent applications received from introducers to the Firm.

(10) By late 2006, you did not demonstrate to the FSA's satisfaction that adequate controls had been put in place to record and assess the outcome of applications.

5.8. The relevant period to which the misconduct relates is from 31 October 2004, when the Firm first became authorised to April 2007 when the Firm agreed to cease conducting regulated activities.

5.9. These issues taken together impact on your competence and capability to manage an authorised firm.

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

6.1. The FSA has considered whether you are fit and proper in accordance with the regulatory requirements and with regard to the relevant guidance. In assessing your competence and capability, for the purpose of considering whether you are a fit and proper person, the FSA had regard to your failure to ensure that the Firm had in place appropriate systems and procedures for the business.

(1) You failed to ensure that there were any formal vetting procedures for the

Firm's introducers (in breach of Statement of Principle 7).

- (2) There was inadequate management and control of procedures to monitor the quality of business submitted by introducers (and generally) or to verify documents and information provided in support of mortgage applications and query obvious anomalies (in breach of Statement of Principle 7).
- (3) You considered that the onus was entirely on the mortgage lenders to identify potentially fraudulent mortgage applications (in breach of Statement of Principle 7).
- (4) A large number of discrepancies were found on the 27 client files reviewed by the FSA. The discrepancies related to financial and personal information for the clients that were pertinent to the accuracy of the mortgage applications being submitted to lenders. This included information relating to clients' incomes, credit histories and employment status (in breach of Statement of Principle 2).
- (5) A significant proportion of the Firm's files (4 out of 27) were found to contain false documents (in breach of Statement of Principle 2).
- (6) The discrepancies on the client files had not been identified by you and the FSA found no evidence to suggest that any steps had been taken to investigate the accuracy of the information on file. There were no systems and procedures in place at the Firm to identify the discrepancies on the client files (in breach of Statement of Principle 7).
- (7) You accepted that the applications containing anomalous information and documents had been accepted by the Firm and mortgage applications had been submitted to lenders without further enquiries being made. You did not notice or act on obvious conflicting information and anomalies about client's financial circumstances and relied on the relevant lender to verify the factual

accuracy of client information given in support of mortgage applications (in breach of Statement of Principle 2 and Statement of Principle 7).

- (8) You told the FSA that you had been naïve by failing to investigate the accuracy of some of the clients' financial information submitted in their mortgage applications (in breach of Statement of Principle 7).
- (9) Even taking into account the size of the business, there were inadequate systems and procedures in place at the Firm. You admitted that you were unaware of the risks posed to the Firm by the introducers and clients. There was no formal vetting procedure in place for the Firm's introducers and no action was taken to address the quality of introducers and their business until the FSA intervened in 2006 (in breach of Statement of Principle 7).
- (10) Subsequent to the FSA's intervention, there was still a lack of any developed system in place at the Firm to monitor business submitted by introducers and to identify any potentially false documents and information. Nor had your view changed in that you still considered that it was the lenders' responsibility to check for potentially fraudulent mortgage applications, although you had introduced some checking procedures (e.g. to authenticate UK passports) (in breach of Statement of Principle 7).

6.2. The FSA has also considered the relevance, materiality and length of time since the occurrence of your conduct indicating unfitness and the severity of the risk you present to confidence in the financial system.

6.3. Your conduct shows a lack of competence and capability in relation to the controlled functions of CF1 (Director) and CF8 (Apportionment and oversight). The FSA considers that you have not complied with the fitness and propriety standards set out in FIT and have acted in breach of the Statements of Principle for Approved Persons through your failure to act with due skill, care and diligence (Statement of Principle

2); and in carrying out your management functions at the Firm (Statement of Principle 7).

6.4. In view of the FSA's findings, it therefore considers that you fail to satisfy the fitness and propriety requirements applicable to an approved person and that you should not therefore carry out the controlled functions.

6.5. Accordingly, the FSA considers it necessary to withdraw your approval.

## **7. DECISION MAKER**

7.1. The decision which gave rise to the obligation to give this Final Notice was made by the executive decision makers on behalf of the FSA.

## **8. IMPORTANT**

8.1. This Final Notice is given to you in accordance with section 390 of the Act. The following statutory rights are important.

### **Publicity**

8.2. 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.

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

**FSA contacts**

- 8.4. For more information concerning this matter generally, you should contact Chris Walmsley at the FSA (direct line: 020 7066 5894) of the Enforcement Division of the FSA.

Jonathan Phelan

Head of Department

FSA Enforcement Division