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FINAL NOTICE

Steven Maoudis trading as Montana Debt Management
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146 Hagley Road
Birmingham
West Midlands
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1 February 2017

ACTION

1. With effect from 1 April 2014, Mr Steven Maoudis ("Mr Maoudis") trading as Montana Debt Management was granted interim permission pursuant to article 56 of the Amendment Order to carry on the regulated activities of:
 - a) Credit brokerage, under article 36A of the RAO;
 - b) Debt administration, under article 39G of the RAO;
 - c) Debt adjusting, under article 39D of the RAO; and
 - d) Debt-counselling, under article 39E of the RAO.
2. By an application dated 24 March 2015 (as amended on 20 August 2015) Mr Maoudis applied under section 55A of the Act for Part 4A permission to carry on the regulated activities of debt adjusting and debt-counselling limited to counselling with no debt management activity. Pursuant to the amended Application, Mr Maoudis did not apply for Part 4A permission to carry on the regulated activities of credit brokerage or debt administration and therefore his interim permission in respect of those activities ceased to have effect pursuant to article 58(1)(b) of the Amendment Order.

3. The Application was completed by the provision of further information on 4 May 2016.
4. For the reasons listed below, the Authority has refused the Application.

SUMMARY OF REASONS

5. The Authority cannot ensure that, in relation to the regulated activities for which Part 4A permission is sought, Mr Maoudis will satisfy, and continue to satisfy, the Threshold Conditions.
6. Specifically, the Authority does not consider that Mr Maoudis will satisfy, and continue to satisfy, the Threshold Conditions in paragraphs 2D (Appropriate resources) or 2E (Suitability) of Schedule 6 to the Act. This is based on:
 - a. Mr Maoudis' lack of knowledge and skills, in particular in relation to the debt solutions that can be offered to customers. The Authority considers that Mr Maoudis – who is the sole debt advisor – does not have sufficient knowledge about certain debt solutions that may be available to his customers, including DROs, bankruptcy and IVAs;
 - b. Mr Maoudis adopting an advice process that requires customers to first research debt solutions themselves, before Mr Maoudis gives debt advice that is restricted to DMPs and/or negotiation of full and final settlement plans (depending on the customer's situation); and
 - c. the business continuity plan that has been produced by Mr Maoudis. In particular, this plan does not properly provide for on-going advice to be given to customers in the event of Mr Maoudis' absence from the business.
7. Mr Maoudis has informed the Authority that he engages an 'advisory board' to assist him. However, the Authority does not consider that the extent of the engagement of this 'advisory board' is sufficient to address the issues set out in paragraph 6 above and, in any event, notes that the responsibility for debt advice remains that of Mr Maoudis.
8. The above matters lead the Authority to conclude that it cannot ensure that, if the Application were granted, Mr Maoudis would satisfy, and continue to satisfy, Threshold Conditions 2D (Appropriate resources) and 2E (Suitability).
9. By way of a Decision Notice dated 16 September 2016, the Authority gave Mr Maoudis notice that it had decided to refuse the Application. Mr Maoudis referred the Decision Notice to the Upper Tribunal on 29 September 2016 but the reference was withdrawn on 7 December 2016.
10. In light of the above, the Authority has issued this Final Notice.

DEFINITIONS

11. The definitions below are used in this Final Notice.

"Act" means the Financial Services and Markets Act 2000;

"Amendment Order" means the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2013;

“Application” means the application dated 24 March 2015 made by Mr Maoudis for Part 4A permission (as amended from time to time), as referred to in paragraph 2 above;

“Authority” means the Financial Conduct Authority;

“COND” mean the section of the Authority’s handbook entitled ‘Threshold Conditions’;

“CONC” means the ‘Consumer Credit Sourcebook’, part of the Handbook;

“DMP” means debt management plan;

“DRO” means debt relief order;

“Handbook” means the Authority’s Handbook of Rules and Guidance;

“IVA” means individual voluntary arrangement;

“RAO” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

“SYSC” means the Senior Management Arrangements, Systems and Controls sourcebook, part of the Handbook;

“Threshold Conditions” means the conditions set out in Schedule 6 to the Act for which the Authority is responsible; and

“Tribunal” means the Upper Tribunal (Tax & Chancery Chamber).

RELEVANT REGULATORY PROVISIONS

12. Details of the regulatory provisions relevant to this Final Notice are set out in Annex A.

FACTS AND MATTERS

Background

13. Mr Maoudis offers debt management services to customers who are seeking debt advice.

Overview of Mr Maoudis’ business

14. Mr Maoudis provides debt advice on DMPs and full and final settlement plans. Mr Maoudis offers both of these debt solutions to customers “in house”. Should a customer decide to enter into a DMP, Mr Maoudis will negotiate with that customer’s creditors to establish repayment plans. Mr Maoudis does not administer the repayment plans. Instead, once repayment plans under a DMP are established, Mr Maoudis:

- a. Acts as the point of contact for both the customer and their creditors for a monthly fee; and
- b. Informs the customer how much they should pay to each of their creditors (with the customer then being expected to set up and maintain the payments to the creditors).

15. Mr Maoudis does not provide advice to customers on other debt solutions such as IVAs or bankruptcy. Mr Maoudis has informed the Authority that, in the event he were to consider that an IVA or bankruptcy might be appropriate for a customer, he would refer the customer to the relevant member of his 'advisory board'.
16. In order to carry out his business model, Mr Maoudis has to engage in the regulated activities of debt-counselling (the giving of advice to a consumer about the liquidation of a debt) and debt adjusting (most notably the activity of negotiating the terms of the discharge of debt with a customer's creditors).

The Authority's conclusions regarding Mr Maoudis

Mr Maoudis' knowledge of debt solutions

17. The Authority considers that Mr Maoudis (as the sole person at the firm involved in the carrying on of its regulated activities) lacks the skills and knowledge that it would expect of someone providing debt advice to customers.
18. Following a meeting with Mr Maoudis on 16 July 2015 and a further conference call on 3 September 2015, the Authority had concerns about Mr Maoudis' knowledge and understanding of debt solutions. This was based on Mr Maoudis stating that he does not offer advice on bankruptcy or IVAs. Mr Maoudis acknowledged on both of these occasions that his knowledge and understanding of these debt solutions was limited.
19. By way of a letter on 20 October 2015, the Authority expressed its concerns as to the deficiencies in Mr Maoudis' knowledge of debt solutions. In response to the Authority's expression of concern, Mr Maoudis informed the Authority that he had improved his knowledge of IVAs and bankruptcies.
20. To assess this improvement, the Authority posed a number of scenario-based questions to Mr Maoudis in a telephone interview on 7 April 2016. The Authority considers that the answers given by Mr Maoudis demonstrated that he continued to lack the level of skills and knowledge required to ensure that he complied with regulatory requirements imposed on him. Specifically, Mr Maoudis:
 - a. Failed to identify that a disposable income in excess of £50 per month and being a homeowner were both reasons why a customer would be ineligible for a DRO;
 - b. Failed to identify the advantages and disadvantages of bankruptcy or an IVA as a debt solution model; and
 - c. Failed to identify that a Magistrates' Court fine would not fall within a DRO.
21. To date, Mr Maoudis has not provided evidence to show that he has gained the level of skills and knowledge required of a debt advisor. The Authority considers that Mr Maoudis' lack of knowledge means that Mr Maoudis is unable to comply with the Authority's regulatory requirements, including the requirement that advice has regard to the best interests of the customer. The Authority's view is strengthened by the fact that Mr Maoudis stated before the 7 April 2016 interview that he had improved his knowledge and understanding of IVAs and bankruptcy.

Mr Maoudis' advice process

22. When a new customer contacts Mr Maoudis to obtain assistance with their debts, that customer is first directed to read Mr Maoudis' website. It is only after a customer has

considered the website that Mr Maoudis will discuss potential debt solutions with them; the Authority understands from Mr Maoudis that this discussion is limited to DMPs and full and final settlement plans.

23. The Authority considers that this process is deficient in a number of respects and that there is a real risk of customer detriment – by way of example:
- a. CONC 8.3.2R(1)(a) and (b) require Mr Maoudis to ensure that his advice and actions have regard to the best interests of the customer and are appropriate to the individual circumstances of the relevant customer. Mr Maoudis limits his advice to only two potential debt solutions and has not demonstrated that he has appropriate arrangements in place to ensure that customers receive advice on other potentially available debt solutions. The Authority therefore considers that Mr Maoudis is not meeting these requirements.
 - b. CONC 8.3.2R(2) and (3) require a firm to ensure that customers receive sufficient information about the available options identified as suitable for the customers' needs and that it explains the reasons why the firm considers the available options suitable and other options unsuitable. In circumstances where Mr Maoudis refers customers to his website for information about the range of potentially available debt solutions and then proceeds to advise on only two of them, the Authority does not consider that Mr Maoudis is meeting these requirements.
24. The Authority therefore considers that the process by which Mr Maoudis gives debt advice may lead to a customer being given advice that is not appropriate to their circumstances, resulting in a real risk of customer detriment.

'Advisory board'

25. On 23 November 2015 Mr Maoudis explained to the Authority that in order to fill the gap in his knowledge and provision of debt solutions, he had engaged a number of professionals to assist him (which he later referred to as an 'advisory board'). On 21 March 2016, Mr Maoudis provided more detail about these professionals. In particular Mr Maoudis explained that, should a customer require assistance and expertise about alternative debt solutions or legal advice, these professionals would be able to assist.
26. The Authority understands from Mr Maoudis that the professionals assisting him are doing so on an "ad-hoc" basis; there is no formal arrangement between these professionals and Mr Maoudis. The Authority also understands that there has been limited referral of matters from Mr Maoudis to these professionals. The referrals that have taken place have been for legal and accountancy problems rather than for advice on solutions other than DMPs and full and final settlement plans.
27. In any event, the day-to-day provision of advice to customers remains the responsibility of Mr Maoudis and (even assuming the adequacy of the 'advisory board') referrals can only be made where Mr Maoudis identifies that an alternative debt solution (e.g. an IVA or bankruptcy) may be appropriate. This requires Mr Maoudis to have a certain level of knowledge of the relevant debt solutions. Based on the Authority's interviews with Mr Maoudis, the Authority considers that Mr Maoudis lacks the requisite level of knowledge.
28. The Authority therefore considers that the use of this 'advisory board' will not address its concerns in relation to Mr Maoudis' knowledge or his advice process.

Concerns as to Mr Maoudis' business continuity plan

29. SYSC 3.1.1R requires Mr Maoudis to take reasonable care to establish and maintain such systems and controls as are appropriate to his business. SYSC 3.1.2G(1) states that the nature and extent of the systems and controls which a firm will need to maintain under SYSC 3.1.1R will depend on a variety of factors including the nature, scale and complexity of its business.
30. As Mr Maoudis is the sole debt adviser, the Authority considers that Mr Maoudis must take reasonable care to establish a system by which his business can continue to provide advice to customers in his absence. This is because the nature of Mr Maoudis' business is such that he may be required to provide debt advice to customers following a change in their circumstances.
31. Mr Maoudis submitted a business continuity plan to the Authority on 4 May 2016. Upon review of this business continuity plan, the Authority considers that it is not adequate to ensure continuity of advice to Mr Maoudis' customers in the event of his absence from the business. In particular:
- a. the plan is predominantly limited to not taking on new customers;
 - b. the plan does not address how existing customers will receive continued advice, for example in the event of a change in their circumstances which necessitates a review of their financial position; and
 - c. the plan does not address how Mr Maoudis will deal with customers who have been taken on as DMP customers, but for whom negotiations with creditors are ongoing.
32. The Authority therefore considers that Mr Maoudis is not meeting the requirements of SYSC 3.1.1R.

IMPACT ON THE THRESHOLD CONDITIONS

33. The Authority considers that it cannot ensure that, if the Application were granted, Mr Maoudis would satisfy, and continue to satisfy, the Threshold Conditions: specifically, the Threshold Conditions in paragraphs 2D (Appropriate resources) and 2E (Suitability) of Schedule 6 to the Act.

Appropriate resources

34. The Authority notes that a firm's resources must be appropriate in relation to the regulated activities it seeks to carry on. COND 2.4.2.G(2) states that 'appropriate resources' includes financial and 'non-financial resources' such as human resources, effective means by which to manage risks and any systems, controls, plans or policies that the firm maintains. In this context, the Authority will interpret the term 'appropriate' as meaning sufficient in terms of quantity, quality and availability. Consideration will be given to whether these resources are sufficient to enable the firm to comply with the requirements imposed or likely to be imposed on the firm by the Authority in the course of exercising its functions.

35. The Authority is not satisfied that Mr Maoudis' non-financial resources will be appropriate in relation to the regulated activities he seeks to carry on. The Authority's view arises out of the following:

- a) Mr Maoudis lacks the skills and knowledge that the Authority would expect of someone providing debt advice to customers. In particular, Mr Maoudis lacks knowledge of insolvency-based debt solutions. In light of this, the Authority considers that Mr Maoudis does not have the appropriate non-financial resources (namely human resources) to conduct regulated activities in a manner compliant with regulatory requirements;
- b) Mr Maoudis' advice process is limited to providing advice on DMPs and full and final settlement plans and Mr Maoudis has not demonstrated how he can meet the requirements of CONC 8.3.2R(1)(a) and (b) and CONC 8.3.2R(2) and (3). The Authority would expect a firm with adequate non-financial resources to ensure that procedures were in place to address these obligations; and
- c) Mr Maoudis' business continuity plan is not appropriate to a firm offering debt management solutions as it does not establish a reliable system of ensuring continuity of advice. Mr Maoudis has therefore not demonstrated that he complies with SYSC 3.1.1R. The Authority would expect a firm that has adequate non-financial resources to have proper business continuity measures in place.

36. The Authority is therefore not satisfied that the non-financial resources of Mr Maoudis are appropriate to carry on the regulated activities for which he seeks permission.

Suitability

37. The suitability Threshold Condition requires, amongst other things, that a firm must be fit and proper having regard to all the circumstances, including the need to ensure that its affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers and the integrity of the UK financial system.

38. Mr Maoudis has not satisfied the Authority he is a fit and proper person, having regard to all the circumstances, to carry out the regulated activities for which he has applied for permission. The Authority's view is based on the following:

- a) Mr Maoudis' inadequate knowledge of debt solutions. The Authority is not satisfied that Mr Maoudis has the requisite skills or experience to ensure that his affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers;
- b) the deficiencies in Mr Maoudis' advice process. The Authority considers that, as a result, there is a risk that customers will receive debt advice which is not appropriate to their circumstances; and
- c) the inadequacy of Mr Maoudis' business continuity plan.

39. In the circumstances, the Authority cannot ensure that, were the Application to be granted, Mr Maoudis would satisfy, and continue to satisfy, the suitability Threshold Condition.

PROCEDURAL MATTERS

40. This Final Notice is given under, and in accordance with, section 390(2) of the Act.

Publication

41. 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 Authority must publish such information about the matter to which this notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to Mr Maoudis or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
42. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Authority Contacts

43. For more information concerning this matter generally, contact Sharika Nightingale, Manager, Credit Authorisations Department, at the Authority (direct line: 020 7066 0244 / email: sharika.nightingale@Fca.org.uk).

David Fisher

On behalf of the Regulatory Transactions Committee

ANNEX A

REGULATORY PROVISIONS RELEVANT TO THIS FINAL NOTICE

1. Section 55A(1) of the Act provides for an application for permission to carry on one or more regulated activities to be made to the appropriate regulator. Section 55A(2) defines the "appropriate regulator" for different applications.
2. Section 55B(3) of the Act provides that, in giving or varying permission, imposing or varying a requirement, or giving consent, under any provision of Part 4A of the Act, each regulator must ensure that the person concerned will satisfy, and continue to satisfy, in relation to all of the regulated activities for which the person has or will have permission, the Threshold Conditions for which that regulator is responsible.

Threshold Conditions (COND)

3. The Threshold Conditions that relate to the Application are set out in Part 2 of Schedule 6 to the Act. In brief, the Threshold Conditions are as follows:
 - (1) Paragraph 2B of Schedule 6: Location of offices
 - (2) Paragraph 2C of Schedule 6: Effective supervision
 - (3) Paragraph 2D of Schedule 6: Appropriate resources
 - (4) Paragraph 2E of Schedule 6: Suitability
 - (5) Paragraph 2F of Schedule 6: Business model
4. In exercising its powers in relation to the granting of a Part 4A permission, the Authority has regard to guidance published in the Authority's Handbook, including COND. Provisions relevant to the consideration of the Application include those set out below.

General guidance

5. COND 1.3.2G(2) states that, in relation to Threshold Conditions 2D to 2F, the Authority will consider whether a firm is ready, willing and organised to comply on a continuing basis with the requirements and standards under the regulatory system which will apply to the firm if it is granted Part 4A permission.
6. Under COND 1.3.3AG, in determining the weight to be given to any relevant matter, the Authority will consider its significance in relation to the regulated activities for which the firm has, or will have, permission, in the context of its ability to supervise the firm adequately, having regard to the Authority's statutory objectives. In this context, a series of matters may be significant when taken together, even though each of them in isolation might not give serious cause for concern.
7. COND 1.3.3BG provides that, in determining whether the firm will satisfy, and continue to satisfy, the Threshold Conditions, the Authority will have regard to all relevant matters, whether arising in the United Kingdom or elsewhere.

Threshold Condition 2D: Appropriate Resources

8. COND 2.4.2G(2) states that the Authority will interpret the term 'appropriate' as meaning sufficient in terms of quantity, quality and availability, and 'resources' as including all financial resources (though only in the case of firms not carrying on, or

seeking to carry on, a PRA-regulated activity), non-financial resources and means of managing its resources; for example, capital, provisions against liabilities, holdings of or access to cash and other liquid assets, human resources and effective means by which to manage risks.

9. COND 2.4.2G(3) states that high level systems and control requirements are in SYSC. The Authority will consider whether the firm is ready, willing and organised to comply with these and other applicable systems and controls requirements when assessing if it has appropriate non-financial resources for the purpose of Threshold Condition 2D.
10. COND 2.4.1A UK(4) states that the matters which are relevant in determining whether a firm has appropriate non-financial resources include:
 - (a) the skills and experience of those who manage the firm's affairs; and
 - (b) whether the firm's non-financial resources are sufficient to enable the firm to comply with requirements imposed or likely to be imposed on the firm by the Authority in the course of the exercise of its functions.

Threshold Condition 2E: Suitability

11. COND 2.5.1A UK provides that a firm must be a fit and proper person having regard to all the circumstances, including -
 - (b) the nature (including the complexity) of any regulated activity that the firm carries on or seeks to carry on;
 - (c) the need to ensure that the firm's affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers and the integrity of the UK financial system;
 - (d) whether the firm has complied and is complying with requirements imposed by the Authority in the exercise of its functions, or requests made by the Authority, relating to the provision of information to the Authority and, where the firm has so complied or is so complying, the manner of that compliance;
 - (e) whether those who manage the firm's affairs have adequate skills and experience and act with probity; and
 - (f) whether the firm's business is being, or is to be, managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner.
12. COND 2.5.2G(2) states that the Authority will also take into consideration anything that could influence a firm's continuing ability to satisfy Threshold Condition 2E.
13. COND 2.5.4G(2) states that examples of the kind of general considerations to which the Authority may have regard when assessing whether a firm will satisfy, and continue to satisfy, Threshold Condition 2E include, but are not limited to, whether the firm:
 - (a) conducts, or will conduct, its business with integrity and in compliance with proper standards;
 - (b) has, or will have, a competent and prudent management; and

- (c) can demonstrate that it conducts, or will conduct, its affairs with the exercise of due skill, care and diligence.

14. COND 2.5.6G provides that examples of the kind of particular considerations to which the Authority may have regard when assessing whether a firm will satisfy, and continue to satisfy, this Threshold Condition include, but are not limited to, whether:

- (1A) the firm has made arrangements to put in place an adequate system of internal control to comply with the requirements and standards for which the Authority is responsible under the regulatory system.

Consumer Credit Sourcebook

15. CONC 8.3.2R states that a firm must ensure that:

- (1) all advice given and action taken by the firm or its agent or its appointed representative:
 - (a) has regard to the best interests of the customer;
 - (b) is appropriate to the individual circumstances of the customer; and
 - (c) is based on a sufficiently full assessment of the financial circumstances of the customer;
- (2) customers receive sufficient information about the available options identified as suitable for the customers' needs; and
- (3) it explains the reasons why the firm considers the available options suitable and other options unsuitable.

Senior Management Arrangements, Systems and Controls

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

17. SYSC 3.1.2G(1) states that the nature and extent of the systems and controls which a firm will need to maintain under SYSC 3.1.1R will depend on a variety of factors including:

- (a) the nature, scale and complexity of its business.