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**FINAL NOTICE**

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To: **Mr Steven Moorley**

Date of birth: **1 September 1963**

Individual ref: **SJM01376**

Date: **27 August 2009**

**TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives you, Steven Moorley, final notice about the withdrawal of the approval given to you to perform the controlled functions of CF3 (Chief Executive) and CF8 (Apportionment and oversight):**

**1. ACTION**

- 1.1. The FSA gave you, Steven Moorley, director of Premier Network Group Limited (In Liquidation) (“the Firm”), a Decision Notice dated 27 August 2009 (the “Decision Notice”) which notified you that the FSA had decided to withdraw the approval given to you to perform the controlled functions of CF3 (Chief Executive) and CF8 (Apportionment and Oversight), pursuant to section 63 of the Financial Services and Markets Act 2000 (“the Act”).
- 1.2. You agreed to settle at an early stage of the FSA’s investigation.

- 1.3. The FSA would also have imposed on you a financial penalty of £30,000 in respect of breaches of Statements of Principle 5 and 7 of the FSA's Statements of Principle for Approved Persons ("the Statements of Principle") between 19 July 2006 and 5 November 2008 ("the Relevant Period"), pursuant to section 66 of the Financial Services and Markets Act 2000 ("the Act"), but you provided evidence that imposing such a financial penalty would cause you financial difficulty and threaten your solvency.
- 1.4. Your approval to perform the controlled functions of CF3 (Chief Executive) and CF8 (Apportionment and oversight) was withdrawn on 27 August 2009.

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

- 2.1. While performing the controlled functions of CF1, CF3 and CF8 at the Firm, you failed:
  - (1) to take reasonable care to organise and control the Firm's affairs responsibly and effectively; and
  - (2) to take reasonable steps to ensure that in recommending regulated mortgage contracts the Firm and its Appointed Representatives ("ARs") complied with the relevant requirements and standards of the regulatory system.
- 2.2. More specifically, you failed to put in place adequate systems and controls to monitor and record the activities carried out by the Firm's ARs. Consequently, the Firm's ARs recommended mortgage contracts which were not suitable taking into account clients' needs and circumstances and completed a number of mortgage applications containing fraudulent information resulting in them being removed from lender's panels.
- 2.3. You also failed to ensure that the Firm:
  - (1) handled complaints in compliance with the regulatory requirements;
  - (2) submitted complete and accurate information to the FSA in its regulatory returns; and
  - (3) disclosed to the FSA a matter relating to the Firm which the FSA would have reasonably have expected notice, namely, removal of some of its ARs from lenders' panels.
- 2.4. Your conduct is serious mainly because it exposed customers to the risk of receiving unsuitable advice and allowed the Firm to be used by its ARs for financial crime.
- 2.5. Taking into account the wide ranging nature of the failures referred to in this Notice, the FSA concluded that you failed to demonstrate that you are competent and capable to perform the controlled functions of chief executive (CF3) and apportionment and oversight (CF8) and that your approval to perform those functions should be withdrawn.

- 2.6. The FSA would also have imposed a financial penalty on you for failing to comply with Statement of Principle 5 and Statement of Principle 7 while you performed the controlled functions of CF1 (Director), CF3 (Chief Executive) and CF8 (Apportionment and Oversight) at the Firm during the Relevant Period. However, you provided evidence that imposing such a financial penalty would cause you financial difficulty and threaten your solvency.
- 2.7. The FSA took into account the following steps taken by you which were regarded as mitigating factors:
- (1) you were open and cooperative with the FSA's investigation; and
  - (2) you accepted that there were management and control failures during the relevant period and the Firm ceased conducting new business to mitigate any ongoing risk to customers.

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

- 3.1. The relevant statutory provisions and regulatory requirements are attached at Annex A.

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

#### **Background**

- 4.1. The Firm was a mortgage and general insurance broker which operated a network of ARs ("the Network") and became authorised on 19 July 2006 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.
- 4.2. On 19 July 2006, the Firm was also granted permission to carry on the following regulated activities in relation to non-investment insurance contracts:
- (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.
- 4.3. During the Relevant Period the Firm expanded rapidly, becoming a Network of up to 43 ARs.
- 4.4. The Firm had not been the subject of any previous disciplinary action by the FSA.

- 4.5. You were the Managing Director of the Firm and you performed the controlled functions of CF3 and CF8 at the Firm. As such, you were responsible for the primary management responsibility for conduct of the whole of the business of the Firm, for overseeing the establishment and maintenance of systems and controls, and for dealing with the apportionment of significant responsibilities among the Firm's senior management in such a way that the business and affairs of the Firm could be adequately monitored and controlled by them.

### **Conduct in issue**

#### ***Monitoring, recruitment and training of ARs***

- 4.6. The Firm recruited the majority of its ARs from other networks. As part of the recruitment process, in accordance with the Firm's procedures, you or the other director of the Firm were required to carry out a visit to the AR, take steps to assess their experience and conduct reference/credit checks to ensure their solvency.
- 4.7. A review of the Firm's recruitment files found that while there were procedures in place to recruit advisers to the Network, you failed to ensure that the Firm was following these procedures. In particular, the Firm held no appropriate documentary evidence of advisers' qualifications and the FSA saw no evidence that it had considered the fitness and propriety of the members of the Network.
- 4.8. Under the Firm's training and competence procedures, as part of their initial training, ARs should have attended an induction course and gap analysis should have been carried out to form the basis of a training plan for each individual. You failed to ensure that the Firm retained appropriate records to demonstrate how it had carried out the training, supervision and monitoring of advisers and ARs. The FSA found no evidence on recruitment files that the gap analysis had been completed or that representatives from the Firm had attended any client meetings with inexperienced mortgage advisers. Further, the FSA found no evidence that the Firm had assessed the ARs' potential ongoing training needs or that it had completed formal reviews to ensure that the ARs' training needs were appropriately met. The Firm has also accepted that attendance at planned training sessions was poor and that, in general, there were no consequences to the ARs for failure to attend these sessions. This lack of attention to training and competence left consumers vulnerable to inappropriate mortgage advice.
- 4.9. To identify training needs the Firm relied mainly on file reviews. However, as a result of the systems being used by the ARs to write business, the Firm did not have access to any mortgage applications which did not complete. Consequently the Firm relied on the ARs sending their mortgage files to be reviewed at the application stage. In practice this did not happen and you failed to ensure that the Firm had systems and controls in place to review cases which did not complete or to identify implausible or suspicious circumstances evident from documents on customers' files. That exposed the Firm to being used by ARs and customers to commit financial crime.
- 4.10. As part of the monitoring process, the Firm advised the FSA that generally it undertook regular quarterly meetings with ARs. However you have acknowledged that these meetings had not taken place since February 2008 and that the Firm had no

plans in place for regular contact with its ARs. Its main contact with its ARs was by telephone or by email, and the ARs would only be visited on a reactive basis.

- 4.11. As you hold the CF3 (Chief Executive) and CF8 (Apportionment and Oversight) functions you were ultimately responsible for ensuring that the recruitment, training and monitoring of ARs was carried out in line with the Firm's internal policies and procedures and within the regulatory requirements to ensure that the Firm was satisfied that the advisers/AR firms the Network recruited were fit and proper. You were also responsible for ensuring that compliance with these policies, procedures and requirements was properly documented.

### ***Complaint handling***

- 4.12. The Firm advised its ARs that it was responsible for handling complaints. The Firm made its ARs aware that all complaints were to be passed to the compliance manager at the Firm. The Firm had in place an internal complaints policy which, amongst other things, set out the timeframes in which responses should be made to consumer complaints and what should be included in the responses, including information about the Financial Ombudsman Service ("FOS").
- 4.13. However, you failed to ensure that the Firm followed its internal complaints policy and recorded information accurately on its complaints register. The Firm failed to record the right dates that complaints were received or closed. At least one complaint had not been recorded on the complaints register. You also failed to ensure that the Firm provided correct information to the customers about their ability to refer a complaint to FOS.

### ***Submission of false and misleading information to the FSA***

- 4.14. In the Firm's Retail Mediation Activities Return ("RMAR") submission there was evidence of a lack of understanding of the financial information to be supplied and incorrect data was included which was also not in agreement with the Firm's annual financial statements.
- 4.15. An example of this was that the Firm's assets disclosed in the RMAR included £200,000 for goodwill which did not appear in the statutory accounts. When it transpired that the Firm may not be meeting its capital adequacy requirement the Firm advised the FSA that it held £30,000 in a separate account to cover the deficit. On further investigation it was discovered that these funds were not held in a separate business account but in the name of a family member of yours, who had no relevant business connection to the Firm. You were not aware that such funds needed to be in a named account of the business. You therefore failed to ensure that the Firm provided accurate information to the FSA about its capital position over the period and you admitted that there were errors in the RMAR.

### ***Other matters***

- 4.16. Some ARs of the Firm were removed from lenders' panels of mortgage intermediaries for suspected involvement in the submission of fraudulent mortgage applications. It appears that the Firm was not notified by the ARs of their removal from the lenders' panels. Consequently, the Firm was not in a position to take steps to prevent the submission of other such mortgage applications to other lenders. The FSA considers that your lack of awareness of action taken by lenders against some of the Firm's ARs is symptomatic of inadequate systems and controls at the Firm and of the remote relationship between the Firm and its ARs.
- 4.17. Even where the removal of an AR was drawn to your attention, you failed to ensure that the Firm took appropriate steps to investigate the matter. Also, the FSA would have expected to be notified that one of the Firm's ARs had been removed from the lender's panel and the reason for its removal.

## **5. ANALYSIS OF MISCONDUCT AND THE SANCTION**

- 5.1. The FSA concluded that the misconduct summarised above meant that you failed to take reasonable steps to ensure the business of the Firm for which you were responsible was organised so that it could be controlled effectively and complied with the relevant requirements and standards of the regulatory system in breach of Statements of Principle 5 and 7. The FSA also concluded that, given the wide ranging nature of the failures described in this Notice, you failed to demonstrate that you are competent and capable to perform the controlled functions of chief executive (CF3) and apportionment and oversight (CF8).
- 5.2. The FSA therefore decided to withdraw your individual approval to perform the controlled functions of CF3 and CF8. The FSA also considered whether to impose on you a financial penalty.
- 5.3. 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. In determining whether to impose a financial penalty, and the appropriate level of any such penalty, the FSA has also had regard to Chapter 13 of the Enforcement Manual ("ENF"), the part of the FSA's Handbook setting out the FSA's policy on the imposition of financial penalties which applied during the majority of the Relevant Period
- 5.4. The principal purpose of imposing a financial penalty is to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour (DEPP 6.1.2G).
- 5.5. The FSA will consider the full circumstances of each case when determining whether or not to take action for a financial penalty. DEPP 6.5.2G sets out guidance on a non-exhaustive list of factors that may be of relevance in determining the level of financial penalty. The factors include:
- 5.6. DEPP 6.5.2G(2): The nature, seriousness and impact of the breach in question:

- (1) Although the FSA found no evidence that the conduct in issue was deliberate, we concluded from our analysis that you exercised inadequate management and control over the running of the business, which resulted in you failing to comply with regulatory requirements for a prolonged period of time and exposed the Network to the risk of being used for financial crime.
  - (2) No clients appeared to have suffered any loss as a result of the breaches. However, the FSA considered the widespread nature of the breach which affected all 43 of the Firm's ARs and, therefore, potentially its entire client base.
- 5.7. DEPP 6.5.2G(4): Whether the person on whom the penalty is to be imposed is an individual:
  - (1) The FSA recognises that imposing a financial penalty on you would be likely to cause financial difficulty and threaten your solvency.
- 5.8. DEPP 6.5.2G(5): The size, financial resources and other circumstances of the person on whom the penalty is to be imposed:
  - (1) The FSA was provided with evidence that you do not have adequate financial resources to pay a penalty.
- 5.9. DEPP 6.5.2G(6): The amount of benefit gained or loss avoided:
  - (1) While the FSA has seen no evidence of a deliberate attempt by you to reduce management and compliance costs to increase profits, it is evident that the limited oversight of ARs during a period of rapid expansion was not sufficient and the resources put into compliance monitoring were inadequate. The Firm has now ceased to conduct regulated business.
- 5.10. DEPP 6.5.2G(8): Conduct following the breach:
  - (1) The FSA has taken into account your co-operation with the FSA's investigation and the decision for the Firm to cease conducting regulated activities.
- 5.11. DEPP 6.5.2G(9): Disciplinary record and compliance history:
  - (1) The FSA has taken into account the fact that you have not been the subject of previous disciplinary action by the FSA.
- 5.12. The FSA, having regard to all the circumstances, considered the appropriate level of financial penalty to be £30,000 before any discount for early settlement but you provided evidence that imposing such a financial penalty would cause you financial difficulty and threaten your solvency.

## **6. DECISION MAKER**

- 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. IMPORTANT**

7.1. This Final Notice is given to you in accordance with section 388 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 Chris Walmsley (direct line: 020 7066 5894) of the Enforcement Division of the FSA.

**Tom Spender**  
**Head of Department**  
**FSA Enforcement Division**



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

### **Statutory provisions**

- 1.1. The FSA's statutory objectives, set out in Section 2(2) of the Act, include the reduction of financial crime, maintaining confidence in the financial system and the protection of consumers.

### **Withdrawal of Approval**

- 1.2. Under section 63 of the Act, the FSA may withdraw an approval given under section 59 if it considers that the person in respect of whom it was given is not a fit and proper person to perform the function to which the approval relates.
- 1.3. The module of the FSA Handbook entitled "The Fit and Proper Test for Approved Persons" ("FIT") outlines the main criteria for assessing the fitness and propriety of a candidate for a controlled function. FIT is also relevant in assessing the continuing fitness and propriety of an approved person. The most relevant provision in FIT in this case is in relation to competence and capability (FIT 2.2), which includes an assessment of the individual's competence in carrying out the controlled function that he is performing.
- 1.4. The FSA policy in relation to the withdrawal of an individual's approval is set out in Chapter 9 of the Enforcement Guide ("EG"), which is part of the FSA's Handbook of rules and guidance.
- 1.5. The FSA will consider the all the relevant circumstances of the case when determining whether or not to withdraw an individual's approval. EG 9.8 to 9.14 sets out guidance on a non-exhaustive list of factors that may be of relevance in determining whether to withdraw approval, which include the following:
- (a) EG 9.9(2): Whether the individual is fit and proper to perform functions in relation to regulated activities;
  - (b) EG 9.9(3)(a): Whether, and to what extent, the approved person has failed to comply with the Statements of Principle (as to which see paragraphs 1.7 to 1.9 below); and
  - (c) EG 9.9(7): The nature of the controlled function the approved person is (or was) performing, the nature and activities of the firm concerned and the markets in which he operates.

### **Financial Penalty**

- 1.6. The FSA has the power, pursuant to section 66 of the Act, to impose a financial penalty of such amount as it considers appropriate where the FSA considers an

approved person has failed to comply with a Statement of Principle issued under section 64 of the Act.

- 1.7. 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, constitutes a failure to comply with them. They also describe the factors to be taken into account by the FSA in determining whether an approved person’s conduct complies with a particular Statement of Principle.
- 1.8. APER 3.1.3G states that, when establishing compliance with, or 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.
- 1.9. In this case, the FSA considers the most relevant Statements of Principle to be Statement of Principle 5 and Statement of Principle 7. Statement of Principle 5 requires that an approved person performing a significant influence function take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled function is organised so that it can be controlled effectively. Statement of Principle 7 requires 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.
- 1.10. The FSA’s approach to taking disciplinary action is set out in Chapter 2 of EG. The FSA has also had regard to the appropriate provisions of the Enforcement Manual (“ENF”) which was in force until 27 August 2007, and therefore during part of the Relevant Period. Imposing financial penalties and public censures shows that the FSA is upholding regulatory standards and helps to maintain market confidence, promote public awareness of regulatory standards and deter financial crime. An increased public awareness of regulatory standards also contributes to the protection of consumers.
- 1.11. The FSA’s policy on the imposition of financial penalties is set out in chapter 6 of DEPP which is a module of the FSA’s Handbook of rules and guidance. The principal purpose of imposing a financial penalty is to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour (DEPP 6.1.2G).
- 1.12. The FSA will consider the full circumstances of each case when determining whether or not to take action for a financial penalty. DEPP 6.2.1G sets out guidance on a non-exhaustive list of factors that may be of relevance in determining whether to take action for a financial penalty, which include the following:
  - (a) DEPP 6.2.1G(1): The nature, seriousness and impact of the suspected breach

- (b) DEPP 6.2.1G(2): The conduct of the person after the breach
  - (c) DEPP 6.2.1G(3): The previous disciplinary record and compliance history of the person
  - (d) DEPP 6.2.1G(4): FSA guidance and other published materials
  - (e) DEPP 6.2.1G(5): Action taken by the FSA in previous similar cases
- 1.13. The FSA will consider all the relevant circumstances of a case when it determines the level of financial penalty. DEPP 6.5.2G sets out guidance on a non-exhaustive list of factors that may be of relevance when determining the amount of a financial penalty, which include:
- (a) DEPP 6.5.2G(1): Deterrence
  - (b) DEPP 6.5.2G(2): The nature, seriousness and impact of the breach in question;
  - (c) DEPP 6.5.2G(4): Whether the person on whom the penalty is to be imposed is an individual;
  - (d) DEPP 6.5.2G(5): The size, financial resources and other circumstances of the person on whom the penalty is to be imposed;
  - (e) DEPP 6.5.2G(6): The amount of benefit gained or loss avoided;
  - (f) DEPP 6.5.2G(8): Conduct following the breach;
  - (g) DEPP 6.5.2G(9): Disciplinary record and compliance history;
  - (h) DEPP 6.5.2.G(10): Other action taken by the FSA;
  - (i) DEPP 6.5.2G(12): FSA guidance and other published materials; and
  - (j) DEPP 6.5.2G(13): The timing of any agreement as to the amount of the penalty.