
FIRST SUPERVISORY NOTICE

To: **Allegiance Mortgages Limited**

Of: **12 Royal Crescent
Cheltenham
GL50 3DA**

Dated: **30 April 2008**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (the "FSA") has taken the following action

1. ACTION

1.1 For the reasons listed below and pursuant to section 45 of the Financial Services and Markets Act 2000 (the "Act"), the FSA has decided to vary the permission granted to Allegiance Mortgages Limited ("Allegiance Mortgages"), pursuant to Part IV of the Act ("Allegiance Mortgages' Permission") by removing all regulated activities with immediate effect. Accordingly, Allegiance Mortgages' Permission no longer includes the following regulated activities:

- (a) advising on investments (excluding pension transfers and pension opt outs);
- (b) advising on regulated mortgage contracts;
- (c) arranging deals in investments;
- (d) arranging regulated mortgage contracts;
- (e) making arrangements with a view to regulated mortgage contracts;
- (f) making arrangements with a view to transactions in investments, and
- (g) agreeing to carry on a regulated activity.

1.2 The FSA has further decided to vary Allegiance Mortgages' Permission by including the following requirements, namely that within 14 days Allegiance Mortgages must:

- (i) advise in writing all clients for its regulated activities (including those of its appointed representatives, Allegiance Insurance Services and Allegiance Packaging) that Allegiance Mortgages is no longer permitted by the FSA to carry on regulated activities; and
- (ii) provide the FSA with a copy of the written advice sent to all clients for Allegiance Mortgages' regulated activities pursuant to (i) above, together with a list of all clients to whom such advice has been sent.

2. REASONS FOR ACTION

Summary

- 2.1 The FSA has concluded, on the basis of the facts and matters described below, that Allegiance Mortgages' conduct has not met the requirements of the FSA's Principles for Businesses and that Allegiance Mortgages is failing to satisfy the threshold conditions set out in Part 1 of Schedule 6 to the Act (the "threshold conditions") in that, in the opinion of the FSA, Allegiance Mortgages' resources are not adequate in relation to the regulated activities it has permission to carry on and that Allegiance Mortgages is not a fit and proper person as it has failed to conduct its business in compliance with proper standards. Specifically, Allegiance Mortgages has failed to: satisfy three County Court Judgments (CCJ) totalling £3,729, or notify the FSA of these CCJs, complete its Retail Mediation Activities Returns ("RMAR") accurately or satisfy the FSA that it has competent and prudent management.
- 2.2 The FSA also considers, on the basis of those facts and matters, that it is necessary, in order to protect the interests of consumers, for the action specified above to take immediate effect.

Relevant Principles

- 2.3 Principle 4 requires a firm to maintain adequate resources.
- 2.4 Principle 11 requires a firm to deal with its regulator in an open and cooperative way, and to disclose to the FSA appropriately anything relating to the firm of which the FSA would reasonably expect notice.

Relevant Rules

- 2.5 FSA Rule 4.2.1 in the Prudential Sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries ("MIPRU") section of the FSA Handbook of rules and guidance (the "FSA Handbook"), requires that:

"A firm must at all times ensure that it is able to meet liabilities as they fall due."

- 2.6 MIPRU 4.2.2 R states that:

"A firm must at all times maintain capital resources equal to or in excess of its

relevant capital resources requirement."

2.7 MIPRU 4.2.11R (1) states that, where a firm carrying on insurance mediation activity or home finance mediation activity (and no other regulated activity) does not hold client money or other client assets in relation to these activities, its capital resources requirement is the higher of:

- (a) £5,000; and
- (b) 2.5% of the annual income from its insurance mediation activity or home finance mediation activity (or both).

2.8 FSA Rules 15.3.1 (1) and (3) in the Supervision Manual ("SUP"), which is part of the FSA Handbook, require that:

"a firm must notify the FSA immediately it becomes aware, or has information which reasonably suggests, that any of the following has occurred, may have occurred or may occur in the foreseeable future:

- (1) the firm failing to satisfy one or more of the threshold conditions; or
- (3) any matters which could affect the firm's ability to continue to provide adequate services to its customers and which could result in serious detriment to a customer of the firm."

2.9 SUP 15.3.15 R states that:

"A firm must notify the FSA immediately if:

- (1) civil proceedings are brought against the firm and the amount of the claim is significant in relation to the firm's financial resources or its reputation."

2.10 SUP 15.6.1 R states that:

"A firm must take reasonable steps to ensure that all information it gives to the FSA in accordance with a rule in any part of the Handbook (including Principle 11) is:

- 1) factually accurate or, in the case of estimates and judgments, fairly and properly based after appropriate enquiries have been made by the firm, and
- 2) complete, in that it should include anything of which the FSA would reasonably expect notice."

Relevant Statutory Provisions

2.11 The FSA's regulatory objectives, established in section 2(2) of the Act, include the protection of consumers.

2.12 By section 45 of the Act, the FSA is authorised:

- to vary an authorised person's permission, where it appears to the FSA that such person is failing to satisfy the threshold conditions;

- to vary such permission by removing a regulated activity from those for which the permission is given;
- to vary an authorised person's permission, where it is desirable to exercise that power in order to protect the interests of consumers; and
- to include any provision in the permission as varied that could be included if a fresh permission were being given in response to an application under Section 40 of the Act, including the imposition pursuant to section 43 of the Act of such requirements as the FSA considers appropriate.

2.13 Section 53(3) of the Act allows such a variation to take effect immediately if the FSA reasonably considers that it is necessary for the variation to take effect immediately.

Relevant Regulatory Provisions

2.14 In exercising its power to vary a Part IV permission, the FSA must have regard to the relevant regulatory provisions and guidance, including the provisions and guidance contained in the FSA's Handbook of Rules and Guidance (the "Handbook"), and also, in particular, the Enforcement Guide ("EG"). The main considerations in relation to the action specified above are set out below.

EG 8 - The FSA's policy for exercising its own-initiative power to vary a Part IV permission

2.15 EG 8.1 G provide that the FSA will have regard to its regulatory objectives and the range of regulatory tools that are available to it.

2.16 EG 8.2 G provides that the FSA will take formal action affecting the conduct of a firm's commercial business only if that business is being conducted in such a way that the FSA judges it necessary to act in order to address the consequences of non-compliance with the Act, the Principles for Businesses and other rules.

2.17 EG 8.5 G provides that the circumstances in which the FSA will consider exercising its power include where the FSA has serious concerns that the authorised person has breached requirements imposed on it by or under the Act (including Principles and rules) and the breaches are material in number or individual seriousness. EG 8.5 G (1) (a) specifies that the FSA will consider exercising its own-initiative power where a firm's financial resources appear to be inadequate. EG 8.5 G (1) (b) (iii) specifies that the FSA will consider exercising its own-initiative power where a firm has breached requirements imposed on it, for example in respect of disclosure or notification requirements, and the breaches are material in number or individual seriousness.

- 2.18 EG 8.9 G includes among the factors which will determine whether the urgent exercise of the FSA's own-initiative power is an appropriate response to serious concerns, the extent of any loss or risk of loss or other adverse effect on consumers and the steps the authorised person has taken or is taking to address the issue. In addition, in considering whether to exercise its urgent own-initiative powers, the FSA will also take into consideration the nature and extent of false or inaccurate information provided by the firm and the impact of the information on the FSA's view of the firm's compliance with the regulatory requirements and the firm's suitability to conduct regulated activities. The FSA will also have regard to whether the information appears to have been provided in an attempt to knowingly mislead the FSA, rather than through inadvertence.

Guidance concerning the relevant Threshold Conditions ("COND")

COND 2.4 - Threshold Condition 4: Adequate resources (paragraph 4, Schedule 6 to the Act)

- 2.19 COND 2.4.1 D (1) reproduces the relevant statutory provision that the resources of the person concerned must, in the opinion of the FSA, be adequate in relation to the regulated activities that he seeks to carry on, or carries on.
- 2.20 COND 2.4.1 D (2) permits the FSA, when forming its opinion as to whether the resources of an authorised person are adequate in relation to the regulated activities that he carries on, to have regard to the provision he makes in respect of liabilities (including contingent and future liabilities).
- 2.21 COND 2.4.4 G (2)(c)(vii) states that the FSA, when assessing whether a firm will satisfy and continue to satisfy Threshold Condition 4, will have regard to whether the firm has within the last ten years, failed to satisfy a judgment debt under a court order, whether in the United Kingdom or elsewhere.
- 2.22 COND 2.4.4 G (3) requires the FSA only to take into account relevant matters which are material in relation to the regulated activities for which the authorised person has permission.

COND 2.5 - Threshold Condition 5: Suitability (paragraph 5, Schedule 6 to the Act)

- 2.23 COND 2.5.1 D reproduces the relevant statutory provision that the person concerned must satisfy the FSA that he is a fit and proper person having regard to all the circumstances, including, among other things, the need to ensure that his affairs are conducted soundly and prudently.
- 2.24 COND 2.5.4 G (2)(a) and (b) requires the FSA, when forming its opinion as to whether an authorised person is conducting its affairs soundly and prudently, to have regard to relevant matters, including whether it conducts its business with integrity and in compliance with proper standards and whether it has, or will have, competent and prudent management.
- 2.25 COND 2.5.4 G (3) requires the FSA only to take into account relevant matters which are significant in the context of the suitability of the firm.

2.26 COND 2.5.6 G permits the FSA, when forming its opinion as to whether an authorised person is conducting its business with integrity and in compliance with proper standards, to have regard to relevant matters, including whether:

- "(1) the firm has been open and co-operative in all its dealings with the FSA and is ready and willing to comply with the requirements and standards under the regulatory system";
- "(2) the firm has been convicted, or is connected with a person who has been convicted, of any criminal offence; this must include, where provided for by the Exceptions Order to the Rehabilitation of Offenders Act 1974, any spent convictions; particular consideration will be given to offences of dishonesty, fraud, financial crime.....";
- "(4) the firm has contravened, among other things, the requirements of the regulatory system, which includes the threshold conditions and the FSA Principles and other rules".

Facts and matters relied on

2.27 Allegiance Mortgages became authorised by the FSA on 31 October 2004 to carry on mortgage advisory business, and was permitted from 14 January 2005 to carry on insurance mediation business. Allegiance Mortgages' sole director and only approved person is Mr Graham John Cole.

2.28 Allegiance Mortgages has failed to satisfy the following CCJs made against it:

- on 16 May 2007, made in the sum of £2,175;
- on 11 September 2007, made in the sum of £1,136, and
- on 10 January 2008, made in the sum of £418.

2.29 Allegiance Mortgages failed to notify the FSA of these CCJs at any stage, or account for the CCJs as liabilities on the balance sheets included in its RMAR for the period ended 1 October 2007, despite there being a clear requirement to do so.

2.30 Allegiance Mortgages has repeatedly submitted RMARs to the FSA with inaccurate and misleading information. Specifically, in addition to failing to reflect the CCJs detailed above in its balance sheet, Allegiance Mortgages has failed to provide genuine financial information in any of its RMARs. Allegiance Mortgages has also failed to use the correct accounting reference date and the information detailed in the balance sheet contained within the RMAR for the period ended 1 April 2006 bears no resemblance to the balance sheet in its accounts for the year ended 31 May 2006 as filed by Allegiance Mortgages at Companies House, which showed that at that date, Allegiance Mortgages had capital resources of £5,611 below the limit required under the FSA's rules.

2.31 The FSA has become aware of material adverse information about Mr Cole, which was not disclosed to the FSA in Allegiance Mortgages' applications for authorisation and individual approval, by either Mr Cole or Allegiance Mortgages.

Having been granted approval, Mr Cole was convicted of further offences and also became the subject of CCJs which neither he nor Allegiance Mortgages notified to the FSA.

The information not disclosed or notified by Allegiance Mortgages or Mr Cole includes:

- that Mr Cole was convicted on 29 September 1980 at Cheltenham Magistrates Court of attempted theft, for which he was fined £50;
- that Mr Cole was convicted on 29 October 1987 at Cheltenham Magistrates Court of:
 - theft, for which he was fined £100;
 - three counts of obtaining property by deception, for which he was fined a total of £300 and ordered to pay compensation of £952.25;
- that Mr Cole was convicted on 4 April 2005 at North Gloucestershire Magistrates Court of: driving a motor vehicle with excess alcohol, for which he was fined £220 and ordered to pay costs of £40. Mr Cole also had his driving licence endorsed and was disqualified from driving for 24 months (disqualification to be reduced by 6 months on successful completion of driver rehabilitation course);
- that Mr Cole was convicted on 3 June 2005 at Cheltenham Magistrates Court of:
 - 3 counts of driving whilst disqualified, for which he was sentenced to 14 weeks imprisonment to run concurrently and had his driving license endorsed;
 - driving a motor vehicle with excess alcohol, for which he had his driving licence endorsed, was disqualified from driving for 3 years, and sentenced to 14 weeks imprisonment to run concurrently;
 - 3 counts of using a vehicle whilst uninsured, for which he had his driving licence endorsed;
- on 22 August 2005, a CCJ was made against Mr Cole in the sum of £9,708, which to date has not been satisfied; and
- on 7 March 2007, a CCJ was made against Mr Cole in the sum of £27,300.26, which to date has not been satisfied.

2.32 Mr Cole has also submitted numerous other regulatory applications in which he failed to disclose, where applicable, the adverse matters detailed above.

Conclusions

2.33 The facts and matters described above lead the FSA, having regard to its regulatory objectives which include the protection of consumers, to the following conclusions:

- Allegiance Mortgages has failed to demonstrate compliance with MIPRU 4.2.1R and has breached Principle 4, by failing to meet liabilities as they have fallen due, as it has failed to satisfy three CCJs totalling £3,729 made against it;
- this failing is material in relation to the regulated activities for which Allegiance Mortgages has permission and it therefore fails to satisfy Threshold Condition 4 (Adequate Resources);
- Allegiance Mortgages has repeatedly submitted RMARs to the FSA which contain inaccurate and misleading information, in breach of SUP 15.6.1R and Principle 11;
- in completing numerous regulatory application forms, including the applications for authorisation and individual approval in relation to Allegiance Mortgages, Mr Cole has repeatedly failed to disclose material adverse information despite there being a clear requirement to do so. As a result, the FSA was denied the opportunity of making a fully informed assessment of Allegiance Mortgages' suitability to be authorised to conduct regulated activities and Mr Cole's fitness and propriety to be approved to perform controlled functions;
- following the granting of authorisation and approval, neither Allegiance Mortgages nor Mr Cole notified the FSA that he was the subject of further criminal proceedings or that CCJs had been made against him and Allegiance Mortgages, in breach of SUP 15.3.1R (1) and (3) and Principle 11. In particular, neither Allegiance Mortgages nor Mr Cole notified the FSA of the 3 June 2005 convictions despite Mr Cole being sentenced to 14 weeks imprisonment. Given that Mr Cole is the only director and approved person at Allegiance Mortgages, it is of serious concern to the FSA that Allegiance Mortgages' was permitted to conduct regulated activities whilst he was imprisoned;
- it therefore appears that Mr Cole repeatedly chose not to disclose or notify adverse information to the FSA, which indicates a pattern of dishonesty and a lack of integrity. Given the significance of Mr Cole's role within Allegiance Mortgages, these matters are material in relation to Allegiance Mortgages' permitted regulated activities and it therefore fails to satisfy Threshold Condition 5 (Suitability), in that it does not have competent and prudent management;
- the above failings present a risk to the FSA's consumer protection objective. Appropriate action is necessary to help provide protection to consumers;
- the risk of adverse effect on consumers arising from Allegiance Mortgages' failings, which are material breaches of requirements imposed upon Allegiance Mortgages by the FSA's rules, causes the FSA to have very serious concerns about Allegiance Mortgages such that the exercise of the FSA's own-initiative power to vary Allegiance Mortgages' permission with immediate effect is an appropriate response to those concerns; and

- specifically, the variation of Allegiance Mortgages' permission should take immediate effect to address the FSA's serious concerns detailed above.

3. DECISION MAKER

The decision which gave rise to the obligation to give this Supervisory Notice was made by a panel of the Regulatory Decisions Committee.

4. IMPORTANT

- 4.1 This Supervisory Notice is given to you in accordance with section 53(4) of the Act. The following statutory rights are important.

The Tribunal

- 4.2 You may refer this matter to the Financial Services and Markets Tribunal ("the Tribunal"). Under section 133 of the Act, you have 28 days from the date you were sent this Supervisory Notice to refer the matter to the Tribunal or such other period as specified in the Tribunal Rules or as the Tribunal may allow. A reference to the Tribunal is made by way of a written notice signed by you and filed with a copy of this Notice. The Tribunal's address is: 15-19 Bedford Avenue, London WC1B 3AS (telephone 020 7612 9700). The detailed procedures for making a reference to the Tribunal are contained in section 133 of the Act and the Tribunal Rules.
- 4.3 You should note that the Tribunal Rules provide that at the same time as filing a reference notice with the Tribunal, you must send a copy of the notice to the FSA. Any copy notice should be sent to Lehong Mac at the FSA, 9th Floor, 25 The North Colonnade, Canary Wharf, London E14 5HS.

Representations

- 4.4 You have the right to make written and oral representations to the FSA. If you wish to make written representations you must do so by 4 June 2008 or such later date as may be permitted by the FSA. Written representations should be made to the Regulatory Decisions Committee and sent to Daniel Lewsey, Regulatory Decisions Committee Professional Support Services. The Regulatory Decisions Committee Professional Support Services' address is: 25 The North Colonnade, Canary Wharf, London E14 5HS. If you wish to make oral representations, you should inform Daniel Lewsey by 12 May 2008.

Confidentiality and publicity

- 4.5 You should note that this Supervisory Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining advice on its contents). You should also note that section 391 of the Act requires the FSA when the Supervisory Notice takes effect, to publish such information about the matter as it considers appropriate.

FSA contacts

- 4.6 If you have any questions regarding the procedures of the Regulatory Decisions Committee, you should contact either Daniel Lewsey (direct line: 020 7066 7468/fax: 020 7066 7469) or Jackie Noonan, RDC Professional Support Services (direct line: 020 7066 3074/fax: 020 7066 3075).
- 4.7 For more information concerning this matter generally, you should contact Lehong Mac at the FSA (direct line: 020 7066 5742/fax: 020 7066 1459).

Tim Herrington
Chairman, Regulatory Decisions Committee