
FIRST SUPERVISORY NOTICE

To: **MJT Mortgages**
Of: **30 Imperial Square**
Cheltenham
Gloucestershire
GL50 1QZ

Dated: **24 March 2005**

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

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 you, Michael John Timberlake, trading as MJT Mortgages, pursuant to Part IV of the Act (“the Permission”) by removing all regulated activities with immediate effect. Accordingly, the Permission no longer includes the following regulated activities:

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

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

- (i) advise in writing all clients for your regulated activities that you are no longer permitted by the FSA to carry on regulated activities;
- (ii) provide the FSA with a copy of the written advice sent to all clients for your 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

The FSA has concluded, on the basis of the facts and matters described below, that you are failing to satisfy the threshold conditions set out in Schedule 6 to the Act (“the threshold conditions”) in that the FSA is not satisfied that you are a fit and proper person having regard to all the circumstances. That is because, in the opinion of the FSA, you have failed to conduct your business with integrity. Further, your conduct has not met the requirements of Principle 11 under which firms must co-operate with the FSA.

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 Statutory Provisions

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

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;
- 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.

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 Guidance

In exercising its power to vary a Part IV permission, the FSA must have regard to guidance published in the FSA Handbook. The main considerations in relation to the action specified above are set out below.

ENF 3.5 - The FSA's policy for exercising its own-initiative power to vary a Part IV permission

Paragraph 3.5.2 requires the FSA to have regard to its regulatory objectives and the range of regulatory tools that are available to it.

Paragraph 3.5.3 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 and the Principles for Businesses.

Paragraph 3.5.8 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.

Paragraph 3.5.13 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.

Guidance concerning the relevant threshold condition

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

Paragraph 2.5.1 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.

Paragraph 2.5.4(2)(a) 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.

Paragraph 2.5.4(3) requires the FSA only to take into account relevant matters which are significant in the context of the suitability of the firm.

Paragraph 2.5.6 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:

- 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;

- the firm has been convicted of any unspent offence involving, among other things, fraud, theft, false accounting or other dishonesty; where relevant, any spent convictions excepted for this purpose under the Rehabilitation of Offenders Act 1974, will be taken into consideration;
- 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.

Relevant Principle

Principle 1 of the FSA's Principles for Businesses requires that a firm must conduct its business with integrity.

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.

Facts and matters relied on

MJT Mortgages is a sole trader mortgage and general insurance intermediary, of which you are the only principal and approved person.

You have been authorised by the FSA since 31 October 2004, following the consideration of your application for authorisation which disclosed no adverse information. You failed to disclose in your application for authorisation, or subsequently, that Michael John Timberlake:

- was made bankrupt in 1992 and discharged in 1995;
- was convicted of four counts of fraud and kindred offences on 2 February 1996, for which he was sentenced to sixty hours community service and given a probation order lasting twelve months;
- had incurred liabilities to customers of £5,587,120 in connection with a financial scheme known as "Invest to Loan", and
- has three unsatisfied county court judgments against him which total £9,339.

Further, since your authorisation Michael John Timberlake entered into an Individual Voluntary Arrangement, on 19 November 2004, relating to debts totalling £5,587,120. You did not notify the FSA of this arrangement.

Conclusions

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:

- by failing to disclose material adverse information to the FSA you prevented the FSA from making a fully informed assessment of your fitness to be authorised to conduct regulated activities, you have breached Principles 1 and 11;
- that failure is material in relation to your permitted regulated activities and you

therefore fail to satisfy Threshold Condition 5: Suitability;

- the extent to which you initially misled the FSA about your circumstances and failed to advise the FSA of subsequent material facts, causes the FSA to have very serious concerns about you such that the exercise of the FSA's own-initiative power to vary the Part IV permission of MJT Mortgages with immediate effect is an appropriate response to those concerns.

3. DECISION MAKER

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

4. IMPORTANT

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

The Tribunal

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.

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 Andrew Wilson at the FSA, 9th Floor, 25 The North Colonnade, Canary Wharf, London E14 5HS.

Representations

You have the right to make written and oral representations to the FSA (whether or not you refer this matter to the Tribunal). If you wish to make written representations you must do so by 26 April 2005 or such later date as may be permitted by the FSA. Written representations should be made to the Regulatory Decisions Committee and sent to Jane Horncastle, Regulatory Decisions Committee Secretariat. The Regulatory Decisions Committee Secretariat's address is: 25 The North Colonnade, Canary Wharf, London E14 5HS. If you wish to make oral representations, you should inform Jane Horncastle not less than 5 business days before 29 April 2005.

Confidentiality and publicity

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

If you have any questions regarding the procedures of the Regulatory Decisions Committee, you should contact either Jane Horncastle (direct line: 020 7066 3200/fax: 020 7066 3201), or Brian Whitbread, Head of the Regulatory Decisions Committee Secretariat (direct line: 020 7066 3202/fax: 020 7066 3203).

For more information concerning this matter generally, you should contact Andrew Wilson at the FSA (direct line: 020 7066 5170/fax: 020 7066 9720).

Tim Herrington
Chairman, Regulatory Decisions Committee