Financial Services Authority

FINAL NOTICE

Celtic Business Services Ltd
The Baker Suite
Grover House
Grover Walk
Corringham
Essex
SS17 7LS

12 October 2012

ACTION

1. By an application dated 23 August 2011("the Application") Celtic Business Services Ltd ("CBS") applied under section 40 of the Financial Services and Markets Act 2000 ("the Act") for Part IV permission to carry on the regulated activities of:

    i. advising on regulated mortgage contracts;

    ii. arranging (bringing about deals) in regulated mortgage contracts;

    iii. making arrangements with a view to regulated mortgage contracts;

    iv. advising on investments in relation to non-investment insurance contracts;

    v. arranging (bringing about) deals in investments in relation to non-investment insurance contracts;

    vi. making arrangements with a view to transactions in investments in relation to non-investment insurance contracts;

    vii. dealing as agent in non-investment insurance contracts; and

    viii. assisting in the administration and performance of non-investment insurance contract.

2. CBS will have two principals and two advisers – Trevor Alan Oakley ("Mr Oakley") and Noel Joseph Andrew Fox ("Mr Fox"). In addition to applying for the Part IV permission, the firm submitted an application for individual approval for Mr Oakley to hold CF1 (Director), CF10 (Compliance Oversight Function), CF11 (Money Laundering Reporting Function), CF30 (Customer Function) and the RIM function (person responsible for insurance mediation). The firm applied for approval for Mr Fox for the same functions, except the RIM function.

3. The Application is incomplete.

4. For the reasons listed below, the FSA has refused the Application.

SUMMARY OF REASONS

5. By its Warning Notice dated 7 August 2012 ("the Warning Notice") the FSA gave notice that it proposed to refuse the Application and that CBS was entitled to make representations to the FSA about the proposed action.

6. As no representations have been received by the FSA from CBS within the time allowed by the Warning Notice, the default procedures in paragraph 2.3.2 of the FSA's Decision Procedure and Penalties Manual apply, permitting the FSA to treat the matters referred to in its Warning Notice as undisputed and, accordingly, to give a Decision Notice.

7. By its Decision Notice dated 18 September 2012 ("the Decision Notice"), the FSA gave CBS notice that it had decided to take the action described above.

8. Under section 133(1) of the Act, CBS had 28 days from the date the Decision Notice was given to refer the matter to the Upper Tribunal (formerly known as the Financial Services and Markets Tribunal). No referral was made to the Upper Tribunal within this period of time or to date.

9. Under section 390(1) of the Act, the FSA, having decided to refuse the Application and there having been no reference of that decision to the Tribunal, must give CBS Final Notice of its refusal.

10. CBS has failed to provide the information required by the FSA and, in the absence of the information sought, the FSA cannot ensure that CBS will satisfy, and continue to satisfy, the threshold conditions set out in Schedule 6 of the Act. The Application does not contain sufficient information about CBS's business to allow the FSA to be satisfied that CBS will be able to meet and continue to meet threshold conditions 4 (Adequate Resources) and 5 (Suitability). Further, the information provided gives rise to significant concerns about the firm's ability to satisfy those conditions. The FSA considers that:

    i. the information provided by the firm regarding its business plan, the experience and competence of its directors and its compliance arrangements is incoherent and incomplete, such that the FSA is unable to ensure that its resources will be and continue to be adequate;

    ii. the firm, through its failure to disclose matters relevant to the fitness and propriety of Mr Oakley, has consistently failed to be open and

co-operative in its dealings with the FSA, such that the FSA considers that it is not a fit and proper person;

iii. the FSA considers that Mr Oakley is not a fit and proper person to conduct the regulated activities in respect of which his approval is sought by the firm; and

iv. given the extent of Mr Oakley's control of and influence over the firm, the fact that he is not considered to be a fit and proper person lends weight to the FSA's conclusion that the firm itself is not a fit and proper person.

DEFINITIONS

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

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

"the FSA" means the Financial Services Authority

FACTS AND MATTERS

Background

12. CBS seeks Part IV permission to advise on and arrange deals in mortgages and general insurance from a limited number of providers. CBS intends to carry out business with both commercial and retail customers. The firm states that it intends to conduct face-to-face sales, visiting clients at their home or their business address.

13. As per a Key Facts document provided to the FSA at an early stage in the correspondence concerning the Application, the firm does not intend to offer customers advice on the suitability of the products that it offers.

The firm's regulatory business plan

14. As part of the Application, CBS submitted to the FSA a completed application form headed 'Supplement for firms selling home finance and non-investment insurance contracts' ("the application form").

15. Section 1 of the application form is headed 'Regulatory business plan'. Section 1.1 asks the applicant firm for background information, including whether it has identified a particular business opportunity or identified a specific customer base; any long-term strategy and expansion plans for the business generally; what experience the principals of the applicant firm have of the type of regulated activities the applicant firm wishes to carry on; and the background and experience of all the individuals performing significant influence controlled functions, including employment background. The form requires applicants to attach copies of the certificates for the relevant qualifications/examinations of such individuals. The firm's response was as follows:

"*both Mr T Oakley and Mr N Fox have worked within the financial industrail for over 25 years* [sic]"

16. Section 1.9 of the application form asks the applicant firm to set out the main business risks for the applicant and how it intends to manage these risks. CBS replied as follows:

    "pure protection life insurance key man insurance in force we do not consider we have competitors we are a will be a small company [sic]"

17. Section 1.10 asks the applicant whether it will have any branches in the UK that intend conducting regulated activities. CBS answered *"No"* to this question.

18. On 20 October 2011, the FSA sought more information about the firm's business plan, asking how many clients the firm currently had, whether the number of clients would increase after authorisation and, if so, how. The firm responded that it had an existing client bank for non-regulated business and that, once FSA approval had been granted, it would purchase a client bank from a mortgage and general insurance broker who was no longer trading, as well as growing the business from existing clients. It did not provide the number of existing or projected clients.

19. In further correspondence with the FSA, on 26 October the firm stated that its existing client bank numbered 150 and that the firm wished to increase this number to 500 during the first 12 months. The firm's explanation for how it would cope with this increase was that it "*would employ extra staff*".

20. In a telephone discussion with Mr Oakley on 23 November, the FSA sought from the firm more detail of how it intended to conduct its business. It was agreed that the firm would resubmit section 1 of the application form. On the same day, the firm resubmitted section 1. It had made no changes, apart from to answer "*Yes"* to the question at 1.10 asking whether the firm would have any branches in the UK that intended to conduct regulated activities. The firm gave the following details in response to this question:

    "Mortgages will be regulated as per the IDD we will do give advice

    Life insurance and general insurance the KFI are sent direct to the clients from the insurance companies we will not give advice [sic]"

21. Notwithstanding that the amended form appeared to state that the firm intended to give advice in respect of its mortgage business, the firm stated in the email to which the form was attached that it did not intend to give advice on either mortgages or general insurance. The firm did not provide the FSA with any further substantive information about its business plan. In terms of the background, experience and qualifications of Mr Oakley and Mr Fox, the information provided by the firm is set out below in the section of this notice dealing with the firm's governing body.

The firm's governing body

22. On 20 October 2011, the FSA requested a list of personnel and the experience/qualifications held by CBS staff. The firm replied as follows:

    "Trevor Oakley – 31 yrs experience in mortgage and financial services industry at Director level. Currently authorised by the FSA and previously by MCCB and FIMBRA.

Noel Fox – 38 yrs experience in banking and financial services industry, having held senior positions up to board level. Previously authorized by the FSA."

23. On 10 November, the FSA sought information from the firm on:

    i. the due diligence conducted on the directors;

    ii. evidence to demonstrate their competence to carry out CF1 functions and to give advice on mortgages and general insurance; and

    iii. how Mr Fox had kept up his regulatory knowledge since 2008 when he was last authorised.

24. On 15 November, Mr Oakley replied on behalf of CBS. In relation to due diligence on the directors, he stated that they met once a week to go over cases, and that Mr Fox had a release from his previous company to act for CBS. Also, Mr Fox had been to a number of meetings with Mr Oakley at clients' houses. In relation to competency, Mr Oakley reiterated that he had 31 years' experience in the industry and Mr Fox 38 years' experience and that both individuals had previously been authorised by the FSA and other regulators.

25. In further correspondence on 21 November, the FSA asked for evidence of the directors' competencies. On 22 November, Mr Oakley replied by email, repeating what he had stated in previous emails and adding the following:

    "We both read the trade press papers, willing to attend work shops, and are happy to accept all information available [sic]*."*

The firm's compliance arrangements

26. Section 5 of the application form is headed 'Compliance Arrangements'. At section 5.1 of the application form, the firm ticked a box indicating that it had documented compliance procedures in place. The form subsequently asks, at section 5.2, for confirmation that a copy of the firm's compliance monitoring programme has been attached. The firm indicated that such a document had been attached, but in fact it was not and the FSA has yet to receive a copy of it.

27. CBS also confirmed at section 5.3 of the application form that all senior management were aware of and understood the compliance procedures.

28. At section 5.7 of the application form, under the heading 'Treating Customers Fairly', the application form asks the applicant firm briefly to describe the steps it has put in place to deliver the FSA's six consumer outcomes and demonstrate that it treats its customers fairly. CBS's response was as follows:

    "at all times the client is aware of aspects of the business to be conducted [i.e. KFI confirming costs terms of the contact etc IDD term of busness [sic] *the agent / consultant will offer* [sic]"

29. On 13 September 2011, the FSA sent a number of queries and requests to the firm. One of them asked CBS to revisit and expand on the sections of the application form dealing

with the firm's compliance arrangements. On 20 September, CBS replied to the FSA, dealing with several of the queries raised but not referring to the particular request in respect of compliance arrangements.

30. On 22 September, the FSA reiterated its request for further information from the firm on its compliance arrangements. The firm replied:

> *"…on every enquiry to the company we post out to the clients following documents IDD Key Facs* [sic] *Services from CBS…In the event client/s do not return the CBS authority form and the D etc we would write and inform them we no longer act for them Noel Fox and Trevor Oakley do meet once a month to talk over business."*

The firm did not provide a copy of its compliance manual at any point.

31. In a subsequent telephone conversation with the FSA on 10 November, Mr Oakley on behalf of CBS stated that the firm would employ a member of staff who would "help with compliance" by *"checking over advisers' paperwork"*. No information was given on how checks would be conducted or when this member of staff would be employed. The list of the firm's personnel supplied to the FSA on 21 November did not include a person occupying such a role. The only person in the list stated to have a compliance role is Mr Oakley.

Failure to disclose Mr Oakley's criminal convictions in his Form A

32. The firm submitted to the FSA a completed Form A in respect of its application for Mr Oakley's approval for the functions set out at the beginning of this document. Form A requires the applicant firm to disclose matters relevant to the fitness and propriety of the candidate for whom approval is sought. The FSA understands Mr Oakley to have personally completed this form in this instance. However, his answers were given on behalf of CBS and with the firm's authority. Therefore any failure in openness or co-operation on Mr Oakley's part is also a failure on the part of the firm and, for the purposes of this notice, the Form A is treated as having been completed by the firm.

33. In completing the Form A, the firm answered *"No"* to section 5.01, which asks:

> ***Has the candidate ever been convicted of any offence (whether spent or not and whether or not in the United Kingdom)***
>
> ***i. Involving fraud, theft, false accounting, offences against the administration of public justice (such as perjury, preventing the course of justice and intimidation of witnesses or jurors), serious tax offences or other dishonesty; or***
>
> ***ii. Relating to companies, building societies, industrial and provident societies, credit unions, friendly societies, insurance banking or other financial services, insolvency, consumer credit or consumer protection, money laundering, market manipulations or insider dealing?***

34. The firm also answered *"No"* to section 5.02, which asks:

Has the candidate any convictions for any offences (whether spent or not and whether or not in the United Kingdom) other than those in 5.01 above (excluding traffic offences that did not result in a ban from driving or did not involve driving without insurance)?

35. The FSA has information that, on 26 June 1970 at Southend Magistrates Court, Mr Oakley was convicted of:

    i. theft from a motor vehicle;

    ii. taking a conveyance without authority; and

    iii. driving without insurance.

36. The FSA also has information that, on 9 May 1977 at Southend Crown Court, Mr Oakley was convicted of:

    i. causing death by reckless driving; and

    ii. being in charge of a motor vehicle while unfit through drink or drugs.

37. The FSA also has information that, on 2 June 1993 at Rochford Magistrates Court, Mr Oakley was convicted of an offence of failing to surrender to bail.

38. None of the above convictions resulted in a significant penalty; in each case Mr Oakley was fined.

39. On 6 December 2011, the FSA asked the firm to revisit section 5 of the Form A, stating that "*the FSA takes non-disclosure very seriously*". On 9 December, the firm, in the person of Mr Oakley, responded to the FSA, saying that *"I also takes non-disclosure very seriously [sic]"*. However, it did not at this point disclose his criminal convictions.

40. On 17 January 2012, the FSA again wrote to the firm, this time specifically referring to Mr Oakley's criminal convictions dating from 1970 and 1977. On 19 January, the firm emailed a response to the FSA, in which it did not dispute that he had the convictions in question but in which it appeared to minimise or dispute his guilt of the offences of which he was convicted. The response provided no explanation or apology for the failure to disclose the convictions in the application for approval.

41. On 20 January 2012, the FSA wrote to the firm asking why it had not disclosed the convictions. The firm replied, on 24 January, that Mr Oakley had that day spoken to a solicitor who had informed him that these matters were "*spent and not applicable*".

42. In a further email sent on 31 January, the FSA referred the firm to the wording of sections 5.01 and 5.02, which require disclosure of convictions "*whether spent or not*" and again asked him why he had not disclosed the convictions. In an emailed response on 3 February, the firm stated that Mr Oakley had been "*unaware*" that he had failed to disclose details of his convictions as they were "*part of [his] pass life which had been forgotten [sic]*".

Failure to disclose an investigation into an allegation of misconduct or malpractice against Mr Oakley

43. The firm answered *"No"* to question 5.09 of Form A, which asks:

    Is the candidate, or has the candidate ever been, the subject of an investigation into allegations of misconduct or malpractice in connection with any business activity?

44. Section 6 of Form A includes the following requirement:

    If there is any other information that the candidate or the firm considers to be relevant to the application, it must be included here.

45. The firm did not at this point provide any details of any investigation into his conduct.

46. However, information obtained by the FSA suggests that Mr Oakley was subject to a criminal investigation that is likely to have related to a business activity and which in any event the FSA considers is relevant to the Application. In 1998 Mr Oakley was arrested and charged by Essex police with mortgage fraud against Nationwide Building Society ("the mortgage fraud proceedings"). The matter proceeded to the Crown Court and either the indictment was stayed by the court or Mr Oakley was acquitted (in any event he was not convicted).

47. When prompted to revisit section 5 of the Form A by the FSA in December 2011 (in correspondence referred to above), the firm did not provide any details of the mortgage fraud proceedings.

48. On 17 January 2012 the FSA wrote to the firm asking it specifically about the proceedings. In a response dated 19 January, the firm in the person of Mr Oakley said:

    "I was acquitted of all fraud charges by a high court judge and my QC Robin Gray & Kenneth Alloatt both said it never happen forget it

    this was after 13 years of harassments and threats by the police because I would not give them information on a clients I informed them return with written authority from the clients or a court warrant for the file we can not proceed further.

    …

    The very nice policeman informed me he would return and cause me many problems [sic]"

49. On 20 January, the FSA sought further information about the proceedings, including the name of the court at which the matter had been heard, whether Mr Oakley had been arrested and interviewed by police in connection with the offence and whether he had been employed as an IFA at the time of the allegation. The firm responded by email on 24 January, stating that the information sought was 'not applicable' because the matter had been stayed as an abuse of process.

50. On 31 January, the FSA once again asked for further information about Mr Oakley's criminal convictions and about the mortgage fraud proceedings. The firm responded to

questions about the criminal convictions but failed to provide any more detail in relation to the mortgage fraud proceedings. The firm's response included the following:

> *"the ex-police officer with in your office [FSA] who are requesting this information are aware of the answers to all the questions you keep asking."*

51. The FSA asked the firm on a number of occasions whether Mr Oakley had been arrested or interviewed by the police in connection with any other criminal offences. In his email of 31 January already referred to, Mr Oakley addressed these requests in the following manner:

> *"You ask me have I previously been the subject of a criminal investigation/proceedings for fraud in your, with respect every day in the life of an IFA there always some one saying Fraud this relates to every question on an application form, if you ask the persons to whom you report to they will inform you of the same I do not consider that being interviewed by police over clients as any thing more, than the normal day in the life of an IFA estate agents accountants solicitors etc [sic]".*

Failure to provide information about or subsequently disclose the winding-up of a firm of which Mr Oakley was principal

52. Mr Oakley was previously principal of a firm called PBF Financial Ltd ("PBF") and was approved by the FSA to carry out the following controlled functions for that firm:

    i. CF1 (Director), held from 31 October 2004 to 30 November 2011;

    ii. CF8 (Appointment and Oversight), held from 31 October 2004 to 31 March 2009; and

    iii. RIM (person responsible for insurance mediation) held from 14 January 2005 to 30 November 2011.

53. These controlled functions are similar to those in respect of which the firm now applies for his approval.

54. In the Form A the firm answered *"Yes"* to question 5.11 which asks:

> ***Has any company, partnership or unincorporated association of which the candidate is or has been a controller, director, senior manager, partner or company secretary been put into liquidation, wound up, ceased trading, had a receiver or administrator appointed or entered into any voluntary arrangement with creditors?***

55. The firm added the following further information at the end of the form:

> *"PBF Financial ceased trading 22/2/10*
>
> *As directed by the shareholders and company accountants due to market conditions and cost of the dispute with the revenue the company ceased trading"*

56. PBF had been authorised by the FSA, which meant that the FSA had dealt with the firm during 2010 and 2011, particularly in relation to its financial position, and had corresponded with it. The FSA's records contain information about PBF that the FSA considers relevant to the current application for Mr Oakley's approval.

57. The FSA's records show that, on 15 November 2010, the FSA was made aware that a winding-up order had been presented to the High Court in relation to PBF. The FSA then contacted PBF on a number of occasions, requesting information about the order and PBF's financial circumstances, but received no substantive information in response.

58. On 16 December 2010 the FSA made a written request for information to Mr Oakley as principal of PBF, reminding him that the firm must maintain adequate capital resources to meet the threshold conditions. The FSA did not receive a reply.

59. On 5 February 2011 the FSA sent a further letter, stating that a failure to provide the FSA with the full circumstances of the winding-up petition and sufficient information about the firm's financial position would be a breach of Principle 11, which requires firms to deal with the FSA in an open and co-operative way. The letter required a response by 11 February.

60. On 11 February Mr Oakley replied to the FSA on behalf of PBF by letter, stating that he had had problems with his emails but that as far as he was aware *"all request's made by FSA have been replied to"*. The letter included no substantive response to the FSA's questions or concerns but stated that Mr Oakley would write further. The FSA has no record of receiving any further correspondence from Mr Oakley in relation to PBF.

61. On 25 February 2011 PBF was wound up on a petition from Her Majesty's Revenue and Customs ("HMRC"). On 6 June 2011 PBF entered compulsory liquidation as a result of an unpaid debt to HMRC. Mr Oakley failed to inform the FSA of either of these events at the time that they occurred. CBS/Mr Oakley also failed to inform the FSA of them in the current Form A.

62. On 22 September 2011, in correspondence relating to the current application for Mr Oakley's approval, the FSA asked the firm to expand on its statement in Mr Oakley's Form A regarding PBF. The firm replied on 23 September, repeating that PBF had ceased trading.

63. On 6 December 2011, as described above, the FSA asked the firm to revisit the Form A, including section 5. On 9 December, the firm replied, stating that "*PBF Financial is on all ... forms as been in receivership since 23/02/2011 the FSA is aware of this it is on a reply to the questions [sic]"*. This email was the first time that the firm had disclosed to the FSA that PBF was 'in receivership' as opposed to merely having 'ceased trading' at the direction of its shareholders and accountants.

IMPACT ON THE THRESHOLD CONDITIONS

64. The regulatory provisions relevant to this Final Notice are referred to in Annex A.

The firm's regulatory business plan

65. The FSA considers the information provided by the firm about its business plan to be incoherent and incomplete. The answers that the firm did provide demonstrate a lack of understanding of the requirements of the regulatory system and a failure to consider and mitigate any risks that may be posed to consumers or the UK financial system by CBS's business. Because the firm has not demonstrated that it has a well-constructed or sufficiently tested business plan, the FSA is unable to ensure that it will satisfy and continue to satisfy threshold condition 4 that it be adequately resourced (see in particular COND 2.4.6).

The firm's governing body

66. Despite the FSA's repeated requests for further information, CBS has failed to provide sufficient information to enable the FSA to determine that its directors, Mr Oakley and Mr Fox, have the requisite experience and skills to manage and carry on CBS's regulated activities. The FSA therefore considers itself unable to ensure that the firm will satisfy and continue to satisfy threshold condition 5 in respect of having competent and prudent management and exercising due skill, care and diligence (see in particular COND 2.5.7G(1)).

The firm's compliance arrangements

67. The FSA also considers CBS's answers to compliance-related questions in section 5 of the application form, and CBS's responses to requests for further information, to be incoherent and incomplete. They provide no evidence that CBS has appropriate compliance procedures in place or that senior management have engaged with the relevant issues.

68. The firm's response to the section of the application form headed 'Treating Customers Fairly' demonstrates no awareness of the FSA's well-established six consumer outcomes and does not deal with the areas that the application form specifically requests should be covered.

69. The firm's failure to provide a copy of its compliance manual implies a lack of understanding of the importance of systems and controls in ensuring compliance with regulatory requirements and standards.

70. Based on the information provided, the FSA considers that CBS does not have sufficient compliance arrangements in place. Consequently, the FSA considers that it cannot ensure that the firm will satisfy and continue to satisfy threshold condition 4 in respect of the adequacy of its resources. In particular, the FSA cannot ensure that the firm has taken reasonable steps to identify and measure any risks of regulatory concern that it may encounter in conducting its business or that it has installed appropriate systems and controls and appointed human resources to measure those risks prudently (see COND 2.4.4G(2)(d)).

71. Further, the FSA considers that it cannot ensure that the firm will satisfy and continue to satisfy threshold condition 5 in respect of conducting its business with integrity and in compliance with proper standards. In particular, the FSA cannot ensure that the firm has taken reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system (see COND 2.5.6G(6) & (7); COND 2.5.7G(5)).

The firm's failure to disclose matters relevant to Mr Oakley's fitness and propriety

72. There is a significant overlap between the FSA's concerns about Mr Oakley and concerns about the applicant firm, because Mr Oakley's acts and omissions are, on many occasions, indistinguishable from those of the firm, and because he is in any event a person connected with the applicant within the terms of section 49 of the Act.

73. Section 49 of the Act permits the FSA to have regard to any person appearing to it to be in a relevant relationship with the applicant firm when considering the firm's application for Part IV permission. Mr Oakley is one of only two directors and advisers at the firm, and is the FSA's point of contact with it. He is the only person to have corresponded on the firm's behalf, and the evidence indicates that he is the driving force behind the firm's application. He is clearly in a relevant relationship with the firm for the purposes of the Act and, because of the evidence of the closeness and the influential nature of that relationship, the FSA considers that particular weight should be attached to evidence of Mr Oakley's fitness and propriety when considering the firm's application for Part IV permission.

74. In respect of the firm's failure to disclose Mr Oakley's criminal convictions, the FSA considers that the requirement imposed on the firm by sections 5.01 and 5.02 of the Form A was clear. The firm failed to disclose six separate criminal convictions in response to this requirement, including a conviction for theft, an offence of dishonesty. The convictions did not result in significant penalties (in each case Mr Oakley was fined) but several of them were for serious offences. All of the convictions were old and spent but one of them, the conviction for failing to surrender to bail in 1993, was much more recent than the others. In light of all of these factors, the FSA considers that the firm/Mr Oakley's ultimate explanation that he forgot to disclose the convictions lacks credibility and considers it more likely that it/he either deliberately ignored the requirement to disclose spent convictions or failed to notice it.

75. Further, the FSA considers the answers provided by the firm when asked questions by the FSA about the convictions to have been incoherent and evasive, indicating a persistent reluctance to be open about the convictions, even when asked direct questions by the regulator. The FSA considers that, in respect of Mr Oakley's criminal convictions, the firm has been neither candid nor truthful in its dealings with the FSA.

76. The FSA also notes that the firm has failed to disclose the circumstances leading to Mr Oakley's conviction for failing to surrender to bail. If he failed to surrender to bail in 1993, he must have been on bail in criminal proceedings then. The proceedings in question cannot have related to any of his other criminal convictions or to the allegation of mortgage fraud, because the dates of those matters are, respectively, 1970 and 1977, and 1998. Therefore, the fact of Mr Oakley's conviction for failure to surrender to bail

implies that he has been investigated for and charged with a further criminal offence about which the firm has chosen to tell the FSA nothing.

77. In respect of the firm's failure to disclose the proceedings against Mr Oakley for mortgage fraud, the FSA considers that the fact that he had been investigated, arrested, charged and prosecuted in relation to an allegation of mortgage fraud should have been disclosed in the application for his approval, irrespective of the final outcome of the case. The FSA considers that this would be so whether or not the matter could be said to be 'in connection with any business activity', as the matter is clearly relevant to an application for approval as a mortgage adviser and should have been disclosed in any event under section 6 of the form.

78. The FSA considers the firm's failure to disclose the mortgage fraud proceedings in the Form A to be a further serious instance of its general lack of candour in dealing with the FSA. In addition, the FSA considers that the firm's explanation for its failure to disclose this allegation, which appears to be that Mr Oakley's barrister had told him to forget all about it, demonstrates either a lack of willingness to co-operate with the FSA, or a lack of understanding of what is required of it as a person seeking authorisation.

79. In respect of the firm's treatment of the demise of PBF, the FSA considers that, at the time at which the firm completed the Form A, it would have been aware that PBF had been wound-up rather than merely having 'ceased trading', and that the distinction between these two outcomes is material. The FSA considers that the lack of information provided by the firm about PBF in the Form A and/or the potentially misleading nature of the information that it did provide, represent further instances of its general failure to be candid in its dealings with the FSA.

80. In respect of all of the above failures of disclosure, the FSA considers that the firm has consistently failed to demonstrate a readiness and willingness to comply with the requirements and standards of the regulatory system, such that the FSA considers that it is not a fit and proper person (see COND 2.5.6G(1)).

The underlying matters relevant to Mr Oakley's fitness and propriety

81. The FSA considers that all of the above failures in openness and co-operation with the FSA are to be attributed to Mr Oakley as much as to the firm and, as such, give rise to serious concerns about his fitness and propriety. In addition, certain aspects of the underlying matters give rise to further such concerns.

82. The FSA has decided to refuse the firm's application for Mr Oakley's approval, as it considers that Mr Oakley is not a fit and proper person to perform the approved functions in respect of which the firm seeks approval. That action is the subject of a separate Final notice. Given the nature and extent of Mr Oakley's connection with the firm, the fact that the FSA considers him not to be fit and proper lends weight to the FSA's conclusion that the firm itself is not a fit and proper person (see COND 2.5.3G(1)).

Conclusion

83. On the basis of the facts and matters described above, in particular the failure to provide the information required by the FSA, and in the absence of the information sought, the FSA has concluded that CBS will not satisfy, and continue to satisfy, the threshold

conditions in relation to all of the regulated activities for which CBS would have permission if the application was granted.

IMPORTANT NOTICES

84. This Final Notice is given under section 390 (1) of the Act.

Publication

85. Sections 391 (4), 391 (6) and 391 (7) of the Act apply to the publication of information about the matter to which this Final Notice relates. Under those provisions, the FSA must publish such information about the matter to which the Final 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 Celtic Business Services Ltd or prejudicial to the interests of consumers.

FSA contacts

86. For more information concerning this matter generally, contact , contact James Borley, Manager, Permissions Department Authorisations Division at the FSA (direct line: 020 7066 5340/email: james.borley@fsa.gov.uk).

Graeme McLean
Chair of the Regulatory Transactions Committee

ANNEX A – REGULATORY PROVISIONS RELEVANT TO THIS FINAL NOTICE

Relevant Statutory Provisions

1. Section 41(2) of the Act requires the FSA, in giving a Part IV permission, to ensure that the person concerned will satisfy, and continue to satisfy, the threshold conditions in relation to all of the regulated activities for which he will have permission.

2. The threshold conditions are set out in schedule 6 of the Act. In brief, the threshold conditions relate to:

   (1) Threshold condition 1: Legal status

   (2) Threshold condition 2: Location of offices

   (3) Threshold condition 2A: Appointment of claims representatives

   (4) Threshold condition 3: Close links

   (5) Threshold condition 4: Adequate resources

   (6) Threshold condition 5: Suitability

3. Section 390(1) of the Act states that if the FSA has given a person a Decision Notice and the matter was not referred to the Tribunal within the time required by the Tribunal Procedure Rules, the FSA must give the person concerned a Final Notice

Re Relevant provisions of the FSA's Handbook

4. In exercising its powers in relation to the granting of a Part IV permission, the FSA must have regard to guidance published in the FSA Handbook, including the part titled Threshold Conditions ("COND"). The main considerations in relation to the action specified are set out below.

   Threshold condition 4: Adequate Resources

5. COND 1.3.2G states that, in relation to threshold conditions 4 and 5, the FSA 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 IV permission.

6. COND 2.4.2G states that threshold condition 4 requires the FSA to ensure that a firm has adequate resources in relation to the specific regulated activity which it seeks to carry on. In this context, the FSA will interpret the term "adequate" as meaning sufficient in terms of quantity, quality and availability, and "resources" as including all financial resources, non-financial resources and means of managing its resources.

7. COND 2.4.4G states that when assessing whether a firm will satisfy and continue to satisfy threshold condition 4, the FSA will have regard to all relevant matters and that those matters include (set out at COND 2..4.4(2)(d)) whether the firm has taken reasonable steps to identify and measure any risks of regulatory concern that it may

encounter in conducting its business and has installed appropriate systems and controls and appointed appropriate resources to measure them prudently at all times.

8. COND 2.4.6G states that:

(1) Any newly-formed firm can be susceptible to early difficulties. These difficulties could arise from a lack of relevant expertise and judgment, or from ill-constructed and insufficiently tested business strategies. A firm may also be susceptible to difficulties where it substantially changes its business activities.

(2) As a result, the FSA would expect a firm which is applying for Part IV permission, or a substantial variation of that permission, to take adequate steps to satisfy itself and, if relevant, the FSA that:

(a) it has a well constructed business plan or strategy plan for its product or service which demonstrates that it is ready, willing and organised to comply with the relevant requirements in the Prudential Standards part of the Handbook and SYSC that apply to the regulated activity it is seeking to carry on;

(b) its business plan or strategy plan has been sufficiently tested; and

(c) the financial and other resources of the firm are commensurate with the likely risks it will face.

(3) The FSA would expect the level of detail in a firm's business plan or strategy plan in (2) to be appropriate to the complexity of the firm's proposed regulated activities and unregulated activities and the risks of regulatory concern it is likely to face…

Threshold condition 5: Suitability

9. COND 2.5.2G(1) states that threshold condition 5 requires the firm to satisfy the FSA that it is "fit and proper" to have Part IV permission having regard to all the circumstances, including its connections with other persons, the range and nature of its proposed regulated activities and the overall need to be satisfied that its affairs are and will be conducted soundly and prudently.

10. COND 2.5.3G(1) states that the emphasis of this threshold condition is on the suitability of the firm itself. The suitability of each person who performs a controlled function will be assessed by the FSA under the approved persons regime. In certain circumstances, however, the FSA may consider that the firm is not suitable because of doubts over the individual or collective suitability of persons connected with the firm.

11. COND 2.5.3G(2) permits the FSA to have regard to any person appearing to be in a relevant relationship with the firm.

12. COND 2.5.4G allows the FSA to have regard to all relevant matters, including whether the firm will conduct its business with integrity and in compliance with

proper standards/will have a competent and prudent management/can demonstrate that it will conduct its affairs with the exercise of due skill, care and diligence.

13. COND 2.5.6G allows the FSA, in determining whether a firm will satisfy, and continue to satisfy, threshold condition 5 in respect of 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 any other regulatory body (see Principle 11 (Relations with regulators)) and is ready, willing and organised to comply with the requirements and standards under the regulatory system and other legal, regulatory and professional obligations; the relevant requirements and standards will depend on the circumstances of each case, including the regulated activities which the firm has permission, or is seeking permission, to carry on;

(6) the firm has taken reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system that apply to the firm and regulated activities for which it has, or will have, permission; and

(7) the firm has put in place procedures which are reasonably designed to:

(a) ensure that it has made its employees aware of, and compliant with, those requirements and standards under the regulatory system that apply to the firm and the regulated activities for which it has, or will have permission;

(b) ensure that its approved persons (whether or not employed by the firm) are aware of those requirements and standards under the regulatory system applicable to them;

(c) determine that its employees are acting in a way compatible with the firm adhering to those requirements and standards; and

(d) determine that its approved persons are adhering to those requirements and standards;

14. COND 2.5.7G allows the FSA, in determining whether a firm will satisfy, and continue to satisfy, threshold condition 5 in respect of having competent and prudent management and exercising due skill, care and diligence, to have regard to relevant matters including whether:

    (1) the governing body of the firm is made up of individuals with an appropriate range of skills and experience to understand, operate and manage the firm's regulated activities;

(2) the firm has made arrangements to put in place an adequate system of internal control to comply with the requirements and standards under the regulatory system.