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## FINAL NOTICE

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**To:** Paul Maguire  
**Date of Birth:** 4 February 1966  
**Date:** 17 March 2011

**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. By an application dated 31 December 2009 (the Application) the FSA received an application from a firm (“Firm A”) under section 60 of the Financial Services and Markets Act 2000 (“the Act”) for approval of Mr Paul Maguire (“Mr Maguire”) to perform the customer function (CF30).
- 1.2. On 11 May 2010 the FSA received notification from Firm A that it no longer wished to proceed with the Application. Mr Maguire’s consent to the withdrawal was required so that the Application would be formally withdrawn within the provisions of section 61(5) of the Act. Mr Maguire did not give such consent and therefore the FSA was required to determine the application.
- 1.3. For the reasons listed below and pursuant to section 52(7) of the Act, the FSA has decided to refuse the Application.

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

### **Summary**

- 2.1 As Firm A has withdrawn its support for the Application, no arrangement within the terms of section 59(1) of the Act exists and the FSA is therefore required to refuse the application. In addition, on the basis of the facts and matters described below, the FSA is not satisfied that Mr Maguire is a fit and proper person to perform the controlled functions to which the Application relates.

### **Relevant Statutory Provisions**

- 2.2 The FSA may grant an application for approval under section 60 of the Act only if it is satisfied that the person in respect of whom the application is made is a fit and proper person to perform the controlled function to which the application relates (section 61(1) of the Act).
- 2.3 Section 62(3) of the Act requires the FSA, if it decides to refuse the application, to issue a Decision Notice to each interested party. Both Mr Maguire and Firm A are interested parties.
- 2.4 Under section 59(1) of the Act, no individual person may perform a controlled function other than under an arrangement entered into with an authorised person which has been approved by the FSA to carry out a regulated activity. The authorised person in this case, Firm A, has withdrawn its support for the Application, therefore no arrangement within the terms of section 59(1) of the Act exists.

### **Relevant Guidance**

- 2.5 The Fit and Proper test for Approved Persons ("FIT") sets out the criteria that the FSA will consider when assessing the fitness and propriety of a person to perform a particular controlled function.
- (1) The most important considerations include the person's honesty, integrity and reputation and competence and capability (FIT 1.3.1G).
- (3) In determining a person's competence and capability, the matters to which the FSA will have regard include whether the person has demonstrated by experience and training that the person is able, or will be able if approved, to perform the controlled function.

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

### *Mr Maguire's references*

- 3.1. Mr Maguire's previous employer informed the FSA that it had concerns about Mr Maguire's work, stating that there was "a potential risk to consumers, mainly in relation to PP (personal pension) switches and Bonds... Virtually 100% of business was PP switches, many of which were failed under (Mr Maguire's former employer's) pre-approval file checking system". It also

stated “numerous PP transfer cases submitted for preapproval raised serious concerns regarding the suitability of the proposed contracts (mostly personal pension as opposed to cheaper/more flexible stakeholder pensions). There was also insufficient research on possible company pension arrangements. 48% of files failed and this adviser gave us serious cause for concern” (our emphasis).

#### *File reviews*

- 3.2. The FSA obtained file review data in respect of business carried out by Mr Maguire in the most recent twelve month period which showed that approximately 50% of the files that were reviewed failed that internal compliance review.
- 3.3. In addition, the FSA obtained copies of seventeen file reviews carried out on Mr Maguire’s work. Of the seventeen file reviews provided in total, seven passed, nine failed, and one was ungraded. In relation to the seventeen file reviews that were provided to the FSA, of the nine files that failed, five files were graded ‘5’ on a scale of 1 to 5, where 5 indicates a “seriously inadequate file”.
- 3.4. Of those file reviews seen by the FSA among the reasons that files were recorded as having failed were:
  - (1) insufficient justification or proof of research and reasons for the recommendation;
  - (2) insufficient commission disclosure in the suitability report and misleading information about charges;
  - (3) recommendations not suited to the client’s needs/circumstances;
  - (4) insufficient consideration of other options;
  - (5) a factual inaccuracy being used to justify a recommendation;
  - (6) attitude to risk section of the fact find not being completed;
  - (7) existing arrangements being better than the fund offered;
  - (8) insufficient information being collected about the client’s current circumstances; and
  - (9) insufficient reasons for discounting stakeholder pensions, in circumstances where it appeared that a stakeholder pension would be more appropriate than the recommendation.
- 3.5. The FSA regards the practice of pension switching to be a high-risk activity with significant scope for client detriment. This concern has been widely publicised as a result of a thematic review of advice on pension switching undertaken in 2008 and subsequent work undertaken by firms. From information received from Firm A for the business conducted in the last

twelve months, it is clear that Mr Maguire had done 44 personal pension scheme transfers (amounting to 80% of his pensions business) in that period.

### **Impact on fitness and propriety**

- 3.6. The foregoing facts and matters call into question Mr Maguire's competence and capability and thereby cause the FSA to doubt that Mr Maguire is fit and proper to perform the CF30 function.

## **4. REPRESENTATIONS, FINDINGS AND CONCLUSIONS**

### **Representations**

- 4.1 Mr Maguire submitted that he was a fit and proper person. He contended that he was competent and capable of performing the controlled function which was the subject of the application. However, he also accepted that the application would have to be refused as there was no longer in existence an arrangement with Firm A and thus the firm had formally withdrawn its application.
- 4.2. Mr Maguire accepted that there had been problems, as disclosed by the file reviews, with some of the work that he had done. Mr Maguire agreed that the reviews had correctly identified weaknesses in his work and that, consequently, there was a "clear ongoing need for close supervision in areas of business where there may be a real risk to a consumer". However, Mr Maguire contended that he had heeded the feedback he had received in relation to the files which had failed the reviews and that, by the end of his time with his most recent former employer, his files were of an acceptable standard and that he was, therefore, verifiably, a competent adviser. In support of this contention Mr Maguire pointed to the improved scores given to his files in the reviews conducted in the latter months of his time with his erstwhile employer. Mr Maguire also submitted that, in addition to having certified that he was competent when they first employed him, his former employer had also made observations in various documentation which showed that, prior to his departure, it had considered that his work was of a good, or at least reasonable, standard.
- 4.3 Mr Maguire further submitted that the improvement in his files came in spite of the flawed procedures and protocols of his former employers. Mr Maguire complained that his former employers placed little emphasis on training and support whilst they rarely provided direct feedback. Mr Maguire added that his most recent former employer compounded these failings by judging files against standards which exceeded that which was required by the FSA.
- 4.4. In the light of the criticisms Mr Maguire made of his former employer he added that the FSA should be cautious about being over-reliant upon its file reviews. In particular Mr Maguire sought to defend the quality and impartiality of the advice that he had given to his clients and to contrast this with the limited support he had received from his former employer. Amongst other examples Mr Maguire noted that he had not been advised until some months into his employment about the existence of certain products which

may have been more suitable for his clients. Mr Maguire explained that the systems which were used by his employer incorporated search tools which had excluded from his consideration these more suitable products. Mr Maguire explained that, in some cases, he had agreed with his clients that the product he would recommend would charge commission thereby ensuring that his clients did not need to pay him a fee. Unfortunately the software which he used to identify suitable products for his clients failed to recommend the most appropriate product as the parameters of the search included the need for commission to be payable. Nonetheless, Mr Maguire insisted that, to his knowledge at the time, the products he recommended had been the best suited to his client's needs. He added that, when he was finally told of the existence of other better suited products, he altered his advice accordingly.

- 4.5. Mr Maguire added that it was not commonplace for an adviser to look at guidance from the FSA and that, instead, he was reliant upon the guidance and support of his former employers. Therefore, he asserted that his failings were in fact the failings of his employers. Nonetheless he maintained that, by the time he left his former employer, his advice was of a good standard. He noted that Firm A had clearly found him to be competent and capable as it had offered him a role. He further submitted that, despite its withdrawal from the application process, Firm A retained confidence in him and would be prepared to offer him employment were he to satisfy the FSA that he is a fit and proper person.
- 4.6. In addressing the reasons underlying Firm A's withdrawal from the application process Mr Maguire complained that the FSA had put pressure on Firm A to withdraw. However Mr Maguire did not place any great reliance on this point, focusing instead on the submission that its continued interest in him demonstrated the confidence others had in his abilities.

### **Findings**

- 4.7. The FSA is not satisfied that Mr Maguire is competent and capable to perform the controlled function to which the application pertains. The FSA therefore is not satisfied that Mr Maguire is a fit and proper person and thus the application is refused on this basis in addition to the fact that no arrangement continues to exist between the authorised person and Mr Maguire and that Firm A has therefore withdrawn the application.
- 4.8. The FSA notes that the evidence of the file reviews was not greatly disputed. Indeed the FSA notes that Mr Maguire accepted that some of his work had been deficient in a number of regards including poor quality; suitability letters; research; and advice. Therefore, the FSA is satisfied that it can rely upon the file reviews as being accurate assessments of the quality of Mr Maguire's work for the various clients. The FSA notes that the evidence of the file reviews demonstrates that in the region of half of Mr Maguire's cases, which were checked in the relevant twelve month period, failed his firm's internal compliance review. Notable concerns identified included insufficient justification for recommendations and unsuitable advice. In particular five of his cases were deemed to be "seriously inadequate files". Moreover the file

reviews over the period indicated that the same concerns were arising frequently in respect of advice given by Mr Maguire.

- 4.9. The FSA does not accept Mr Maguire's explanation for why his files came to be graded so poorly. In particular the FSA finds that, regardless of the support or training he received from his former employers, a number of the problems with Mr Maguire's work were his responsibility. The FSA finds that Mr Maguire; undertook inadequate research on the products he was looking to advise upon; conducted poor analysis; did not advise suitable products to his customers; and erred in focusing upon products that paid commission.
- 4.10. The FSA is not persuaded that Mr Maguire had rectified these failings by the time he had left his former employer. Whilst the FSA finds that the scores on his file reviews had improved, the FSA also finds that there were continuing deficiencies in his work. Moreover, the FSA finds that, notwithstanding the excerpts of some e-mails relied upon by Mr Maguire, his former employer appeared, immediately prior to his departure, to lack confidence in Mr Maguire's competence and capability to discharge the CF30 role. The FSA is also concerned that, despite having held the CF30 controlled function for almost three years, Mr Maguire only belatedly took any action to address some of the points raised in these file reviews. The FSA also notes that Mr Maguire did not appear to have proactively taken steps to improve his competence and capability.
- 4.11. The FSA finds that the failings in Mr Maguire's work that were exposed by the file reviews betray a lack of competence and capability. The FSA is not satisfied that these failings had been rectified by the time that Mr Maguire left his former employer. The FSA is also not satisfied that Mr Maguire has addressed his lack of competence and capability during the period that his application has been determined by the FSA. Therefore, the FSA is not satisfied that Mr Maguire is a fit and proper person because he lacks competence and capability.
- 4.12. The FSA accepts that, though Firm A had withdrawn its support for the application, the firm may have intended to employ Mr Maguire had his application only been refused on the basis of its withdrawal. However, the FSA finds that Firm A had not been encouraged or pressured by the FSA into withdrawing its support for the application.

### **Conclusions**

- 4.13. In the absence of an arrangement between Mr Maguire and a regulated firm, within the terms of section 59(1) of the Act, the FSA cannot approve Mr Maguire to perform a controlled function.
- 4.14. In addition, in light of the matters set out above, the FSA concludes that it cannot currently be satisfied that Mr Maguire is a fit and proper person to perform the controlled function to which the application relates because he lacks competence and capability.

## **5. IMPORTANT NOTICES**

- 5.1. This Final Notice is given to you pursuant to Section 390(1) of the Act.

### **Publication**

- 5.2. 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 you or prejudicial to the interests of consumers.
- 5.3. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

### **FSA Contacts**

- 5.4. For more information concerning this matter generally, you should contact Andrew Freeman, Manager, Permissions department at the FSA (direct line 020 7066 9786 / e-mail: [andrew.freeman@fsa.gov.uk](mailto:andrew.freeman@fsa.gov.uk)).

**Sharon Campbell**  
**Head of Department, Permissions**