
FIRST SUPERVISORY NOTICE

To: **The Millbank Consultancy Limited**

FRN: **402399**

Of: **6 Yukon Court
Yukon Road
London
SW12 9PU**

Date: **30 January 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 The Millbank Consultancy Limited (“Millbank”) pursuant to Part IV of the Act (“Millbank’s permission”) by removing all regulated activities with immediate effect. Accordingly, Millbank’s permission no longer includes the following regulated activities:

- (a) advising on investments (except on Pension Transfers and Opt Outs);
- (b) agreeing to carry on a regulated activity;
- (c) arranging (bringing about) deals in investments;
- (d) making arrangements with a view to transactions in investments;
- (e) advising on regulated mortgage contracts;
- (f) arranging (bringing about) regulated mortgage contracts; and
- (g) making arrangements with a view to regulated mortgage contracts.

2. REASONS FOR ACTION

Summary

- 2.1 The FSA has concluded, on the basis of the facts and matters described below, that Millbank is failing, and will continue to fail, to satisfy the Threshold Conditions set out in Schedule 6 of the Act (the “Threshold Conditions”) in that the FSA is not satisfied that it is a fit and proper person having regard to all the circumstances.
- 2.2 The principal of Millbank, who is also its only mortgage adviser, submitted applications based on false information to a mortgage lender for one of Millbank’s customers. The principal entered false information about employment and salary. When the application was not successful, the principal submitted another false mortgage application which also referred to false self-employed income and a different amount of false income. The FSA has established that at least five further applications submitted by Millbank were based on false information and supporting documents.
- 2.3 Millbank’s conduct has failed to meet the requirements of the FSA’s Principles for Businesses. Specifically, Millbank failed to comply with Principle 1, which provides that a firm must conduct its business with integrity.
- 2.4 In the opinion of the FSA, Millbank failed, and is likely to continue to fail, to conduct its business with integrity and in compliance with proper standards (Threshold

Condition 5 – Suitability).

- 2.5 The conduct as summarised above raises serious concerns about Millbank’s integrity and its ability to conduct its business in compliance with proper standards.
- 2.6 The FSA also considers, on the basis of those facts and matters, that it is necessary, in support of the FSA’s financial crime, consumer protection and market confidence objectives, for the action specified above to take immediate effect.

3. RELEVANT STATUTORY PROVISIONS AND OTHER REGULATORY PROVISIONS

- 3.1 The FSA’s regulatory objectives, established in section 2(2) of the Act, include consumer protection and the reduction of financial crime.
- 3.2 By section 45 of the Act, the FSA is authorised:
 - (1) to vary an authorised person’s permission, where the authorised person is failing or is likely to fail to satisfy the Threshold Conditions or where it is desirable to exercise that power in order to protect the interests of consumers or potential consumers; and
 - (2) to vary such permission by removing a regulated activity from those for which the permission is given.
- 3.3 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.
- 3.4 Threshold Condition 5, in Schedule 6 to the Act, states that you must satisfy the FSA that you are a fit and proper person having regard to all the circumstances, including your connection with any person, the nature of the regulated activity that you carry on and seek to carry on and the need to ensure that your affairs are conducted soundly and prudently.

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

- 3.5 The FSA’s policy for exercising its own initiative power to vary a Part IV permission is set out in the Enforcement Guide (“EG”). The main considerations in relation to

the action specified above are set out below.

- 3.6 Paragraph 8.5(1) of EG indicates that the FSA will consider varying a firm's Part IV permission in support of its enforcement function in circumstances where it has serious concerns about a firm, or about the way its business is being or has been conducted, including where it appears that the firm is failing or is likely to fail to satisfy the threshold conditions relating to one or more of its regulated activities because, for example, the firm is not fit and proper because it has not conducted its businesses in compliance with high standards.
- 3.7 Paragraph 8.7(1) and 8.7(2) of EG indicate that the FSA will consider exercising its own initiative power as a matter of urgency where the information available to it indicates serious concerns about the firm or its business which need to be addressed immediately and where circumstances indicate that it is appropriate to use statutory powers immediately to require and/or prohibit certain actions by the firm in order to ensure the firm addresses these concerns.
- 3.8 Paragraph 8.8 of EG gives examples of situations that will give rise to such serious concerns which include:
- (3) information indicating significant loss, risk of loss or other adverse effects for consumers, where action is necessary to protect their interests;
 - (4) information indicating that a firm's conduct has put it at risk of being used for the purposes of financial crime, or of being otherwise involved in crime;
 - (5) evidence the firm has submitted to the FSA inaccurate or misleading that information so that the FSA becomes seriously concerned about the firm's ability to meet its regulatory obligations;
 - (6) circumstances suggesting a serious problem within a firm or with a firm's controllers that calls into question the firm's ability to continue to meet the threshold conditions.

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

- 3.9 COND 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.

- 3.10 COND 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.
- 3.11 COND 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.
- 3.12 COND 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 (COND 2.5.6(1));
 - whether the firm has contravened any provisions of the Act or the regulatory system (COND2.5.6(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 (COND2.5.6(6)).

Relevant Principle

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

4. FACTS AND MATTERS RELIED ON

Background

- 4.1 Millbank is a limited company incorporated on 22 December 1999 and operating as a mortgage broker from Yukon Court, 6 Yukon Road, London SW12 9PU. The principal of Millbank, Mr Byron Brown, is also its only mortgage adviser.

4.2 Millbank became authorised by the FSA on 4 January 2005 to carry on the following regulated activities:

- (a) advising on investments (except on Pension Transfers and Opt Outs);
- (b) agreeing to carry on a regulated activity;
- (c) arranging (bringing about) deals in investments;
- (d) making arrangements with a view to transactions in investments;
- (e) advising on regulated mortgage contracts;
- (f) arranging (bringing about) regulated mortgage contracts; and
- (g) making arrangements with a view to regulated mortgage contracts.

Customer A's mortgage applications

4.3 Customer A applied for a re-mortgage of his existing property through Millbank. The application was rejected by the lender on the basis that it contained false income details. The application form stated that Customer A earned £68,000 per annum and that his income as a police constable was supplemented by additional, part-time work as a security consultant. When the application was rejected, Millbank submitted a second mortgage application stating that Customer A earned £44,000 per annum and, again, that his income as a police constable was supplemented by additional, part-time work as a security consultant.

4.4 In relation to Customer A's applications:

- (a) As the only mortgage adviser at Millbank, Byron Brown dealt with Customer A's mortgage application when he became a customer of Millbank in 2006.
- (b) In June 2006, after researching mortgage products on behalf of Customer A, Byron Brown contacted Customer A by telephone to inform him that he had found a suitable product and asked Customer A to send him documents including copies of Customer A's passport, driving licence and annual

mortgage statement.

- (c) On 18 June, Byron Brown sent Customer A an e-mail requesting the same documents and attaching a copy of a mortgage application form. In the e-mail Byron Brown instructed Customer A to fill in an attached form, but to “leave out the earnings part”. Byron Brown told Customer A that the lender would not require this information.
- (d) In accordance with Byron Brown’s e-mail instructions, Customer A completed the mortgage application form and returned it to Millbank, leaving blank the sections relating to earnings.
- (e) Byron Brown submitted mortgage applications to two lenders on behalf of Customer A. He informed Customer A that his mortgage application had been rejected by both lenders, but provided no reasons.
- (f) Customer A has never undertaken part-time work in addition to his regular employment as a police constable.
- (g) Customer A did not earn £68,000 per annum.
- (h) Customer A saw for the first time, during the course of the police force’s internal investigation into the matter, the fully completed mortgage application form. The sections that he had been asked to leave blank had been completed in handwriting which was not his.

Other mortgage applications based on false information

4.5 In the course of responding to the FSA’s request for copies of all mortgage applications received from Millbank between 31 December 2005 and September 2007, the lender drew to the FSA’s attention a number of mortgage applications which it had rejected because they appeared to be based on false information.

4.6 The FSA reviewed a sample of five of these applications. In four cases, the applicant was stated as being self-employed. In each case, the income details disclosed were verified by an accountant, by way of an accountant’s certificate. In each case a different accountant had been used, and in each case the applicant was not in fact self-

employed and the income details provided were false.

- 4.7 For three of the four different accountants, the addresses and telephone numbers provided were false and, consequently, the individuals who purportedly produced the accounts, could not be traced. The fourth accountant confirmed that he had provided a certificate to support the information disclosed on the customer's mortgage application form, but he said that he was unable to comment on the integrity of the information because he had simply transferred the details provided by the customer directly onto an accountants' certificate without taking any steps to verify it.
- 4.8 In the fifth case, false employer and income details were disclosed. The false information was supported by a letter, purportedly from the applicant's employer, confirming the stated income.
- 4.9 Millbank maintains that it has never knowingly supplied misleading information to lenders and that it has no relationship with any of the accountants used by the applicants.

5. CONCLUSIONS

- 5.1 On the basis of the facts and matters set out above, and with regard to its regulatory objectives, which include the protection of consumers and the market confidence, the FSA has drawn the following conclusions.
- (1) Millbank, through its principal, knowingly entered false information onto Customer A's mortgage application forms, having instructed the customer to leave blank the relevant sections of the mortgage application, and submitted those forms to a lender.
 - (2) Millbank submitted other mortgage applications to lenders based on false information.
 - (3) Millbank failed to conduct its business with integrity and in compliance with proper standards and has contravened Principle 1 of the FSA's Principles for Businesses. This directly impugns its integrity and demonstrates that it is not a fit and proper person to be authorised to conduct regulated activities.

5.2 These matters are material in relation to Millbank's permitted regulated activities and it is therefore failing to satisfy, and is likely to continue to fail to satisfy, Threshold Condition 5 (Suitability).

5.3 In support of the FSA's financial crime, consumer protection and market confidence objectives, the exercise of the FSA's own-initiative power to vary Millbank's permission with immediate effect is an appropriate response to these concerns.

6. DECISION MAKER

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

7. IMPORTANT

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

The Tribunal

7.2 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.

7.3 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 Chris Walmsley at the FSA, 9th Floor, 25 The North Colonnade, Canary Wharf, London E14 5HS.

Representations

7.4 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 5 March 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 Samantha Jones, 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 Samantha Jones by 13 February 2008.

Access to evidence

- 7.5 Section 394 of the Act does not apply to this Supervisory Notice.

Confidentiality and publicity

- 7.6 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

- 7.7 If you have any questions regarding the procedures of the Regulatory Decisions Committee, you should contact Samantha Jones (direct line: 020 7066 3198/fax 020 7066 3199) or Jackie Noonan (direct line: 020 7066 3074/fax: 020 7066 3199), Regulatory Decisions Committee Professional Support Services.
- 7.8 For more information concerning this matter generally, you should contact Chris Walmsley at the FSA (direct line: 020 7066 5894) of the FSA.

Tim Herrington
Chairman, Regulatory Decisions Committee