
FINAL NOTICE

To: **Besso Limited**
Of: **8-11 Crescent**
London
EC3N 2LY

Date: **26 April 2006**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") gives you final notice about a requirement to pay a financial penalty:

1. ACTION

- 1.1. For the reasons listed below and pursuant to section 206 of the Financial Services and Markets Act 2000 ("the Act"), the FSA proposes to impose a financial penalty upon you, Besso Limited ("Besso") in the sum of £20,000.

2. REASONS FOR THE ACTION

- 2.1. The financial penalty is in respect of breaches of Section 59(1) of the Act that occurred between 14 January 2005 and 25 July 2005 and relate to Besso's conduct in relation to a certain former employee ("Individual X") of Besso and of a certain subsidiary company of Besso ("Company Y"), an Appointed Representative of Besso.
- 2.2. Individual X is a convicted fraudster, which fact was unknown to Besso until after the termination of the individual X's employment within the Besso Group. Individual X

allegedly perpetrated various frauds while he was employed within the Besso Group (a police investigation into these matters is ongoing).

- 2.3. At various times following the introduction of the FSA's regulation of general insurance intermediaries on 14 January 2005, Individual X carried out Controlled Functions (for the purposes of Section 59 of the Act) for both Besso and Company Y.
- 2.4. Nevertheless, no application under Section 60 of the Act was made by Besso in respect of Individual X. Accordingly, at no time was Individual X an Approved Person.
- 2.5. The FSA considers that if, pursuant to Section 59(1), an application under Section 60 of the Act had been made by Besso in respect of Individual X, his previous conviction would have come to light and his fraudulent activity would have been detected at an earlier date.

Relevant Statutory Provisions and Guidance

- 2.6. Section 59(1) of the Act provides that "An authorised person ("A") must take reasonable care to ensure that no person performs a Controlled Function under an arrangement entered into by A in relation to the carrying on by A of a regulated activity, unless the Authority approves the performance by that person of the Controlled Function to which the arrangement relates".
- 2.7. "Controlled Functions" fall into three broad categories:
 - (1) those involving the exercise of a significant influence on the conduct of the firm's affairs;
 - (2) those involving dealing with the firm's customers; and
 - (3) those involving dealing with the property of customers.¹

¹ FSMA s 59. See the Handbook at SUP 10:4 for a full list of Controlled Functions.

- 2.8. The requirement to ensure that only approved persons perform Controlled Functions extends to firms which use Appointed Representatives ("ARs") to perform Controlled Functions for them:
- (1) MIGI 9.2.1 G explains "An AR is a person (this includes a firm) who carries on regulated activities and who, in doing so, acts under the responsibility of an authorised firm... On this basis the AR does not need to be authorised by us. Our rules do not apply directly to an AR but everything the AR does (or omits to do) in carrying on the business for which the authorised firm has accepted responsibility is deemed to have been done (or omitted) by the authorised firm."
 - (2) MIGI 6.3.2 G provides that "(1) all individuals that perform the governing functions within... ARs carrying on insurance mediation activities as their main business; will need to be approved persons".
- 2.9. Section 206(1) of the Act provides that, if the FSA considers that an authorised person has contravened a requirement imposed on him by or under FMSA, it may impose on him a penalty, in respect of the contravention, of such an amount as it considers appropriate.

Factors Relevant to Determining the Proposed Action

- 2.10. The guidance in ENF Part 13 applies where the FSA is considering imposing a financial penalty on a firm.
- 2.11. ENF 13.1.2 G provides that financial penalties are one of a variety of regulatory tools the FSA may employ to help it to achieve its regulatory objectives. The principal purpose of financial penalties is to promote high standards of regulatory conduct by deterring firms and approved persons who have breached regulatory requirements from committing further contraventions, helping to deter other firms and approved persons from committing contraventions, and demonstrating generally to firms and approved persons the benefits of compliant behaviour.

2.12. ENF 13.3.3 G sets out the factors which may be relevant when the FSA determines the amount of a financial penalty for a firm or approved person. The relevant factors in this case include:

- (1) The seriousness of the contravention, including
 - (b) the duration or frequency of the contravention;
 - (e) the loss or risk of loss caused to consumers or other market users;
- (5) Conduct following the contravention. The FSA may take into account the conduct of the firm in bringing (or failing to bring) quickly, effectively and completely the contravention or misconduct to the FSA's attention and:
 - (a) The degree of cooperation the firm showed during the investigation of the contravention or misconduct (where a firm has fully cooperated with the FSA's investigation, this will be a factor tending to reduce the level of financial penalty);
 - (b) Any remedial steps taken since the contravention or misconduct was identified, including identifying whether consumers suffered loss, compensating them, taking disciplinary action against staff involved (if appropriate), and taking steps to ensure that similar problems cannot arise in the future.
- (6) Disciplinary record and compliance history. The previous disciplinary record and general compliance history of the firm may be taken into account.
- (9) The timing of any agreement as to the amount of the disciplinary penalty. The FSA and the person subject to disciplinary action may seek to agree the amount of any financial penalty and other terms. In recognition of the benefits of such agreements, ENF 13.7 provides that the amount of the penalty which might otherwise have been payable will be reduced to reflect the stage at which the FSA and the person concerned reach an agreement.

Conclusion

- 2.13. The FSA has concluded that it is appropriate in all the circumstances to impose a financial penalty upon Besso in the sum of £20,000. In accordance with ENF 13.7 a 30% discount has been applied to the penalty as Besso settled this matter at Stage 1 of the settlement process.
- 2.14. The FSA regards compliance with the requirement in Section 59 of the Act to ensure that no person performs a Controlled Function without being approved by the FSA to perform that function as vitally important for the fulfilment of its regulatory objectives, in particular those of maintaining confidence in the UK financial system, securing the protection of consumers and reducing financial crime. This case illustrates the potential risk to those regulatory objectives that can arise where firms fail to comply with Section 59: accordingly, the FSA regards Besso's breach of Section 59 very seriously.
- 2.15. But for the commendable co-operation of Besso with the FSA throughout, the prompt and decisive remedial action taken by Besso on discovery of Individual X's misconduct, and the fact that this appears to have been an unintentional and isolated example of failure to comply with Section 59 of the Act, the financial penalty would have been higher.

3. DECISION MAKER

- 3.1. The decision which gave rise to the obligation to give this notice was made by Margaret Cole, Director of Enforcement and Sally Dewar, Director of Markets as the Executive Settlement Decision Makers on behalf of the FSA.

4. IMPORTANT NOTICES

- 4.1. This Final Notice is given to you in accordance with section 390. The following statutory rights are important.

Manner of and time for payment

- 4.2. The financial penalty must be paid in full by Besso to the FSA by no later than 10 May 2006, 14 days from the date of this Notice.

If the financial penalty is not paid

- 4.3. If all or any of the financial penalty is outstanding on 11 May 2006, the FSA may recover the outstanding amount as a debt owed by Besso and due to the FSA.

Publicity

- 4.4. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Notice relates. Under those provisions, the FSA must publish such information about the matter to which this 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 or prejudicial to the interests of consumers.
- 4.5. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

- 4.6. For more information concerning this matter generally, you should contact Kevin Quinlan (020 7066 1334).

Carlos Conceicao

Head of Wholesale Department

FSA Enforcement